

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE S/SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.1224/Ahd/2019  
Assessment Year : 2015-16

Jt.CIT (Exemptions)(OSD) Cir.2, Ahmedabad.	Vs	Divya Jyoti Trust Tejas Eye Hospital Suthar FaliyaAt & post – Mandvi Surat 394 610. PAN : AABTD 3401 D
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Ketan Jagirdar, AR
Revenue by :		Shri Urjit Shah, Sr.DR

सुनवाई की तारीख/Date of Hearing : 17/02/2022  
घोषणा की तारीख /Date of Pronouncement: 25/02/2022

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:**

This appeal is filed by the Revenue against order dated 7.6.2019 in appeal no. CIT(A)-9/10321/DCIT(E), Cir.2-/17-18 passed by the Ld.Commissioner of Income-tax (Appeals)-9, Ahmedabad [for short "Ld.CIT(A)] relating to the assessment year 2015-16.

2. Revenue has raised the following grounds of appeal:

"1. Whether in the facts and circumstances of the case and when the assessee Trust is already eligible for exemption under Section 11 (l)(d) of the Act on the Corpus funds, the learned CIT(Appeals)1 is correct in law in holding that capital expenditure incurred by the assessee Trust from the corpus funds, shall be allowed as application of income?"

2. Whether in the facts and circumstances of the case the learned CIT(Appeals) is correct in law in holding that the assessee Trust is eligible for exemption under Section 11(l)(a) of the I.T. Act, 1961, on the

*capital expenditure made out of corpus funds, relying on the decision of the Hon'ble High Court of Orissa in the case of CIT v. Silicon Institute of Technology reported in 370 ITR 567 [2015] (Orissa), where facts involved are quite distinct.*

*3. The Revenue craves to add, alter, amend, modify, substitute, delete and/or rescind all or any Grounds of Appeal on or before the final hearing, in necessity so arises.*

3. Brief facts of the case is that the assessee is public charitable trust registered under Bombay Public Trust Act, 1950 as well as registered under section 12AA of the Income Tax Act, 1961 (for short "the Act") Assessee-trust was engaged for the services of poor people in the field of eye-care needs. The founder of the trust himself is Ophthalmologist. The Trust has begun with an eye-hospital in the rural tribal area of Mandvi taluka of Surat District and also running a hostel for blind children wherein 14 children were being trained with Braille system of education and thereby encouraging children to attend regular schooling. In the assessment year 2015-16, the assessee filed its return of income declaring NIL income. The return has taken for scrutiny assessment, and regular assessment was completed under section 143(3) of the Act on 11.12 2017 holding that total income of the assessee before application was Rs.3,04,37,986/- ; total revenue expenditure Rs.2,87,31,974/- and expenditure on capital at Rs.2,51,85,640/-. According to the AO, the total expenditure is more than the total income. Thus, the assessee was asked to explain source for excess expenditure of Rs.2,34,79,628/- (Rs.5,39,17,614/- minus Rs.3,04,37,986/-). The assessee replied that the assessee-trust has received corpus donation of Rs.2,68,45,899/-, and out of that an amount of Rs.2,51,85,640/- was utilized for the objects of hospital construction, equipments and other capital expenditure. According to the AO, as per the provision of the Act, an expenditure made out of corpus fund would not be considered as application of income.

The AO held that as per the provision of the Act, corpus fund received by the assessee-trust is exempt under section 11(1)(d) of the Act and it is not considered as part of income of the trust. In other words, since the corpus fund is already exempt under the Act, expenditure made out from such corpus fund will not be qualified for further deduction under section 11(1)(a) of the Act, which would otherwise amount to double deduction. Thus, the claim of the assessee to allow capital expenditure incurred out of corpus fund, as application of income was rejected. However, the claim of the assessee to allow set off of part of 15% of gross-receipt was found to be acceptable, hence, the AO allowed that part of the claim. The assessee aggrieved by the action of the AO in not allowing deduction under section 11(1)(a) of the Act, the assessee filed an appeal before the Id.CIT(A), Ahmedabad.

4. Before the Id.CIT(A) the assessee reiterated submissions as were made during the assessment proceedings. The Id.CIT(A) after considering the submissions of the assessee and examining the provisions of section 11(1)(a) and 11(1)(d) of the Act, passed a detailed order and allowed claim of the assessee as follows:

*“3.5 The careful perusal of the assessment order revealed that the A.O. did not dispute that the corpus donation could not be treated as income and would be chargeable to tax and the appellant has also not disputed this fact. On the contrary, the appellant had brought on record that it received the corpus donation of Rs.2,68,45,899/- which had been applied for construction of the hospital building which was also to be treated as an application of income as there is no bar on incurring the capital expenditure out of the corpus donation which was also treated as income. Various Courts and the Tribunals have also held that the capital expenditure out of corpus donation was to be treated as exempt income as applied for the charitable purposes and also considered the controversial issue of allowing the depreciation. The amendment brought in the Statute book by inserting the provisions of sub-section (6) and (7) w.e.f. 1.04.2015 to redress the controversy over allowing the depreciation on the capital assets generated by spending the corpus donation or revenue receipts generated by carrying out other activities. In section 11 (6), it is specifically provided that "In this section, where any income is required to be applied or accumulated or set apart..." does not make any distinction as to whether such income should*

*be only revenue receipts and not capital receipts in the form of corpus donation with specific directions for construction of the hospital building and other infrastructural facilities as brought on record by the appellant. Section 11(1)(a) of the Act specifies that "income derived from the property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied.....". Thus, the provisions of section 11(1)(a) of the Act refer to the applied income out of income derived from the properties held under the trust and not "any" or "whole" income. Therefore, the provisions of section 11(1)(d) specifying the income in the form of voluntary contributions made with a specific direction are independent of section 11(1)(a) of the Act. Further, the corpus donation as referred to in section 11(1)(d) of the Act does not require any application of income as it has to be received with specific direction that the said income would be forming part of the corpus of the trust or institution as expenditure out of corpus fund, if read with inserted provisions of section 11(6) of the Act has to be allowed.*

*3.6 I have on hand a relatable decision rendered by the Hon'ble High Court of Orissa in the case of CIT Vs. Silicon Institute of Technology reported at (2015) 56 taxmann.com 189(Orissa HC) wherein it has been held that:-*

*Section 11, read with section 12A, of the Income-tax Act, 1961 - Charitable or religion.; trust - Exemption of income from property held tinder (Capital expenditure) - Assessment year 2007-08 - Assessee-trust claimed exemption under section 11 -It was observed that assessee was registered under section 12A and was running educational institution - Amount received by it by way of collection of tuition fees and hostel fees was being spent for building necessary infrastructure for imparting education in various field which was charitable purpose for which trust was established - Mielher since capital expenditure incurred by assessee was for attainment of object of trust, exemption would be granted - Held, yes [Para 26] [In favour of assessee] FACTS*

- The assessee was a trust registered under section 12A.*
- In the assessment order, the Assessing Officer did not allow the benefit of exemption under section 11 to the trust on the ground that the assessee-trust was making systematic profit year after year, incurred capital expenditure and diverted income to capital funds which did not amount to application of income as per section 11(1).*
- On appeal, the Commissioner (Appeals), after considering (he submissions of the assessee, allowed the appeal by deleting all the additions made in the assessment order and directed the Assessing Officer to allow the benefit of exemption to the trust under section 11.*
- On appeal, the Tribunal, also upheld said order of the Commissioner (Appeals).*
- On appeal: HELD*
  - The Tribunal, after hearing the appeal filed by the department did not incline to interfere with the order of the Commissioner (Appeals) by observing that the assessee is registered under section 12A and running the educational institution, imparting education in the fields of technical engineering and computer applications with the parameters laid down by the AICTE and the guidelines given by the Ministry of Human Resource Development, Government of India, New Delhi and the fees*

*collected by the assessee from the students for imparting such education having been approved by the AICTE. The assessee is spending the amount received by it by way of collection of tuition fees or collection of hostel fees is being spent for building necessary infrastructure for imparting the education in various fields which is the charitable purpose for which the trust was established. The assessee has also spent the said amount for raising the infrastructure necessary for carrying out the object of imparting education and thereby the assessee was found to be entitled for exemption under section 11 [Para 18]*

- *The Educational Institution is eligible for exemption under section 11 for the reasons stated hereinabove and it is a settled position of law that capital expenditure incurred by an Educational Institution is the basic necessity if such expenditure promotes the object of the trust. [Para 20]*
- *In view of the above, capital expenditure if incurred by an Educational Institution for attainment of The object of the society, it would be entitled to exemption under section 11. [Para 25]*

*3.7 In view of the above-mentioned provisions of the Act coupled with the available decision of Hon'ble Orissa High Court on the issue of allowing of capital expenditure as application of income, irrespective of the fact as to whether it was the income held under the property by the trust (as contemplated u/s 11(1)(a) or the corpus donation with specific direction(as contemplated in section 11(1)(d) of the Act read with inserted provisions of section 11 (6) of the Act, the action of the A.O. to exclude the corpus donation from the income of the appellant trust and not allowing the capital expenditure as deduction, resulting into NIL income is not justified and as per the provisions of .the section 11(1) read with 11(6) of the Act. The A.O. is accordingly directed to re-compute the income by including the corpus fund as income and allowing the capital expenditure treating the same as applied for the objects of the trust in other words, to accept the returned income as such. Accordingly, the sole ground of appeal is allowed.”*

5. Not satisfied with the order of the Id.CIT(A), Revenue is now before the Tribunal.

6. The Id.DR submitted that the capital expenditure incurred by the assessee-trust from the corpus fund was not allowed as application of income. The judgment of Hon'ble Orissa High Court relied upon by the Id.CIT(A) in the case of CIT Vs. Sillicon Institute of Technology, (2015) 56 taxmann.com 189 is distinguishable, and therefore, he submitted that order of the AO to be restored.

7. Per contra, the submissions of the assessee are more or less on similar line as were made before the Revenue authorities. The Id.AR has supported the order of the Id.CIT(A) by pleading that a very detailed judicious order passed by the Id.CIT(A) does not require any interference. He also produced a copy of the assessment order in the case of another trust viz. Bapu Ashram Ghantoli (PAN : AAATB2557K) for the assessment year 2016-17, wherein similar expenditure was allowed in favour of the assessee, and accordingly, applying the same ratio, the claim of the assessee be allowed. Further, *Explanation (4) & (5)* to section 11(1) was introduced from Finance Act, 2021 w.e.f. 1-4-2022 only, whereas in the present case, assessment year involved is 2015-16, and therefore, the assessee is eligible to claim the capital expenditure incurred by the Trust as application of income.

8. We have given out thoughtful consideration and perused the materials available on record. During the assessment year 2015-16, the assessee trust has received corpus donation of Rs.2,68,45,899/- and claimed the same as exempt under section 11(1)(d) of the Act. During the year, the trust has acquired fixed assets to the tune of Rs.2,51,85,640/- and claimed the same as application of income under section 11(1)(a) of the Act. The position of law, as of pre-amended stage, was that both these sections 11(1)(d) and 11(1)(a) are independent from each other and separate code in itself. In other words, corpus donation received can be claimed as exempt income under section 11(1)(d) of the Act, and application of income by way of capital expenditure under section 11(1)(a) of the Act. We find that there is no bar in section 11(1)(d) that such corpus donation shall be applied for any other than the objects of the Trust. On the contrary, donation has to be applied for the purpose for

which donation are received by the Trust. Further, only condition that, claim of deduction of capital expenditure of the trust is that it should be for object of the trust. In this case, the assessee used corpus donation for the purpose of construction of hospital building such as eye-care hospital and other medical facilities for catering the need of the people in remote tribal areas. Thus, the core issue before us is that whether provisions of section 11(1)(a) and 11(1)(d) of the Act have overriding effect or have to be interpreted independently to each other. We also find that the Id.CIT(A) has made a detailed discussion of the issue on hand both factually as well as from legal point of view.

