

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.364/Bang/2015
Assessment year : 2011-12

St. Charles Medical Society
Nirmala Hospital,
44/1,Hennur Road,
St. Thomas Town,
Bangalore – 560 084.

PAN: AAAJS0441D
APPELLANT

Vs. The Deputy Director of
Income Tax (Exemption),
Circle 17(2),
Bangalore.

RESPONDENT

Appellant by : Shri V. Srinivasan, CA
Respondent by : Shri Sunil Kumar Aggarwala, JCIT

Date of hearing : 07.10.2015
Date of Pronouncement : 09-10-2015

ORDER

PER SMT ASHA VIJAYARAGHAVAN, JM:

This appeal by the assessee is directed against the order of the CIT(Appeals)-14, LTU, Bangalore relating to assessment year 2011-12.

2. The assessee is a public religious cum public charitable institution registered as Society under the Karnataka Societies Act, 1960. Its main activity revolves around running and management of the Nirmala Hospital at Bhadravathi having 150 beds, a nursing school and related activities. The return of income for AY 2011-12 was filed on 30.09.2011 declaring a

taxable income of 'nil'. The only substantive issue disputed in this appeal is the restriction of accumulation of income u/s 11(1)(a) of the Act,1961 to Rs.21,43,711/- by the AO as against Rs.45,71,247/- claimed by the assessee.

3. The Assessing Officer computed the accumulation at 15% of the net income of the Society holding that the gross receipts of an educational institution will not be available fully for application to charitable purposes in India since the expenditure for running the educational activities, which are necessary for earning such income, would have to be factored in. The assessee's claim of accumulation at 15% of gross receipt was not allowed since the AO was of the view that this method is applicable only to a Trust which is running purely on donations and where no amount has been spent for getting such donations.

4. On appeal, the assessee relied upon the decision of the Hon'ble Supreme Court in case of *CIT vs Programme for Community Organization* 248 ITR 1 to emphasize its stand that the accumulation of income provided for after application of income for charitable purposes u/s 11(1)(a), should be with reference to 'gross' and not 'net' income.

5. The Id. CIT(Appeals) was of the opinion that assessee's reading of the said judgment was incorrect since the decision deals with a case where only voluntary contributions were received and utilized for rendering charitable/religious activities free of cost and there was no income generating activity performed by the assessee.

6. The assessee also referred to earlier ruling of the Hon'ble Supreme Court in the case of *S.R.M. M.C.T.M. Tiruppani Trust Vs Commissioner of Income Tax (1998)* reported in *230 ITR 636 (SC)* and *Commissioner of Income Tax vs ALN Rao Charitable Trust (1995)* reported in *216 ITR 697 (SC)* which have dealt with this issue wherein it was held that the deduction or exclusion on account of accumulation of income under section 11(1)(a) of the Income Tax Act is to be granted at 25% (now reduced to 15%) of the gross receipts or 25% (now reduced to 15%) of the income from property held under trust. The CIT(Appeals) held that the cited decisions were delivered on a completely different set of facts and legal issues.

7. The CIT(Appeals) also observed as follows:-

“3.2 The Central Board of Direct Taxes in its Circular No.5-P(LXX-6) dt. 19.06.1968 has also clarified that the income of the charitable or religious trusts/organization shall be computed by

applying the general commercial principles rather than the regular provisions of the Income Tax Act. The circular, therefore, held that it would be incorrect to assign to the word “income” used in section 11(1)(a) the same meaning as has been specifically assigned to the expression “Total Income” under section 2(45). The said circular contains the following mention which appears to have confused the matter for some –

“Where the trust derives income from house property interest on securities, capital gains, or other sources, the word “income” should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax u/s 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income, computed in the aforesaid manner, should be not less than 75 percent of the latter, if the trust is to get the full benefit of the exemption u/s 11(1).”

(emphasis added)

3.3 The appropriations or applications referred supra actually mean the debit entries appearing below the line i.e. the Income and Expenditure Appropriation account rather than above the line i.e. Income and Expenditure Account. The circular, therefore, does not indicate that even revenue expenditure has to be added back in the case of charitable or religious trusts which are running hospitals, educational institutions or any other activities for which they charge a service fee, in order to arrive at “income” within the meaning of section 11(1)(a).”

