

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

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.971/Bang/2015
(Asst. Year 2011-12)

M/s Sevasadan Orphanage and
Training Institute,
#347, Sarjapur Road, Koramangala,
Bangalore-560 034.

. Appellant

Vs.

The Dy. Commissioner of Income-tax (Exemption),
Circle – 17(2),
Bangalore.

. Respondent

Appellant by : Shri S Venkatesan, C.A

Respondent by : Smt. Rukmani Attri, JCIT

Date of Hearing : 09-11-2015

Date of Pronouncement : 10-11 -2015

ORDER

PER SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

The appeal is filed by the assessee. The appeal is directed against the order of Commissioner of Income-tax (Appeals) – II dated 25/2/2015 for the assessment year 2011-12.

2. The appellant is a public charitable institution registered as a society under the Mysore Societies Registration Act and it carries on educational activities for the homeless and orphaned boys and activities for the relief of the poor. The return of income for AY 2011-12 was filed on 12.03.2012 declaring a total income of Rs.'nil'. The only substantive issue disputed in this appeal relates to the AO not permitting the deficit for the year to be carried forward and set off against the appellant's income of future years.

3. The assessee had shown excess expenditure of Rs.26,23,938/- in its Income & Expenditure account. The AO did not allow carry forward of this for application to future years where surplus income would be available, holding that exemption in terms of section 11(1)(a) is allowable only for the application of the current year's income. He also mentioned that the assessment of Trusts is done as per the self contained code incorporated in sections 11 to 13 of the IT Act 1961 which do not expressly allow for carry forward of losses arising due to excess application in a particular year.

4. The appellant is aggrieved by the above treatment and emphasized before the CIT(A) on appeal that as per section 11(1)(a)

there is no restriction that the entire income has to be applied in the same year only, which means that excess application can be set-off in the subsequent year out of receipt of income during the next year. As a corollary, therefore, it was claimed that the excess application of any year can be set off in the subsequent year. Reliance was placed on the following judicial decisions:

- CIT Vs. Shri Gujarati Samaj 204 Taxman 151 (MP/17 taxmann.com 164 (M)
- DIT Vs. Raghuvanshi Charitable Trust 197 Taxman 170 (Delhi)
- CIT Vs. Maharana of Mewar Charitable Foundation (1987) 164 ITR 439 (Raj)
- CIT Vs. Institute of Banking Personnel Selection 264 ITR 110 (Bom.)
- Govindu Naicker Estate Vs. ADIT (2001) 248 ITR 368 (Mad)
- Dawath Institute of DB Community Vs. ITO (2008) 22 SOT 359 (Mum. ITAT)
- CIT Vs. Shri Plot Swetambar Murti Pujak Jain Mandal (1995) 211 itr 293 (Guj.)
- CIT Vs. Sacred Heart Church 278 ITR 180 (Guj.)
- CIT Vs. Matriseva Trust (2000) 242 ITR 20 (Mad)
- Gem & Jewellery Export Promotion Council Vs. ITO (1999) 68 ITD 95 (Mum)
- CIT Vs. St. George Forane Church (1988) 170 ITR 62; 36 Taxman 42 (Ker.)
- Trustees of Balkan J Bari (1979) 10 CTR (Trib) 22 (Bombay)
- Chotanagpur Diocesan Trust Vs. ITO 19 ITD 175 (Patna)

5. CIT(A) concluded the decision of the Hon'ble ITAT Bombay in case of ITO Vs. Trustees of Sri Satya Sai Trust (33 ITD 320) have

also affirmed the AO's position holding that the deficit arising on account of application of funds/sums which are not in the nature of income is not capable of being carried forward. Further, the CIT(A) observed that Hon'ble ITAT Delhi in Pushpavati Singhania Research Institute for Liver, Renal and Digestive Diseases Vs. DDIT (E) (29 SOT 316) have held that any excess expenditure incurred by a charitable institution in earlier years cannot be allowed to be carried forward and set off against the income of subsequent years.

6. The CIT(A) held that there was no reason to interfere with the AO's conclusion in this matter. The ground raised by the appellant was dismissed by CIT(A).

7. The learned Authorised Representative submitted that the view taken by the learned CIT (Appeals) that carry forward of excess expenditure incurred is not permissible in the absence of a specific provision for the same is not correct and in this regard referred to the observations of the Hon'ble High Court of Bombay in the case of CIT V Institute of Banking (264 ITR 111) and the decision of the coordinate benches of this Tribunal in the cases of Baldwin Methodist Education Society in ITA No.523/Bang/2014 dt.31.3.2015 and St.

Francis Sales Educational and Charitable Trust in ITA No.365/Bang/2014 dt.10.7.2015 in support of the proposition put forth by him.

8. Per contra, the learned Departmental Representative supported the orders of the authorities below. He submitted that the Hon'ble High Court of Delhi in the case of Indian National Theater Trust (supra) has held that accumulation of income should be only out of the current year's income. The learned Authorised Representative submitted that in view of the above, the impugned orders passed by the learned CIT (Appeals) is justified and no interference is called for thereon.

9. The co-ordinate Bench of the Tribunal in the case of Jyothi Seva Society of Bangalore Vs. Asst. Director of Income-tax (Exemption) in ITA No.312/Bang/2015 has held as follows:

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.”

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.”

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.

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 coordinate 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 coordinate 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.7,44,328 for the year to be 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.

10. Respectfully following the decision of co-ordinate Bench we allow the appeal of the assessee.

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

Order pronounced in the open court on **10th Nov, 2015**.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Bangalore
Dated : 10/11/2015

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Asst. Registrar, ITAT, Bangalore.