

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT  
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.939/Bang/2023
Assessment Years : 2016-17

Gyudmed Tantric University Society P.O Gurupura, Hunsur, Mysuru-571 105.  <b>PAN – AAATG 4097 R</b>	Vs.	The Income Tax Officer, Exemptions Ward, Mysuru.
APPELLANT		RESPONDENT

Assessee by	:	Shri G Venkatesh, Advocate
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	08.05.2024
Date of Pronouncement	:	16.05.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 25/09/2023 in DIN No. ITBA/ NFAC/ S/ 250/ 2023-24/1056513585(1) for the assessment year 2016-17.

2. The issue raised by the assessee is that the Id. CIT(A) erred in confirming the addition of Rs.1,61,07,894/- representing accrued interest on FD by denying the exemption u/s 11 of the Act.

3. The assessee in the present case is a public charitable trust and filed return of income u/s 139(1) of the Act declaring at Nil income after claiming exemption u/s 11 of the Act. The assessee has shown members fund in its balance sheet, which was utilized by depositing in the bank in the form of fixed deposits. The assessee has earned interest

income against such fixed deposits, which was claimed as application of income. As such, the amount of interest received by the assessee was transferred to the Members fund account. However, the AO was of the view that the application of impugned interest income does not represent the charitable activity for which the trust was established. Therefore, the same cannot be allowed as deduction treating as application of income u/s 11 of the Act.

4. Besides the above, the AO also found that the impugned interest expenses/application was subject to the provision of TDS but the assessee has not done so. Accordingly, the AO was of the view that such application/interest expense also requires to be disallowed on account of non-deduction of TDS. Thus, the AO also disallowed the interest expenses/ application of income amounting to Rs. 1,61,07,894/- on account of non-deduction of TDS and added to the total income of the assessee.

5. Aggrieved, the assessee carried the matter before the Id. CIT(A).

6. The assessee before the Id. CIT(A) submitted that the amount received by the assessee was representing the corpus fund, which was marked in the form of FD with the resolution that interest from such fixed deposit will not be used for day-to-day activities of the assessee. However, the Id. CIT(A) called for a remand report from the AO who submitted that the amount of interest received on such FDs was reinvested in the bank. Thus, such an amount was not transferred to the individual account of the members.

7. The Id. CIT(A) after considering the submissions of the assessee and the remand report of the AO observed that the assessee under the provisions of sec. 11 of the Act has to utilize 85% of its gross receipts for

charitable purposes and balance 15% can be accumulated. However, if utilization falls short, less than 85% then same can be set apart after applying provisions of sec. 11(2)/11(5) of the Act after furnishing the necessary Form 9A or 10 as applicable before the due date of filing return of income. However, the assessee in the present case has not done so and, therefore, the Id. CIT(A) confirmed the order of the AO by observing as under:

*"5.15 In the present case as the appellant has reinvested the interest income of Rs.1,61,07,894/- which does not qualify for exemption automatically': For the appellant was required to submit Form No.9A to the AO before the due date of filing return u/s 139(1) and if not done the amount is subject to tax as per law. Under the prevailing rules, Form 9A is required to be filed if the organization fails to apply 85% and accumulates the deficit to be applied in the next financial year or in the year of receipt of income. Further, Form 10 is required to be filed if the organization fails to apply 85% and accumulates the deficit to be applied in the next five years. In the present on record is before me whether the appellant has submitted any of the forms within the stipulated time. Under the circumstances, the AO is directed to verify whether the form 9A or 10 has been filed as per Act and allow the appeal accordingly."*

8. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

9. The Id. AR before us filed a paper book running from 1 to 66 pages and contended that the fund collected from members was carrying some cost to the assessee in the form of interest. As such, the assessee was under the obligation to pay the interest to the members on the fund collected from them. Accordingly, the assessee is entitled for deduction of such interest against the interest income received from the bank. The Id. AR further contended that whatever amount of interest income received from the bank on the FDs was transferred to the individual members account in the books of accounts. The Id. AR in support of his contention has furnished the list of all the members running from Sl. No. 1 to 657 demonstrating that the amount of interest of Rs. 1,61,07,894/- was transferred to the respective members account.

10. Regarding non deduction of TDS it was submitted that the provisions of TDS were not applicable to society for the year under consideration. As per the Id. AR, the explanation (3) to sec. 11 was inserted by the Finance Act 2018 effective from 01/04/2019 for complying with the TDS provisions to the trust.

11. On the other hand, the Id. DR submitted that necessary details for the interest received from the bank was transferred to the individual members account of the trust was not available with the AO and, therefore, he requested to transfer the issue to the file of the AO for fresh verification/examination/adjudication as per the provisions of law.

12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note certain facts as detailed below:-

1) On perusal of the audited financial statement of the assessee, we find that the assessee has classified members fund as liability which is payable to the members in future.

2) Even in the earlier years, the assessee has transferred interest to the member's fund, which can be verified from the audited financial statements placed at pages 9 to 25 of the paper book.

12.1 It is the trite law that if assessee incurs any expenditure in the earning of any income, then such expenditure is to be allowed as deduction. In the present case, if the interest received from the bank has been treated as income of the assessee, then the assessee is entitled to the deduction of the corresponding expenses. It also appears to us that the assessee has been following this system of interest income and expenditure consistently and the Revenue has not disturbed the same

barring the year before us. Therefore, in principle, we agree with the contention of the Id. DR that the assessee is eligible for deduction of such interest expenses against the impugned interest income. However, we find that the contention of the Id. AR that the interest has been transferred in the respective members account has not been verified by the authorizes below. Therefore, we are inclined to set aside the issue to the file of the AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence, ground of appeal raised by the assessee is allowed for statistical purposes.

13. The assessee also raised additional grounds of appeal. At the time of hearing, since the assessee did not press the additional ground of appeal, the same is dismissed as infructuous.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in court on 16<sup>th</sup> day of May, 2024

Sd/-

**(GEORGE GEORGE K)**  
Vice President

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore,  
Dated, 16<sup>th</sup> May, 2024  
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore