

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH ' B '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. No.887/Bang/2016  
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax (Exemptions),  
Circle 1, Bangalore.

.... Appellant.

Vs.

M/s. Chalasani Education Trust,  
No.420, Chalasani Main Road,  
Whitefield Road, Bangalore-560 066.  
PAN AABTC 0124G

..... Respondent.

Appellant By : Shri G. Kamaladhar, D.R.  
Respondent By : Dr.N.Suresh, C.A.

Date of Hearing : 05.04.2017.

Date of Pronouncement : 26.04.2017.

**ORDER**

**Per Shri Vijay Pal Rao, J.M. :**

This appeal by the assessee is directed against the order dt.19.12.2016 of Commissioner of Income Tax (Appeals) for the Assessment Year 2011-12.

2. The revenue has raised the following grounds :

**Carry forward of excess application:**

i). Whether, in the given facts and circumstances, the CIT(A) is correct without appreciating the fact that the normal computation of income under respective heads as envisaged u/s 15 to 59 are not applicable to the computation of income in respect of charitable trust/institution for the purpose of claiming exemption under section 11, 12 and 13 and, therefore, the provisions relating to set-off of loss from one source against the income from another source, set-off of loss from one head against income from another head and carry forward and set-off of loss against the income of subsequent years as envisaged u/s 70 to 79 are also not applicable to the charitable trusts/institutions.

ii). Whether, in the given facts and circumstances, the CIT(A) is correct in law without appreciating the fact that the issue of application of income more than the income computed does not arise, except in a case where the assessee has incurred huge amount of capital expenditure sourced out of borrowed or corpus donations or 15% of income set apart over a period of time. However, expenditure incurred out of the above sources cannot be termed as application of funds out of the income earned in a particular assessment year inasmuch as loan borrowed does not fall under the category of income earned by the assessee, corpus fund donation does not come under income by virtue of section 11(1)(d) and 15% of income set apart in earlier assessment year cannot be construed as income of the current year and 15% set apart out of the current year income is also excluded from income available for application. As such, the concept of application is only to show that the income is fully utilized rather than claiming excess expenditure either revenue or capital over and above the income so as to claim excess application or deficit/loss to be carried forward to subsequent assessment years. Even in the case of excess application by

virtue of borrowed funds/corpus fund donations/15% set apart of earlier years, the income of the assessee cannot be converted to loss but at best it can be made Nil. Hence, the carry forward of excess application of income as claimed by the assessee cannot be allowed.

**Net receipts Vs. Gross receipts**

i) Whether, in the given facts and circumstances, the CIT(A) is correct in law in not considering the Board Circular on this issue i.e. *Board Circular no. 12-(PXX-7 of 1968) dated 26.11.1968*, on which the AO placed reliance for disallowance of accumulation /set apart of income u/s 11(1)(a), wherein it is clearly explained that if a trust fails to comply with accumulation provisions u/s 11(2), then the entire income accumulated would be liable to assessment u/s 11(3), including 15% of income set apart or accumulated u/s 11(1)(a), and, therefore, rendered a perverse decision.

ii) Whether, in the given facts and circumstances, the CIT(A) is correct in law in holding that the provisions of sub-section (1) and (2) of section 11 operate independently, and, therefore, disallowance of accumulation u/s 11(2) has no effect on allowance of set apart/accumulation u/s 11(1)(a).

iii) Whether, in the given facts and circumstances, the CIT(A) is correct in law in ignoring the fact that in case the assessee is claiming 15% of income set-apart/accumulation on the basis of gross receipts, the assessee shall produce evidence that such amount is invested in the modes specified u/s 11(5) r.w.s. 13(1)(d)(i). However, as the net surplus available in the hands is less than 15% of gross receipts, the assessee will not be in a position to invest higher amount/more than net surplus in the modes specified u/s 11(5).

iv) Whether, in the given facts and circumstances, the CIT(A) is correct in law in not considering the fact that if the gross receipts are considered as income within the

meaning of Section 11(1)(a), then in the event of assessee losing the exemption due to violation of conditions stipulated u/s 13, then the entire gross receipts being the income is liable to be taxed, which is grossly unjustified and unviable and beyond the purview of Section 11(1)(a). On the other hand, it is not the case of the assessee to argue that for the purpose of claiming 15% of income set-apart/accumulation, income to be reckoned on the basis of gross receipts, but in the event of assessee losing the exemption, the income will be recognized on the basis of net surplus/book profits rather than gross receipts.

