

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

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

ITA No.976/Bang/2015
Assessment year : 2011-12

M/s. St. Martha’s Hospital, Nrupathunga Road, Bangalore – 560 001. PAN: AAATS 4999J	Vs.	The Deputy Commissioner of Income Tax (Exemption), Circle 17(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishnan, CA
Respondent by	:	Dr. P.K. Srihari, Addl. CIT(DR)

Date of hearing	:	04.11.2015
Date of Pronouncement	:	06.11.2015

ORDER

Per Asha Vijayaraghavan, Judicial Member

This appeal by the assessee is directed against the order dated 28.04.2015 of the CIT(Appeals)-14, LTU, Bangalore for the assessment year 2011-12.

2. The assessee is a public charitable institution registered as a society under the Mysore Societies Registration Act, 1960 since 10.11.1965. It

runs a hospital called St. Martha's Hospital. It filed its return of income for the AY 2011-12 on 29.09.2011 declaring a total income of NIL.

3. The Assessing Officer computed the accumulation of the net income of the assessee at 15% 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 for accumulation at 15% of the gross receipt was not accepted 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. Aggrieved by the order of the AO, the assessee preferred appeal before the CIT(Appeals) against the restriction of deduction u/s. 11(1)(a) of the Income-tax Act, 1961 ["the Act"] by the AO at Rs.1,38,84,923 as against the claim of Rs.4,49,36,161 by the assessee. It was submitted that the AO has not appreciated that the word "income" in section 11 of the Act, which refers to gross income/receipt and not the commercial meaning of the word "income" i.e., net of expenses used for earning the receipts.

5. The CIT(Appeals) found that the different kinds of receipts available to the assessee through voluntary contributions, etc. have all been included in the gross receipts and taken into account by him for the purpose of calculating 15% accumulation u/s. 11(1)(a). The CIT(A) was of the view

that what should have been included as net receipts for this purpose are only those activities or services for which the assessee charges a fee or consideration. The CIT(A) observed that the principle of 15% accumulation on net educational and medical income has therefore been applied without proper application of the mind by the AO. According to the CIT(A), to the extent the assessee receives donations, the accumulation from such receipts are to be treated in terms of the Hon'ble Supreme Court's decision in case of *CIT v. Programme for Community Organization* (249 ITR 1). The receipts from the hospital, 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. The CIT(A) therefore held that the application of income and accumulation are both to be reckoned from the net income available for these purposes. The CIT(A) therefore directed the AO 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. He thus partly allowed the appeal of the assessee.

6. Aggrieved by the impugned order of the CIT(Appeals), the assessee is in appeal before us on the following grounds of appeal:-

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

2. The Learned CIT[A] is not justified in upholding, in principle, the action of the learned A.O. in computing the accumulation of income u/s.11[1][a] of the Act, at 15% of the net income from property held under trust after deducting revenue expenditure incurred by the appellant as against a sum of Rs.4,49,36,161/- claimed by the appellant on the basis of the gross income from property held under trust under the facts and in the circumstances of the appellant's case.

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

7. We have heard both the parties and perused the material on record. 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* by order dated *14.08.2015*. The relevant extract at paras 15 to 8 of the said order 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.11(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 Sec.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 s. 11(1)(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. 11(1)(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(1)(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 s. 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."

8. Following the decision of the co-ordinate Bench of this Tribunal in the case of *Jyothy Charitable Trust (supra)*, we set aside the order of the CIT(A) and hold that the accumulation u/s.11(1)(a) of the Act should be allowed as claimed by the Assessee.

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

Pronounced in the open court on this 6th day of November, 2015.

Sd/-

Sd/-

(JASON P. BOAZ)
Accountant Member

(ASHA VIJAYARAGHAVAN)
Judicial Member

Bangalore,
Dated, the 6th November, 2015.

/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.