8. The ld. CIT(Appeals) finally concluded as follows:-

“3.7 I find from the AO’s treatment that the different kinds of receipts available to the assessee through voluntary contributions, local donations, apart from income from Nirmala Hospitals and the Nursing College, has not been appreciated and the principle of 15% accumulation on net educational income has been applied without proper mind application. To the extent the appellant receives donations, the accumulation from such receipts are to be treated in terms of the Hon’ble Supreme Court’s decision in case of Programme for Community Organization (supra). The receipts from the hospital and the nursing school, even if fixed at non commercial rates (subject to verification and recording clearly by the AO) could be earned only through the incurring of operational expenses relating to salary, medicine purchase, academic material, maintenance etc. for these activities. Therefore, the application of income and accumulation are both to be reckoned from the net income available for these purposes. The AO is, therefore, directed to bifurcate the receipts from donation and the consideration charging activities and treat the accumulation in the former in terms of gross receipt and in the latter in terms of net receipts. In view of this discussion, the grounds raised are partly accepted.”

9. Aggrieved the assessee is in appeal before us and has raised the following grounds;

“ 1. The orders of the authorities below in so far as they are against the assessee are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The ld.CIT(A) is not justified in holding that the computation of the income accumulated u/s 11(1)(a) of

the Act, at 15% of the income from property held under trust requires to be computed on the net income from charitable activities after reducing revenue expenditure and thereby reducing the claim of accumulation u/s 11(1)(a) of the Act to Rs.21,43,711/- as against a sum of Rs.45,71,247/- claimed by the assessee in its return of income filed for the year under appeal under the facts and in the circumstances of the assessee's case.

3. The ld.CIT(A) is not justified in upholding the computation of the amount accumulated u/s 11(2) of the Act at Rs.21,17,878/- as against a sum of Rs.01,37,985/- computed by the assessee after reckoning 15% of the accumulation in terms of section 11(1)(a)d of the Act on the net surplus after deducting revenue expenditure incurred by the assessee, instead of computing the same at 15% of the gross income from property held under trust, as done by the assessee under the facts and in the circumstances of the assessee's case.

4. For the above and other grounds that may be urged at the time of hearing of the assessee, your assessee humbly prays that the appeal may be allowed and justice rendered and the assessee may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs”.

12. We find that the issue is covered by the Co-ordinate Bench decision in the case of Jyothy Charitable Trust in ITA No.662/Bang/2015. The relevant extract is reproduced below;

“15. The third issue that arises for consideration in this appeal is as to whether 15% accumulation for application in future has to be calculated on gross receipts or net receipts after deduction of revenue expenditure. The Assessee claimed accumulation of income for application for charitable purpose at 15% of the gross receipts. The AO was of the view that accumulation will be allowed only to the extent of 15% of the income after revenue expenditure. In other words income to be set apart u/s.1 1(1)(a) of the Act has to be computed at 15% of the net income i.e., gross receipts minus revenue expenditure and not on the gross receipts as claimed by the Assessee. Since in the case of the Assessee, the gross receipts after revenue expenditure was nil, the AO denied the benefit of accumulation to the Assessee.

16. On appeal by the Assessee, the CIT(A) confirmed the order of the AO. Hence ground No-4 raised by the Assessee before the Tribunal.

17. The issue to be decided is therefore as to whether for the purpose of computing accumulation of income of 15% under section 11(1)(a) of the Act, one has to take the gross receipts or gross receipts after expenditure for charitable purpose i.e., the net receipts. This issue is no longer res integra and has been decided by the Special

Bench Mumbai in the case of Bai Sonabai Hirji Agiary Trust Vs. ITO 93 ITD 0070 (SB). The facts in the aforesaid case were that the assessee was a public charitable trust enjoying exemption under s. 11 of the IT Act. As per the requirement of s. 11(1) of the IT Act, as it prevailed at that point of time, the assessee had to apply 75 per cent of its income for the objects and purposes of the trust and the assessee was permitted to accumulate or set apart up to 25 per cent of its income, which was subject to fulfillment of other conditions. While calculating the aforesaid 25 per cent, the important question which arose was as to whether for this purpose, the gross income earned by the assessee is relevant or the income as computed in accordance with the provisions of IT Act. In other words, whether outgoings from out of gross income which are in the nature of application of income, should be first deducted from the gross income and 25 per cent of only the remaining amount should be allowed to be accumulated or set apart. The Special Bench of the ITAT on the issue held as follows:-

9. Coming to the merits of the issue, we are of the view that the same is clearly covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Programme for Community Organization (supra). In the decision, their Lordships, after taking note of provisions of sec.