3. The first issue raised by the revenue in this appeal is regarding carry forward of excess application of income under Section 11(1)(a) of the Income Tax Act, 1961 (in short 'the Act').

4. We have heard the learned Departmental Representative as well as learned Authorised Representative and considered the relevant material on record. The CIT (Appeals) has decided this issue by following the decisions of this Tribunal including the decision in the case of **CIT Vs. Manipal Academy of Higher Education** (2015) 44 ITR (Trib) 18 (Bang).

The co-ordinate bench of this Tribunal in the case of **CIT Vs. Karnataka Food and Civil Supplies Ltd** vide order dt.20.10.2015 in ITA

No.124/Bang/2014 has held in paras 8 & 9 as under :

“ 8. We are of the view that pendency of an appeal before the Hon'ble High Court of Karnataka cannot be the basis not to follow the decision on the issue already rendered in identical cases. Section 11(1)(a) does not contain any words of limitation to the effect that the income should have been applied for charitable or religious purpose only in the year in

which the income has arisen. The application for charitable purposes as contemplated in section 11(1)(a) takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. Hence, even if the expenses for such purposes have been incurred in the earlier years and the said expenses are adjusted against the income of a subsequent year, the income of such subsequent year can be said to be applied for charitable or religious purposes in the year in which such adjustment takes place. In other words, the set-off of excess of expenditure incurred over the income of earlier years against the income of a later year will amount to application of income of such later year. The above is the position of law as held in the case of CIT Vs. Maharana of Mewar Charitable Foundation 164 ITR 439 (Raj) CIT Vs. Shri Plot Swetamber Murti Pujak Jain Mandal 211 ITR 293 (Guj.). In CIT Vs. Institute of Banking Personnel Selection 264 ITR 110 (Bom), it was held that in case of charitable trust whose income is exempt under s. 11, excess of expenditure in the earlier years can be adjusted against income of subsequent years and such adjustment would be application of income for subsequent years and that depreciation is allowable on the assets the cost of which has been fully allowed as application of income under s. 11 in past years. In Govindu Naicker Estate VS. ADIT 248 ITR 368 (Mad), the Hon'ble Madras High Court held that the income of the trust has to be arrived at having due regard to the commercial principles, that s. 11 is a benevolent provision, and that the expenditure incurred on religious or charitable purposes in earlier year or years can be adjusted against the income of the subsequent year. The principle that the loss incurred under one head can only be set off against the income from the same head is not of any relevance, if the expenditure incurred was for religious or charitable purposes, and the expenditure adjusted against the income of the trust in a subsequent year, would not amount to an incidence of loss of an earlier year being set off against the profit of a subsequent year. The object of the religious and charitable trust can only be achieved by incurring expenditure and in order to incur that expenditure, the trust should have an income. So long as the expenditure incurred is on religious or charitable purposes, it is the expenditure properly incurred by the trust, and the income from out of which that expenditure is incurred, would not be liable to tax. The expenditure, if incurred in an earlier year is adjusted against the income of a later year, it has to be held that the trust had incurred expenditure on religious and charitable purposes from the income of the subsequent year, even though the actual expenditure was in the earlier years, if in the books of account of the trust such earlier expenditure had been set off against the income of the subsequent year. The expenditure that can be so adjusted can only be expenditure on religious and charitable purposes and no other. The High Court relied on the decision in the case of CIT Vs. Society of Sisters of ST. Anne 146 ITR 28 (Kar)."