9. On legal aspects, he has recorded a finding that Section 11(1)(d) was introduced w.e.f 01.04.1989 and simultaneously, section 2(24)(ia) which defines the term 'income' was amended and corpus donations were within the ambit of the taxable income on which a charitable organization can claim exemption. As far as exemption is concerned it was available even prior to 01.04.1989. But with this amendment corpus donation which was not a part of taxable income has now become a part of the taxable income but enjoys exemption by virtue of section 11(1)(d) of the IT Act. Further, term 'application' has a relatively wider connotation for the purposes of section 11, For instance, even capital expenditure which is otherwise not considered as an allowable expense is also treated as expenditure. It may be noted that the scope of 'Income' includes capital income and scope of application includes application of capital nature. Further, even corpus donations are considered as a part of income under section 2(24)(ia) and subsequently exempted under section 11(1)(d) and similarly the word 'expenditure' is not used under section 11(1)(d) instead the word 'applied' has been used. Thus, it may be appreciated that unlike commercial or

business organization, in case of charitable trusts, capital gains are also considered as a part of income under section 11(1) and are not computed under the head 'Capital Gain' under section 45 to 55. In other words, the scheme of computing income as well as application is totally different as far as charitable or religious organization are concerned. Moreover, amendment to section 11 by Finance Act i.e. insertion of sub section (6) and (7) after sub-section (5) of section 11, intension of the legislature is clear that there is no bar on the Charitable organization to acquire fixed assets out of Corpus donation. The only condition put by the newly inserted sub-section (6) is that double deduction of depreciation and capital expenditure are not allowable. Sub-section (6) of Section 11 read as follow:

*"In this section where any income is required to be applied or accumulated or set apart for application, then, for such purpose the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year."*

10. In addition to the above, trust is also eligible for 15% deduction of gross income of the trust which comes to Rs. 45,65,698/- (15% of Gross income excluding corpus donation 3,04,37,986/-). Since the trust has excess application of income, it has not claimed 15% of basic deduction. Section 11(1)(a) of the Act specifies that "income derived from the property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied.....". Thus, the provisions of section 11(1)(a) of the Act refer to the applied income out of income derived from the properties held under the trust and not "any" or "whole" income. Therefore, the provisions of section 11(1)(d) specifying the income in the form of voluntary contributions made with a specific direction are independent of section 11(1)(a) of the Act. Further, the corpus

donation as referred to in section 11(1)(d) of the Act does not require any application of income as it has to be received with specific direction that the said income would be forming part of the corpus of the trust or institution as contemplated in section 11(1)(a) of the Act. Therefore, incurring of capital expenditure out of corpus fund, if read with inserted provisions of section 11(6) of the Act, has to be allowed. The amendment brought in the Statute book by inserting the provisions of sub-section (6) and (7) w.e.f.1.04.2015 to redress the controversy over allowing the depreciation on the capital assets generated by spending the corpus donation or revenue receipts generated by carrying out other activities.

11. In section 11(6), it is specifically provided that "In this section, where any income is required to be applied or accumulated or set apart...." does not make any distinction as to whether such income should be only revenue receipts and not capital receipts in the form of corpus donation with specific directions for construction of the hospital building and other infrastructural facilities as brought on record by the assessee. In view of the above discussions, the legal position as existing at the relevant of point, we find no infirmity in the order passed by the Id.CIT(A) in allowing the claim of the assessee. Thus, there is no merit in the grounds raised by the Revenue, they stand rejected.

12. In the result, appeal of the Revenue is dismissed.

**Order pronounced in the Court on 25<sup>th</sup> February, 2022 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 25/02/2022