11(l)(a), have held as under:

"Having regard to the plain language of the above provision, it is clear that a charitable or religious trust is entitled to accumulate twenty-five per cent of its income derived from property held under trust. For the present purposes, the donations the assessee received, in the sum of Rs. 2,57,376, would constitute its property and it is entitled to accumulate twenty-five per cent thereof. It is unclear on what basis the Revenue contended that it was entitled to accumulate only twenty five per cent of Rs.87,010.

For the aforesaid reasons, the civil appeal is dismissed."

It is clear from the above that deduction of twenty-five per cent was held to be allowable not on total income as computed under the IT Act. Any amount or expenditure, which was application of income, is not to be considered for determining twenty five per cent to be accumulated. Their Lordships, as noted earlier, affirmed the decision of Kerala High Court in (1997) 141 CTR (Ker) 502 : (1997) 228 ITR 620 (Ker) (supra) wherein it is held as under:

"At the outset, the statutory language of s. u(i)(a) of the IT Act, 1961, relates to the income derived by the trust from property. The trust is required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to

which such income is applied to such purposes in India. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of 25 per cent of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25 per cent of the income from the source of property with reference to the extent to which such income is applied for such purposes, charitable or religious. In other words, for the purpose of s. 11(i)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25 per cent is set apart in accordance with the spirit of the statutory provision."

This means that, when it is established that trust is entitled to full benefit of exemption under s. 11(1), the said trust is to get the benefit of twenty-five per cent and this twenty-five per cent has to be understood as income of the trust under the relevant head of s. 11(1). In other words, income that is not to be included for the purpose of computing the total income would be the amount expended for purposes of trust in India. Their Lordships in the above case have emphasized on the clear and unambiguous language of sec. 11(1)(a) and decided the matter on the basis of the same. It has been held that as per the statutory language of the above section the income which is

to be taken for purpose of accumulation is the income derived by the trust from property.

If both the decisions are carefully read, it becomes evident that any expenditure which is in the shape of application of income is not to be taken into account. Having found that trust is entitled to exemption under s.11(1), we are to go to the stage of income before application thereof and take into account 25 per cent of such income. Their Lordships have pointed that the same has to be taken on "commercial" basis and not "total income" as computed under the IT Act. Their Lordships in the decided case rejected the contention of the Revenue that the sum of Rs. 1,70,369 which was spent and applied by the assessee for charitable purposes was required to be excluded for purpose of taking amount to be accumulated.

Having regard to the clear pronouncement of their Lordships of the Supreme Court, it is difficult to accept that outgoings which are in the nature of application of income are to be excluded. The income available to the assessee before it was applied is directed to be taken and the same in the present case is Rs. 3,42,174. Twenty five per cent of the above income is to be allowed as a deduction. Similar view has also been taken by the Hon'ble Madhya Pradesh High Court in Parsi Zorastrian Anjuman Trust vs. CIT (supra). No reason whatsoever has been given by the Revenue authorities for deducting Rs. 2,17,126 in

this case for purposes of s. 11(1)(a). The decision cited on behalf of the Revenue did not take into account the decision of the Supreme Court referred to above. The circular of CBDT has also been considered by the Hon'ble Kerala High Court in its decision referred to above. Accordingly, the question referred to is answered in the affirmative and in favour of the assessee."

18. The aforesaid decision clearly supports the plea of the Assessee. Following the same, we hold that the accumulation u/s 11(1)(a) of the Act, should be allowed as claimed by the Assessee. Ground No.4 raised by the Assessee is accordingly allowed.

Following the decision of the co-ordinate bench of the Tribunal, we set aside the order of the CIT(A).

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on the 9th October, 2015.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER
Place : Bangalore:
D a t e d : 09-10-015

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

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Copy to :

- 1 Appellant
- 2 Respondent
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By order

AR, ITAT, Bangalore