9.. We find that the above decision has considered the judgment of Hon'ble Madras High Court in the case of Govindu Naicker Estate (supra), relied on by the Ld. DR before us. In so far as the argument of the Ld. DR that only the deficit of immediately preceding assessment year can be considered, in our opinion, this issue also stands covered by the above mentioned decision of the coordinate bench in the case of Academy of Liberal Education (supra). Relevant para 3 is reproduced here under :

*"3. The assessee is a trust registered u/s. 12A of the Act. For the A.Y. 2011-12, the assessee filed a return of income showing application of income by more than Rs.3,08,66,139 of its receipts. The assessee also had a carry forward unabsorbed deficit of Rs.25,78,08,575 from*

*A.Ys. 2005-06 to 2010-11. The unabsorbed current deficit and unabsorbed deficit for the A.Ys. 2005-06 to 2010-11 were sought to be carried forward for setting off and on treatment as application of income in the subsequent assessment years. The income declared in the return of income was NIL.”*

Thus this Tribunal had allowed set off of losses even for years prior to the immediately preceding assessment year. We do not find any reason to differ from the view taken by the coordinate bench.”

In view of the decision of the co-ordinate bench of this Tribunal, we do not find any merit or substance in the appeal of revenue.

5. The second issue raised by the revenue is regarding allowability of accumulation of 15% of gross receipts or net receipts.

6. We have heard the learned Departmental Representative as well as learned Authorised Representative and considered the relevant material on record. The Assessing Officer has disallowed the claim of depreciation to the assessee-trust on the ground that when the capital expenditure itself was allowed as application of income under Section 11(1)(a) then the allowance of depreciation would amount to double deduction. The CIT (Appeals) has allowed the claim of the assessee by following various decisions of this Tribunal as well as High Courts. At the outset we note that an identical issue has been considered by the co-ordinate bench of this Tribunal in the case of **Moogambigai Charitable and Education**

**Trust Vs. ADIT (Exemptions)** vide order dt.13.7.2016 in ITA No.1224/Bang/2015 in para 11 as under :

*“ 11. We have considered the rival submissions as well as the relevant material on record. At the outset, we note that this issue has been considered by this Tribunal in a series of decisions. In the case of M/s. CMR Janardhana Trust (supra), the Tribunal has again considered and decided this issue in paras 15 to 17 as under :*

*“ 15. We have heard the submissions of the Id. DR, who relied on the order of CIT(A) and the decision of the Hon’ble Delhi High Court in the case of DIT(E) Vs. Charanjiv Charitable Trust (2014) 43 taxmann.com 300 (Delhi). We have considered the order of the CIT(A). Identical issue came up for consideration before ITAT Bangalore Bench in the case of DDIT(E) v. Cutchi Memon Union (2013) 60 SOT 260 Bangalore ITAT, wherein similar issue has been dealt with by this Tribunal. In the aforesaid case, the assessee claimed depreciation and the AO denied depreciation on the ground that at the time of acquiring the relevant capital asset, cost of acquisition was considered as application of income in the year of its acquisition. The AO took the view that allowing depreciation would amount to allowing double deduction and placed reliance on the decision of Hon’ble Supreme Court in Escorts Ltd. (supra). The CIT(A), however, allowed the claim of assessee. On further appeal by the Revenue, the Tribunal held as follows:-*

*“20. We have considered the rival submissions. If depreciation is not allowed as a necessary deduction for computing income of charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income as it is nothing but a decrease in the value of property through wear, deterioration, or obsolescence. Since income for the purposes of section 11(1) has to be computed in normal commercial manner, the amount of depreciation debited in the books is deductible while computing such income. It was so held by the Hon’ble Karnataka High Court in the case of CIT Vs. Society of Sisters of St. Anne 146 ITR 28 (Kar). It was held in CIT vs. Tiny Tots Education Society (2011) 330 ITR 21 (P&H) , following CIT vs. Market Committee, Pipli (2011) 330 ITR 16 (P&H) : (2011) 238 CTR (P&H) 103 that depreciation can be claimed by a charitable institution in determining percentage of funds applied for the purpose of charitable objects. Claim for depreciation will not amount to double benefit. The decision of the Hon’ble Supreme Court in the case of Escorts Ltd. 199 ITR 43 (SC) have been referred to and distinguished by the Hon’ble Court in the aforesaid decisions.*

