

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

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
AND SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.2190/Bang/2016
(Asst. Year 2012-13)

The Dy. Director of Income-tax
(Exemption),
Bangalore. . Appellant

Vs.

Karnataka Fransalain Society,
Bangalore. . Respondent

Appellant by : Shri M.K Biju, JCIT
Respondent by : Shri Suresh Muthukrishnan, C.A

Date of Hearing : 30-8-2017
Date of Pronouncement : 6-9-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER:

This appeal by the Revenue is directed against the order of the
Commissioner of Income-tax (Appeals) - 14, LTU, Bangalore dated
27/9/2016 for asst. year 2012-13.

2. Briefly stated, the facts of the case relevant for the present
appeal are as under:-

2.1 The assessee, a trust registered u/s 12A of the Income-tax Act 1961 (in short 'the Act') vide order dated 19/3/1976, filed its return of income for asst. year 2012-13 on 30/9/2012 declaring NIL income, after claiming exemption u/s 11 and 12 of the Act. In the computation of income filed the assessee claimed of a deficit (i.e expenditure over income) of Rs.85,31,722/- to be carried forward for set off as application against income of the assessee for subsequent years. The Assessing Officer (AO) denied the assessee's aforesaid claim, holding that exemption in terms of sec. 11(1) (a) of the Act is allowable only on current years income and that sections 11 to 13 of the Act, which are relevant to the assessment of trusts does not expressly allow for carry forward of deficit arising due to excess application (i.e expenditure over income) of any year. The assessment was, inter alia, accordingly completed u/s 143(3) of the Act vide order dated 18/3/2015.

2.2 Aggrieved by the order of assessment dated 18/3/2015 for asst. year 2012-13, the assessee preferred an appeal before the CIT(A)-14, LTU, Bangalore . The Id CIT(A) vide the impugned order dated 27/9/2016 allowed the assessee's appeal on this issue, following the

decisions of the co-ordinate benches of this Tribunal in the cases of ACIT Vs. City Hospital Charitable Trust (2015) 42 ITR (Trib) 583 (Bangalore) and DCIT Vs. Manipal Academy of Higher Education (2015) 44 ITR (Trib) 18 (Bangalore).

3.1 Revenue, being aggrieved by the order of the CIT(A)-14, LTU, Bangalore dated 27/9/2016 for asst. year 2012-13, has preferred this appeal, wherein it has raised the following grounds:-

“1) Carry forward of excess application/ deficit of current year for application in subsequent (future) year:

a) The CIT (A) has erred in directing the assessing officer to allow set-off of excess expenditure/application pertaining to current asst. year and earlier years against the income of the future asst. year without appreciating the fact that as per the scheme of taxation of charitable or religious trust/institution as codified u/s.11,12 and 13, there is no provision for computing loss from property held under trust/institution on account of excess application of income/funds of the trust.

b) The CIT (A) has failed to appreciate 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 sec.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.

c) The CIT (A) has failed to discuss the issue in detail bringing out the facts and applying the relevant provisions of the Act, but came to a conclusion that excess expenditure/excess application shall be allowed to be carried forward and set-off against the income of the future assessment years and, thereby, rendering the order perverse.”

The Id DR for Revenue was heard in support of the grounds raised.

3.2 Per contra, the Id AR for the assessee supported the impugned order of Id CIT(A) on the issue in dispute and submitted that the same is in order, since the Id CIT(A) had followed the binding decisions of the co-ordinate bench of this Tribunal in the cases of

City Hospital Charitable Trust (Supra) and Manipal Academy of Higher Education (Supra). It is further submitted that this issue is now covered in favour of the assessee of the decision of the co-ordinate bench in the assessee's own case for asst. year 2011-12 in ITA NO.972/Bang/2015 dated 18/11/2015.

3.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited (Supra). The only issue for adjudication before us is whether a deficit (expenditure over income) arising on account of application of funds can be carried forward and set off as application against income of subsequent years. We find that a coordinate bench of the Tribunal in the assessee's own case for asst. year 2011-2 had considered the identical issue and in its order in ITA No.972/Bang/2015 dated 18/11/2015 had decided the issue in favour of the assessee and against Revenue holding as under at paras 6 and 7 thereof:-

06. We have perused the orders and heard the rival contentions. Judgment of Hon'ble Delhi High Court in the case of Indian National Theatre Trust (supra), relied on by the CIT (A) for confirming the view taken by the AO was considered by this Tribunal in the case of M/s. St. Francis Sales

Educational & Charitable Trust (supra). Same view has been taken by us in the case of DCIT v. M/s. Rashtrothana Parishat [ITA Nos.896 & 897/Bang/2014, dt.14.08.2015]. In para 9 of the latter order it was held as under :

09.Coming to the aspect of eligibility for carry forward of such deficit, coordinate bench of this Tribunal in the case of Rajarajeshwari Devasthanam Trust v. ITO (Ex), in ITA No.116/Bang/2015, dt.11.06.2015, had considered this issue. It was held at para 7 of the order as under:

07. In so far as the issue relating to carry forward of deficit, it was held as under at paras 11 to 13 of the order dt. 16.02.2009 of this Tribunal in the case of TMA Pai Foundations's case (supra) :

