

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE 'C' BENCH, BANGALORE**

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

**ITA No.315(BNG)/2015
(Assessment year : 2011-12)**

M/s Society of St. Francis De Sales,
Sudhirvana, Kodathi Village,
Carmelaram P.O.,
Bangalore-560 035

Appellant

Vs

The Deputy Director of Income-tax,
Circle-17(1),
Bangalore

Respondent

**Assessee by : Shri Suresh Muthukrishanan, CA
Revenue by : Shri Sunil Kumar Aggarwala, JCIT**

**Date of hearing : 05-01-2016
Date of pronouncement : 08-01-2016**

ORDER

PER SHRI INTURI RAMA RAO, AM :

This appeal filed by the assessee is directed against the order of the learned CIT(A)-14,LTU, Bangalore, dated 24-02-2014 for the assessment year 2011-12.

2. The assessee society raised the following grounds of appeal;

"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 upholding the denial of carry forward of the deficit being the excess application of income amounting to Rs.14,58,490/- to be set off against the income from property held under trust in the future under the facts and in the circumstances of the assessee's case.

3. The ld. CIT(A) ought to have appreciated that the carry forward of the deficit to be set off against the incomes from property held under trust in future is permissible and the same is not prohibited under the scheme of the Act and therefore, the denial of the claim made by the assessee is unjustified and the same is liable to be vacated.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your assessee humbly prayed 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”.

3. Briefly, the facts of the case are that the assessee public charitable institution registered under the provision of Karnataka Societies registration Act, 1960. It filed its return of income for the assessment year

2011-12 declaring NIL income. During the previous year relevant to assessment year under consideration, the assessee society had applied excess income of Rs.14,58,490/- for charitable purposes. This was not allowed to be carry forward for future years which had to be shown as application of income in the future years.

4. Being aggrieved by this order, an appeal was filed before the CIT(A) who vide impugned order had confirmed the action of the AO, relying on the decision of the Hon'ble Mumbai Bench in the case of ITO Vs Trustees of Sri Satya Sai Trust (33 ITD 320) and also in the case of Pushpavati Singhania Research Institute for Liver, Renal and Digestive Diseases Vs DDIT (E) (29 SOT 316).

5. Being aggrieved by the order of the lower authorities the assessee is in appeal before us.

The learned counsel for the assessee submitted that this issue in hand is covered by the decision of the Co-ordinate Bench of this Tribunal in

the case of Society of St. Francis De Sales in ITA No.315(B)/2015 dated 10-07-2015.

6. On the other hand, learned SR.DR relied on the decisions in the case refereed above i.e ITO Vs Trustees of Sri Satya Sai Trust (33 ITD 320) and also in the case of Pushpavati Singhania Research Institute for Liver, Renal and Digestive Diseases Vs DDIT (E) (29 SOT 316).

7. We have heard the rival submissions and perused the material on record.

7.1. The issue in appeal is whether the excess application of income during the year for charitable purposes can be carries forward and allowed to be set off in future years. The issue is no more *res-integra*, as it was covered by the Co-ordinate Bench of this Tribunal in the case of St. Francis De Sales (Supra) wherein it is held as follows;

5.3.1 We have heard the rival contentions of both parties and perused and carefully considered the material on record; including judicial pronouncements, cited and placed reliance

upon. We find that the case of Institute of Banking (supra), the Hon'ble High Court of Bombay has held as under :-

" Now coming to question No. 3, the point which arises for consideration is : whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the AO did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a charitable trust, their income was assessable under self-contained code mentioned in s. 11 to s. 13 of the IT Act and that the income of the charitable trust was not assessable under the head "Profits and gains of business" under s. 28 in which the provision for carry forward of losses was relevant. That, in the case of a charitable trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the Department. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years against the income earned by the trust in the subsequent year will have to be

regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in s. 11 of the Act and that such adjustment will have to be excluded from the income of the trust under s. 11(1)(a) of the Act. Our view is also supported by the judgment of the Gujarat High Court in the case of CIT vs. Shri Plot Swetamber Murti Pujak Jain Mandal (1994) 119 CTR (Guj) 144 : (1995) 211 ITR 293 (Guj). Accordingly, we answer question No. 3 in the affirmative i.e., in favour of the assessee and against the Department.”

5.3.2 The co-ordinate bench of this Tribunal in the case of Baldwin Methodist Educational Society (supra), has held as under :-

“We also find that ‘A’ bench of this Tribunal in the case of Academy of Liberal Education in ITA No.687/Bang/2014 dated 20/2/2015, to which one of us i.e. the Accountant Member is the signatory, has considered this issue and in para.8 of its order, held 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).”

We find that the order of the CIT(A) is in consonance with the judicial precedents reproduced above. Therefore, we see no reason to interfere with the order of the CIT(A). The revenue’s appeal is, accordingly, dismissed.”

5.3.3 It is clear from the relevant portions of the aforesaid decisions of the Hon'ble High Court of Bombay (supra) and the co-ordinate bench of the ITAT, Bangalore (supra) extracted above that the income of charitable trusts is required to be computed on commercial principles. The concept of application of the income for the year in which the income has arisen is not found in Section 11(1)(a) of the Act. No limitation to the above effect is found in the language of the section. It merely requires application of the income that has arisen from the property held under trust. In this view of the matter, the principles relating to set off of losses, etc. is not of any relevance and therefore any excess application of income during the year can be regarded as application of the income of future years and can be adjusted. Therefore, in our view, the claim of the assessee for carry forward of excess application is in accordance with the judicial precedents on the issue and the same is allowable.

5.3.4 In the case of Indian National Theater (supra) relied on by the learned Departmental Representative. The Hon'ble High Court of Delhi has held that to satisfy the requirements

of section 11(2)(b) of the Act, the investment must necessarily come out of current year's income and the investment made in the past obviously cannot satisfy the requirements for the current year. The above decision of the Hon'ble Delhi High Court has considered the provisions of section 11(2) of the Act and has taken the view that the accumulation under Section 11(2) of the Act can be only out of current income. We, however, find that the co-ordinate benches of the Bangalore Tribunal have consistently followed the view of the Hon'ble Bombay High Court (supra) in which the application has been regarded as adjustable against the income of the future years. We are, therefore, inclined to follow the view taken by the co-ordinate benches of this Tribunal, inter alia, in the case of Baldwin Methodist Educational Society (supra), based on the view/decisions of the Hon'ble Bombay High Court in the case of Institute of Banking (supra) and the Hon'ble Gujarat High Court in the case of CIT V Shri Plot Swetamber Murti Pujak Jain Mandal reported in 211 ITR 293. In this view of the matter, the Assessing Officer is directed to allow carry forward of the excess application of Rs.17,35,360 for the year to be

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adjusted from income from property held under trust of the subsequent years. It is ordered accordingly. Consequently, Grounds 2 and 3 of assessee 's appeal are allowed".

Respectfully following the decision of the Co-ordinate Bench, we direct the AO to allow the carry forward of the amount of excess income applied during the year to the future year for set off against he income.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on the 8-01-2016.

Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER

Place: Bangalore
D a t e d : 08-01-2016

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(INTURI RAMARAO)
ACCOUNTANT MEMBER

By order, AR,ITAT, Bangalore