

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “A” BENCH, BENGALURU
SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
BEFORE SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 208/Bang/2024 (Assessment Year:2008-09)		
Assistant Commissioner of Income Tax, Circle-1, (Exemptions), Bengaluru	vs.	Bangalore Development Authority, T. Chowdaiah Road, Kumarapark West, Seshadripuram S.O., Bangalore North, Bangalore-560020 PAN – AAALB0060D
(Appellant)		(Respondent)

Assessee by:	Sri. T. Srinivasa, CA
Revenue by:	Sri. D.K. Mishra, CIT DR

Date of hearing:	06.08.2024
Date of pronouncement:	30.08.2024

ORDER

PER: SOUNDARARAJAN K., J.M.

This is an appeal filed by the Revenue challenging the order of the NFAC, Delhi dated 8.12.2023 in respect of the assessment year 2008-09.

2. Brief facts of the case are that the assessee is a statutory body under the Government of Karnataka and they are regular in filing their return of income. The assessee also got registration under section 12AA of the Act w.e.f. 1.04.2003. During the assessment year 2008-09, the assessee filed their original return of income on 25.09.2008 and claimed exemption under section 11 and 12 of the Act. The assessee also filed the audit report alongwith the return of income. The return was processed and the AO accepted the same. Thereafter, the case was selected for scrutiny under CASS and notice was issued on various dates and the assessee also appeared and filed their

objections alongwith documents. The AO concluded the assessment under section 147 of the Act by fixing the total income at Rs. 53,91,72,000/- as against the Nil income returned by the assessee. Being aggrieved with the above order of the AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) also considered the various submissions and allowed the ground nos. 7 and 8 in which the assessee had claimed the repayment of the loan amount as application towards the object of the trust. As against the said order of the Id. CIT(A), the Revenue is before us with the following grounds of appeal:-

"I. The order of Ld.CIT(A) is opposed to facts and circumstances of the case;

II. The Ld. CIT(A) erred in allowing the claim of assessee for repayment of loan borrowed from Bank as application of income in the current financial year by ignoring the fact that the assessee itself had admitted that the capital expenditure on infrastructure project for which the loan was borrowed, had been claimed as application for the earlier assessment years;

III. The Ld. CIT(A) erred in allowing the claim of assessee for repayment of loan borrowed from Bank as application in the current financial year without appreciating the fact that such an allowance would amount to double deduction and is not permissible under the Income Tax Act, 1961;

IV. The CIT(A) has erred in relying on the judgment of the Hon'ble High Court of Madras in the case of Naicker Estate (2009) 315 ITR 237 (Madras) to allow the appeal of the assessee as the facts of the case relied upon are distinguishable from the present case. In the case of Naicker Estate (2009) 315 ITR 237 (Madras), the AO disallowed the claim of the assessee regarding repayment of loan borrowed for construction of commercial complex as "application of income" for charitable purpose on the ground that construction of multi storeyed commercial complex was not one of the objects of the trust and as such, the expenditure incurred for the construction of the building could not be treated as charitable nature. In this context, the Hon'ble Madras High Court held that though the expenditure incurred is capital in nature, if such expenditure is for the purpose of promoting the object of the trust, it should be considered as application of income. However, in the instant case, the AO disallowed the claim of the assessee regarding repayment of loan taken for construction of the

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building bridges etc. as application of income in the current financial year because cost of construction had been claimed as application in the earlier assessment years and further allowing repayment of loan in the current year, would amount to double deduction.;

V. The appellant craves leave to add, alter or amend all or any of the Grounds of Appeal before or at the time of the hearing of the appeal;

VI. The order of the Ld.CIT(A) may be set-aside and the order of the AO may be confirmed.”

3. At the time of hearing, the Id. DR appearing for the appellant had pointed out that the assessee had already utilized the loan amount towards the application for charitable purposes and claimed the same as capital expenditure and therefore, the repayment of loan would not be eligible to be treated as application for charitable purposes and therefore, the Id. AO had rightly rejected the claim and submitted that the order of the Id CIT(A) is wrong and prayed to allow the appeal.