"11. With regard to the second issue, the learned counsel submitted that the stand of the revenue that the assessee did not claim the carry forward in the original return and the claim was made for the first time through application u/s.154 of the Act which was time barred and there is no provision under the Income tax to allow carry forward of the loss of the preceding years any excess expenditure/application of the preceding years were not to be set off against the subsequent years' surplus. Though the assessee has not specifically sought for any carry forward benefit, for the assessment years up to 2005-06 the assessee filed the return of income where the surplus was determined and the application was made during the years have been declared. In the earlier years the assessee had not specifically

sought for any carry forward benefit. Surplus is being determined for the purpose of section 11 and not u/s.28. While processing the assessment for the Assessment Year 2006-07 the Assessing Officer raised the issue and in order to enable the Assessing Officer to ascertain the excess application in the preceding year the assessee filed application u/s.154 to enable the Assessing Officer to quantify such excess application in the relevant year. The assessee filed the application u/s.154 up to assessment years 2004-05 in fact to enable the officer to ascertain the actual surplus of the application which was required to be set off against the surplus against the Assessment Year 2006-07. For Assessment Years 2004-05 and 2005-06 in the returns itself the claim was made and the excess surplus was shown. For this assessment year the assessment has been completed accordingly accepting the return though in the intimation, the assessed income has shown as nil. The assessee's counsel without prejudice to the claim of the assessee, submitted that the excess application as claimed for the earlier years up to 2004-05 cumulatively was to be considered for set off against the surplus for the Assessment Year 2006-07. The counsel for the assessee submitted surplus for the purpose of section 11 is required to be considered after allowing application towards objects of the trust. It is only the surplus over the expenditure is required to be assessed. Undisputedly in the instant

case of the assessee, the trust had excess application over the income in the past years which was required to be considered against its income in order to ascertain the surplus left for the purpose of tax after allowing the exemption u/s.11(1) of the Act.

12. The counsel for the assessee submitted the Hon'ble Bombay High Court in Institute of Banking (supra) had observed that section 11 to 13 are self contained code for the purpose of determination of the income of the charitable trust and the charitable trust is not assessable under the head profit and gains of the business u/s.28 for which provision the benefit of carry forward loss was relevant. The assessee is a charitable trust for education purpose and has no profit motive. Surplus is required to be determined for the purpose of section 11 and the provisions of section 28 has no application significantly the provisions of section 70 of the Act also cannot be brought in. The surplus is computed after taking into account the net outgoing of the relevant year and earlier years. The Bombay High Court took support of the decision of the Gujarat High Court in Shri Plot Svetamber Murti Pujak Jain Mandal (supra). The learned counsel submitted that the Commissioner of Income-tax(A) decided the issue in assessee's favour following the above decision of the Bombay High Court. The Hon'ble Madras High Court decision reported in Govindu Naicker Estate (supra) also supports the case of the assessee he submitted. The assessee is enjoying exemption u/s.10(23C)(vi). Thus no income for the relevant assessment year is liable to be taxed as exemption continues to be in operation for the relevant assessment years. Hence the learned counsel for the assessee submitted the appeal by the revenue is to be dismissed.

13. Considering the rival submissions we are of the view that all the appeals preferred by the revenue is to be allowed. The assessee is relying on the decision of the Bombay High Court in the case of Institute of Banking (supra) whereas the revenue is

relying on the decision of the Tribunal, Bombay Bench in VII ITO v. Trustees of Sathya Sai Trust in (1990) 33 ITD 320. In this case the Tribunal held the deficit arising as a result of excess spending for charitable purposes will not form part of the income and the same cannot be carried forward. With regard to the point whether excess spending will form or not form part of the total income and, therefore, it could be carried forward or not is decided by the Hon'ble Bombay High Court in the case Institute of Banking (supra) in assessee's favour. In that case, however, it was a regular assessment and not 154 order as in the instant case of the assessee. There was no specific claim as such by the assessee in the instant case. Therefore, the facts are distinguishable.

No doubt in the above case, Revenue succeeded for a reason that the order assailed by the assessee was one u/s.154 of the Act and Tribunal held that allowing or not allowing carry forward deficit adjustment was not something which would fall within the parameters of a rectificatory proceedings u/s.154 of the Act. However in principle, the claim of the assessee that deficit from earlier years can be set-off against current year's income for working out the utilisation, found approval from the Coordinate Bench."

In view of this, we are of the view that assessee is eligible for claiming carry forward of the deficit, and CIT (A) was justified in directing so.

07. *Accordingly we are of the opinion that assessee could not have been denied the claim of carry forward of Rs.2,15,68,002/-. AO is directed to allow carry forward claimed by the assessee.*

3.3.2 Respectfully following the decision of the co-ordinate bench in the assessee's own case for asst. year 2011-12 (Supra),

,which squarely covers the issue in favour of the assessee, we uphold the finding of the Id CI(A) in the impugned order allowing the assessee's claim of carry forward of excess application/deficit of the current years for set off as application against income of subsequent years. Consequently, the grounds 1(a) to (c) raised by Revenue (Supra) are dismissed.

4. In the result, Revenue's appeal for asst. year 2012-13 is dismissed.

Order pronounced in the open court on **6th September, 2017.**

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Bangalore

Dated : 6/9/2017

Vms

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

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

By order

Sr. Private Secretary, ITAT, Bangalore.