

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH :NAGPUR [VIRTUAL HEARING]
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.308/NAG./2019
Assessment Year 2012-2013

Ramdeobaba Sarvajanik Samiti, Katol Road, Gittikhadan, NAGPUR. PIN – 440 013. Maharashtra PAN AAETS2414A	vs.	The ACIT (Exemption), Room No.521, 5 th Floor, Dr. Ambedkar Bhawan (MECL Bldg.) Seminary Hills, Nagpur – 440 001. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Sanjay C. Thakar
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

Date of Hearing :	18.03.2024
Date of Pronouncement :	06.05.2024

ORDER

This assessee’s appeal for assessment year 2012-13, arises against the CIT(A)-1, Nagpur, Nagpur's Order No. CIT(A)-1/51/2015-16, dated 02.07.2019, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. Coming to the assessee’s sole substantive grievance raised in the instant appeal that both the learned lower authorities have erred in law and on facts in disallowing it’s claim of Rs.5,50,092/-; as “application” for carrying-out charitable purposes in India; the Ld. CIT(A)'s lower appellate discussion affirming Assessing Officer’s action to this effect reads as under :

Decision:

5.0 Ground no 2 and 3: The only issue in these two grounds pertains to disallowance of expenses incurred on foreign travelling. During the year under consideration the A.O. has disallowed a sum of Rs.5,50,092/- incurred on foreign travel expense of students of the trust. The appellant has submitted that the appellant trust is engaged in imparting education in the field of Engineering and Management. In order to provide education of international standard, the appellant trust has made agreements with various Educational Institutions/ Universities outside India which is only with a view to benefit to the students of the college of appellant trust. A sum of Rs.5,50,092/- was incurred on foreign travel expenses of the such students and as the said expenditures were incurred mainly with the view to benefit students of the appellant trust and accordingly for the purpose of achieving object of Education, as such, is liable to be allowed as expenses incurred for the purpose of objects of the trust.

5.1 The AO on the other hand has held that as per section 11(I)(a), the income derived from property held under trust, wholly for charitable or religious purposes, shall not be incurred in the total income to the extent to which such income is applied to charitable or religious purposes **in India**. In other words, expenditure incurred outside India cannot be considered as application of income and incurred for charitable or religious purposes in India.

5.2 An identical issue was dealt with in Appeal No. CIT(A)-1/107/2016-17 dated 22/01/2018 for A.Y. 2014-15 in the assessee's case by following the decision of ITAT Delhi Bench 'C' in the case of India Brand Equity Foundation v/s Assistant Commissioner of Income Tax (E) , Trust Ward-II IT Appeal No. 787 (DELHI) of 2011 [AY 2007-08], and the appeal was dismissed. It is pertinent to note that the Hon'ble ITAT DELHI BENCH 'C' in the case of India Brand Equity Foundation V/s. Assistant Commissioner of Income-tax (E), Trust Ward-II IT Appeal No. 787 (DELHI) OF 2011[AY 2007-08] in its order dated 11.7.12 has had an occasion to examine the issue wherein it has analysed the context and language of sec 11 (1)(a) which is reproduced hereunder :

"it is to be seen that the words "to the extent to the which such income is applied to such purposes in India" appearing in section 11(1)(a) of the Act only require that the charitable purposes should be confined to India on the application of the income of the trust to the execution of such purposes can be outside India, appears to us to be also opposed to the natural and grammatical meaning that can be ascribed to the words.

The word "applied" is a verb used in past tense. In the provision, it is used in the transitive form because it is followed by the words "to such purposes in India". It answers three questions which would arise in the mind of the reader: apply what? applied to what? and where? The answers would then make the meaning obvious. The answer to the first question would be: apply the income of the trust.

The answer to the second question will be: applied to charitable purposes.

The answer to the third question will be: applied in India.

Thus even grammatically speaking it seems to us that the group of words "to such purposes in India" qualifies the preceding verb "applied". It is a case of a verb being qualified by two prepositions which follow, viz., "to" and 'in'. So read, it seems clear to us that grammatically also it would be proper to understand requirement of the provision in this way, that is, that the income of the trust should be applied not only to charitable purposes, but also applied in India to such purposes. The submissions of Ld. Counsel that the words "in India" qualify only the words "such purposes" so that only the purposes are geographically confirmed to India does not appear to us to be the natural and grammatical way of construing the provision. That would break or clog the natural flow of the entire group of words "to the extent to which such income is applied to such purposes in India". The meaning sought to be attached by Ld. Counsel to the words "in India" as qualifying only the 'purposes' places a strain on the natural or grammatical interpretation of the group of words. If what Ld. Counsel contends is correct, then section 11(1)(c) may become redundant and otiose. If as he says, the income of the trust can be applied even outside India so long as the charitable purposes are in India, then there is no need for a trust which tends to promote international welfare in which India is interested and which was created after 1.4.1952 to apply to the CBDT for a general or special order directing that the income to the extent to which it is applied to the promotion of international welfare outside India shall not be denied the exemption, nor would it be necessary for a charitable or religious trust created before the aforesaid date to seek such an order from CBDT in respect of its income which is applied to charitable or religious purposes outside India. In our opinion, therefore, the words "in India" appearing in section 11(1)(a) and the words "outside India" appearing in section 11(1)(c) of the Act qualify the verb "applied appearing in these provisions and not the words "such purposes.

5.3 The Hon'ble Delhi High Court in the case of National Association of Software and Services Companies (345 ITR 362/ 2012) has discussed and analysed the provisions of section 11(1)(a) of the Act elaborately in paras 20 to 28, and the last 2 paragraphs are reproduced as under:

27. We now come to the last part of the submission of Mr. Vohra, learned counsel for the assessee. He suggested (of course, without giving up or conceding his main arguments dealt with above) that the time has now come to take a fresh look at the Section and having regard to the globalisation of

commerce and the vast strides made in cross-border trade : and flight of capital, it is the need of the hour to shed conservative thinking on the subject and adopt a bold and innovative approach by dispensing with the requirement that the application of the income of the trust should be in India in order 'to secure exemption for the trust. His point was that this can be achieved by construing or interpreting the section in the manner suggested by him. He also points out that the benefits of the application of the income outside the taxable territory will ultimately trickle down to India. He also pointed out by way of example an anomaly that is likely to arise because of the interpretation which we have placed upon the provision. He says that in the case of a trust whose object is the giving away of scholarship; to meritorious student the cost of air tickets purchased in India and borne by the trust to enable the student to go abroad for higher studies will be exempted from tax because the application of the income is in India, whereas the amount of fees paid by the trust abroad to the University there would not be exempt because it amounts to application of the income of the trust outside India, even though there is no difference between the two so far as the charitable nature of the purpose is concerned. In both the cases, according to him, the income is applied to the charitable purposes only.

28. What Mr. Vohra says is not without force or merit but we are required to interpret the statute as it is and not in the manner in which we think the law ought to be. We need to distance ourselves from matters of policy. Innovative thinking has its limits. Judicial adventurism, masquerading as judicial innovativeness should not result in legislation. Policy, so far as we are concerned, is uncharted territory into which we should feel chary of making forays. Secondly, we ought to be wise enough to know that in the matter of exemption from tax in all India statute, judicial restraint, and not innovativeness or novelty, may be the proper approach to follow in order that, the long settled legal position is not turned upside-down. We must, however, appreciate the tenacity with which the matter was argued before us by the learned-counsel on behalf of the assessee but we are afraid that he is looking up the wrong tree."

5.4 While discussing the above judgment in its order, the ITAT Bangalore C Bench, through order dated 26 August, 2016 (I.T.A. Nos.1489 /Bang/2013 & 1329/Bang/2014), in Foundation For Indian Sporting vs Department Of Income Tax held as follows:

The Hon'ble High Court has understood the meaning of the term applied to such purposes in India as appearing in Section 11(1)(a) by holding that the requirement of the provisions is that the income of the trust should be applied not only to the charitable purpose but also be applied in India to such purposes. Thus for exemption under Section 11(1) both the conditions of applying the income for charitable purpose and also in India are mandatory. It is pertinent to note that the application of income outside India is a pure question of fact and the decision of the Hon'ble Delhi High Court is applicable on the question of law

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that the condition of application of income in India is a mandatory requirement for quantifying the exemption under Section 11(1) of the Act.

5.5 Respectfully following the above decisions, I am of the considered view that the AO has correctly disallowed the expenses on foreign travel even though the same may have been incurred in India; however, the benefit was for students studying outside the geographical location of India. No infirmity is found the action of the AO, and this addition is upheld. Consequently, the appellant's Ground No. 2 and 3 is dismissed.

3. Learned counsel vehemently argued during the course of hearing that both the learned lower authorities have erred in law and on facts in making the impugned disallowance. He invited my attention to the assessee's detailed paper book running into 61 pages containing all the relevant particulars as well as various judicial precedents in support of the assessee's stand. It emerges from a perusal of the corresponding details compiled at page-11 of the paper book that the assessee had incurred the impugned expenditure for the purpose of foreign travels of its principal and vice-principal to various overseas destinations i.e., take for instance some of the expenditure incurred for Tanzania visit/tour followed by similar claims of U.K. and U.S. visits. It is noticed in this factual backdrop that the Ld. CIT(A)'s has already discussed a catena of case law holding that the condition of application of such an assessee's income in India is a mandatory requirement which it has failed to satisfy in above extracted terms. Faced with this situation, I see no ground to interfere with the learned CIT(A)'s detailed reasoning affirming Assessing Officer's action. Ordered accordingly.

4. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 06.05.2024.

Sd/
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 06th May, 2024

VBP/-

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1.	The appellant
2.	The respondent
3.	The Pr. CIT, Nagpur concerned
4.	D.R. ITAT, "SMC" Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.