

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

<b>ITA No.104/Bang/2021</b>
<b>Assessment Year : 2014-15</b>

M/s.Bellary Educational Services Trust, T S Nos-823/B/2/23/C, Allipur Road, Opp. Maruthi Showroom, Bellary – 583 104. <b>PAN : AAATB 4649 N</b>	Vs.	The Deputy Commissioner of Income Tax (Exemptions), Circle – 1, Mangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Shiva Prasad Reddy, ITP
Respondent by	:	Shri. Elamurugu G, JCIT(DR)(ITAT), Bengaluru

Date of hearing	:	02.09.2021
Date of Pronouncement	:	03.09.2021

**ORDER**

***Per N.V. Vasudevan, Vice President***

This an appeal by the assessee against the order dated 21.01.2021 passed by the CIT(A)-2, Panaji, relating to Assessment Year 2014-15.

2. The assessee is a trust engaged in providing education in the district of Bellary, State of Karnataka. The assessee has been granted registration U/s.12A of the Income Tax act, 1961 (Act) by the CIT(E), Bengaluru, w.e.f. 01.03.2002. For Assessment Year 2014-15, the assessee filed return of income on 10.11.2015 declaring a total income of Rs.29,68,920/-. The income of the assessee before application of income for charitable purpose as per the audited books of account was a sum of Rs.15,94,43,856/-. The assessee claimed a sum of Rs.2,39,16,578/- as accumulation of income for charitable purpose in future as permitted under section 11(1)(a) of the

Income Tax Act, 1961(hereinafter called 'the Act'). The said provisions permits accumulation of income to the extent of 15% for application for charitable purpose in future. The audit report in Form 10B was also filed along with the return of income.

3. The AO issued an intimation under section 143(1) of the Act dated 16.03.2016 in which the accumulation claimed at 15% of Rs.15,94,43,856/- amounting to Rs.2,39,16,578/- was not allowed by the AO and only a sum of Rs.69,33,919/- was allowed as accumulation under section 11(1)(a) of the Act in the aforesaid intimation. The AO computed accumulation u/s.11(1)(a) of the Act at 15% on Rs.4,62,26,127/-.

4. The assessee filed application under section 154 of the Act dated 25.02.2019. In the aforesaid application, the assessee pointed out that the deemed application @ 15% has been worked out in the intimation Rs.69,33,919/- as against Rs.2,39,16,578/- as per the return of income. The assessee pointed out that it had claimed deemed application @ 15% of the gross receipts of Rs. 15,94,43,856/-. But in the intimation the deemed application of 15% is calculated on Rs.4,62,26,127/- which is the total income determined by the AO. The assessee pointed out that deemed application of 15% is eligible on the gross receipt which as per the financial statements are Rs.15,43,61,065/-. After adding the previous year fees during the year the adjusted gross receipts are Rs.15,94,43,856/-.

5. The AO passed an order under section 154 of the Act dated 08.03.2019 wherein he dismissed the application of the assessee observing as follows:

*“On verification of the details filed by the assessee and also the records available in this Office it is seen that intimation u/s. 143(1) for AY 2014-15 the accumulation of 15% claimed u/s 11(1)(a) amounting to 2,69,33,919 is correctly allowed on the income of Rs.4,62,26,127/- as per the Return of Income filed by the assessee (Copy enclosed). Vide acknowledgment no. 883115941101115.*

*Since there is no error apparent on record your request for rectification of the above order cannot be considered and "our application for rectification u/s 154 dated 21.02.2019 is hereby rejected.”*

6. Aggrieved by the aforesaid order of the AO, assessee preferred appeal before the CIT(A) contending that accumulation at 15% has to be computed on the gross receipts in terms of section 11(1)(a) of the Act and not on the net receipts as computed by the AO. assessee also pointed out that the gross receipts on which accumulation was claimed by the assessee was supported by the financial statements annexed with audit report filed by the assessee along with the return of income. The assessee also pointed out that it filed Form No.10B on the same date of filing the return of income claiming deduction on account of accumulation under section 11(1)(a) of the Act at Rs.2,39,16,578/-.

7. The CIT(A) however did not agree with the submissions made on behalf of the assessee. He held that the mistake pointed out by the assessee cannot be said to be a mistake apparent on the face of the record within the meaning of the said term under section 154 of the Act. He held that the mistake can be found out only by investigation of facts and the assessee ought to have filed the appeal under intimation under section 143(1) of the Act. The CIT(A), therefore, dismissed the appeal of the assessee on this ground.

8. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned Counsel for the assessee submitted that the approach of the CIT(A) in dismissing the appeal of the assessee on the ground that the issue was debatable cannot be sustained. He submitted that if the issue was debatable, then the Computer Processing Centre (CPC) was not competent to make the adjustment under section 143(1) of the Act. Secondly, it was submitted by him that the Hon'ble Supreme Court in the case of ALN Rao Charitable Trust (1995) 129 CTR 2015 (SC) has held that under section 11(1)(a) of the Act, the assessee is entitled to accumulate 15% of the gross receipts before application and not on the amount remaining after expenditure for charitable purpose out of the income. Learned Counsel also relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Programme for Community Organisation (2001) 116 taxman 608 (SC). Learned Counsel also brought to our notice of the CBDT's Circular No.204 dated 24.07.1976 wherein the aforesaid aspect was clarified by the CBDT. He also relied on CBDT's Circular No.68 dated 17.11.1971 wherein the CBDT directed that the mistake arising as a result of a subsequent interpretation of law by the Supreme Court would constitute a mistake apparent from the record and therefore would be rectifiable under section 154 of the Act. It was submitted that since it is settled law that 15% deduction u/s 11(1)(a) should be allowed on income before application and not on the net income, the allowance of the deduction on net income in the said intimation constituted a mistake apparent from the records. It was submitted that only prima facie mistakes apparent from the records may be considered for disallowance u/s 143(1) and if the issue raised in the application is not a mistake apparent from the records, as has been held by

the learned CIT(A), it should not have been disallowed in the first place in the said intimation u/s 143(1) of the Act.

9. Learned DR relied on the order of the CIT(A).

10. We have carefully considered the rival submissions. The Income Tax return filed by the assessee for the year 2014-15 is at pages 35-37 of the assessee's Paper Book in Schedule IV, the assessee has claimed accumulation under section 11(1)(a) of the Act at 15% viz., a sum of Rs.2,39,16,578/-. This sum is claimed to be on the gross receipts of the assessee which is stated to be a sum of Rs.15,94,43,856/-. The sum of Rs.15,94,43,856/- has been arrived at by the assessee in the computation of total income as follows:

	<b>REVENUE AS PER RECEIPTS &amp; PAYMENTS A/C</b>		
1	<i>Fees Collections</i>	153,969,080	
2	<i>Other Income</i>	391,985	
3	<i>Misc Income</i>	-	
<i>Add:</i>	<i>Previous Year fees received during this year</i>	154,361,065 5,082,791	159,443,856

11. These figures are supported by the receipts and payments account of the assessee which is placed at pages 39 and 40 of the assessee's Paper Book. In Form 10B, copy of which is at page 55 of the assessee's Paper Book, the accumulation under section 11(1)(a) of the Act has been claimed at Rs.2,39,16,578/-. In the light of the above factual position, we find no basis for the AO to have made the impugned adjustment under section 143(1) of the Act. The law is well settled that the accumulation of 15% under section 11(1)(a) of the Act has to be computed on the income (gross receipts) before application i.e., on the gross receipts and not on the amount remaining after expenditure for charitable purpose (net income).

The decisions of the Hon'ble Supreme Court cited by the learned Counsel for the assessee supports the case of the assessee. In the CBDT's Circular No.68 dated 17.11.1971 supports the plea of the assessee that an interpretation of law by the Supreme Court if not followed in an assessment could constitute a mistake apparent from the record and therefore rectifiable under section 154 of the Act. In this background of facts, we are of the view that there was a mistake apparent on the face of the record which ought to have been rectified under section 154 of the Act. It is clear from the order passed under section 154 of the Act that the AO has computed accumulation of 15% on the net revenue after reducing all the expenditures in the form of application of income for charitable purpose. This approach of the AO was clearly contrary to the decision of the Hon'ble Supreme Court cited by the learned Counsel of the assessee. In these circumstances, we are of the view that the mistake sought to be rectified by the assessee ought to have been rectified by the Revenue authorities. Accordingly, we direct the AO to allow accumulation under section 11(1)(a) of the Act as claimed by the assessee in the application under section 154 of the Act.

12. In the result, appeal by the assessee is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(CHANDRA POOJARI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N. V. VASUDEVAN)**  
**VICE PRESIDENT**

Bangalore,  
Dated : 03.09.2021.  
/NS/\*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.