21. The issue raised by the revenue in the ground of appeal is thus no longer res integra and has been decided by the Hon’ble Punjab & Haryana High Court in the case of CIT v. Market Committee, Pipli, 330 ITR 16 (P&H). The Hon’ble Punjab & Haryana High Court after considering several decisions on that issue and also the decision of the Hon’ble Supreme Court in the case of Escorts Ltd. (supra), came to the conclusion that depreciation is allowable on capital assets on the income of the charitable trust for determining the

quantum of funds which have to be applied for the purpose of trusts in terms of section 11 of the Act. The Hon'ble Punjab & Haryana High Court made a reference to the decision of the Hon'ble Supreme Court in the case of Escorts Ltd. (supra) and observed that the Hon'ble Supreme Court was dealing with a case of two deductions under different provisions of the Act, one u/s. 32 for depreciation and the other on account of expenditure of a capital nature incurred on scientific research u/s. 35(1)(iv) of the Act. The Hon'ble Court thereafter held that a trust claiming depreciation cannot be equated with a claim for double deduction. The Hon'ble Punjab & Haryana High Court has also made a reference to the decision of the Hon'ble Karnataka High Court in the case of CIT v. Society of Sisters of Anne, 146 ITR 28 (Kar), wherein it was held that u/s. 11(1) of the Act, income has to be computed in normal commercial manner and the amount of depreciation debited in the books is deductible while computing such income. In view of the aforesaid decision on the issue, we are of the view that the order of the CIT(A) on the above issue does not call for any interference.

22. Consequently, ground No.5 raised by the revenue is dismissed."

16. It is no doubt true that the Hon'ble Delhi High Court in the case of Charanjiv Charitable Trust (supra) has taken a contrary view but then when two views are possible on an issue, the view favourable to the Assessee has to be followed. The decision of the Hon'ble Punjab & Haryana High Court is in favour of the Assessee and has followed the decision of the Hon'ble Karnataka High Court in the case of Society of Sisters of Anne (supra). The interpretation to the contrary given by the CIT(A) on the decision of the Hon'ble Karnataka High Court in the case of Society of Sisters of Anne (supra) cannot therefore be accepted. We may also add that the legal position has since been amended by a prospective amendment by the Finance (No.2) Act, 2014 w.e.f. 1.4.2015 by insertion of subsection (6) to section 11 of the Act, which reads as under:- "(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year."

17. As already stated, the aforesaid amendment is prospective and will apply only from A.Y. 2015-16. In view of the above legal position, we are of the view that the order of the CIT(A) has to be reversed. Consequently grounds No.4 & 5 raised by the Assessee are allowed."

*There is no dispute that the amendment of section 11(6) of the Act by the Finance Act, 2014 is prospective w.e.f. 1.4.2015 and therefore the said amended provision is not applicable for the assessment year under consideration. Following the earlier decisions of this Tribunal, we decide this issue in favour of the assessee and against the revenue."*

In view of the decision of the Tribunal, we do not find any reason to interfere with the impugned order of the CIT (Appeals) qua this issue.

7. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on the 26th day of April, 2017.

Sd/-  
**(INTURI RAMA RAO)**  
Accountant Member

Sd/-  
**(VIJAY PAL RAO)**  
Judicial Member

Bangalore,  
Dt.26.04.2017.

\*Reddy gp

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2. Respondent
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Assistant Registrar  
Income Tax Appellate Tribunal  
Bangalore.