4. The Id. AR filed a paper book enclosing the various documents and also filed the various orders of the Tribunal in support of their arguments. The Id. AR submitted that the CIT(A) had elaborately discussed the issue and came to the correct conclusion that the repayment of loan amount is for the purpose of fulfilling the objects of the trust. Ld. AR further submitted that during the year, the grant received by the assessee for the construction of roads and bridges was treated as income and therefore the repayment of the loan is also to be treated as application income.

5. We heard the arguments of both sides and perused the materials on record. We found from the assessment order dated 28.03.2016, the AO has given the following observations in respect of the repayment of loan by the assessee, which reads as under:-

“3. Further it was noted that the assessee had taken a loan for the purpose of construction of Flyover, construction/formation of Outer Ring Road etc and the same was considered as application for charitable purpose and claimed as capital expenditure. Further the repayment of loan of Rs. 1072.32 lakhs

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borrowed to fulfil the above objects of the trust was also claimed in the computation statement and the same was allowed in the assessment.”

6. Further, we have also perused the certified annual accounts and audit report filed by the assessee for 2007-08 and in page 88 of the paperbook, in the source of funds column the assessee had shown the grants received. Similarly in page 107 of the paper book, it was observed as follows:

“Fixed assets are stated at cost less accumulated depreciation.

Commencing from the current financial year (FY 2011-12), fixed assets are recognised in the books of account only when they embody future economic benefits to the Authority. Thus, the infrastructure and other works undertaken by the Authority for the development of the Bangalore Metropolitan Area over which it has no legal ownership and also which do not have any potential to contribute to the future revenues of the Authority are not recognised as fixed assets. The amounts spent on these developmental works are recognised as expenditure as and when incurred.

Pursuant to this change in accounting policy, various developmental works recognised as Fixed Assets and Capital Work-in-progress up to 31 March, 2011 are charged to the Income & Expenditure Account for the current financial year. The corresponding grants which were earlier part of the capital reserves have been reduced from the carrying value of the Fixed Assets and Capital Work-in-progress.

In accordance with the requirement of Accounting Standard 5 relating to change in accounting policy, the impact on account of change in accounting policy is disclosed separately in the Income & Expenditure Account under Schedule 24.”

Further right from the beginning the case of the assessee is that they have treated the grants received as income according to their accounting treatment and therefore the repayment of loan was claimed as application of income. This plea was not considered by the AO.

7. But the certified annual accounts and audit report filed for the financial year 2011-12, which have been extracted above, would brought to light that the said grants / loan were treated as part of the income. Therefore, on this background the issue has to be decided. Moreover these facts were not placed

before the AO and before the Id. CIT(A) at the time of passing the orders and therefore they have no opportunity to consider the same. In similar circumstances, the Coordinate Bench of this Tribunal in ITA No. 1281/Bang/2016 dated 1.11.2021 had considered the similar issue in respect of another trust and gave the following findings:-

“6. In view of the foregoing discussion, we quash the order of Ld. CIT(Exemptions) with regard to issue relating to depreciation. With regard to issue relating to repayment of loan, we modify the direction of the CIT (Exemptions) and direct the A.O. to examine this claim afresh i.e. if the cost of assets acquired out of loan funds have already been allowed as application of income, then the repayment of loan should not be allowed as application. On the contrary, if the cost of assets purchased out of loan was not allowed as application of income, then the repayment of loan should be allowed as application of income. We modify the directions given by Ld. CIT(Exemptions) accordingly.”

8. In the above order, this Tribunal had directed the AO to examine the claim afresh and decide the issue accordingly. The Tribunal further held that if the cost of assets acquired out of loan funds have already been allowed as application of income, then the repayment of loan should not be allowed as application. Taking a clue from the above order, we also remit the issue to the Assessing Officer with a direction to consider, if the assessee had already utilized the loan amount and claimed the same as application of income then naturally the repayment of loan could not be attributed to the application of income. With the above directions, we dispose the appeal filed by the Revenue.

9. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 30th August, 2024.

Sd/-

(Waseem Ahmed)
Accountant Member

Bengaluru, Dated: 30th Aug, 2024

Sd/-

(Soundararajan K)
Judicial Member

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Copy to:

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2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
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By Order

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Assistant Registrar
ITAT, Bengaluru