IT : Where assessee applied income on charitable activities over and above its gross total income, no question of accumulation at rate of 15 per cent would arise

IT : Where assessee received certain amount as voluntary donations towards corpus fund, such donations would be capital receipts, not includible in its income

[2019] 103 taxmann.com 395 (Surat-Trib.)

IN THE ITAT SURAT BENCH

Deputy Commissioner of Income-tax, Circle-2, Ahmedabad

v.

Shree Surat Jilla Leuva Patidar Samaj Trust*

C.M. GARG, JUDICIAL MEMBER
AND O.P. MEENA, ACCOUNTANT MEMBER
IT APPEAL NO. 3282 (AHD) OF 2014
[ASSESSMENT YEAR 2010-11]
NOVEMBER 14, 2018

I. Section 11 of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under (Accumulation of income) - Assessment year 2010-11 - Assessing Officer made addition on account of accumulation of income at rate of 15 per cent of gross total income under section 11(1)(a) - On appeal before Commissioner (Appeals), assessee reiterated that it had already applied its income for charitable activities over and above gross total income earned - Whether Commissioner (Appeals) had rightly deleted addition on basis that since there remained no income for accumulation at rate of 15 per cent; hence, section 11(1)(a) provision would not apply - Held, yes [Para 8] [In favour of assessee]

II. Section 11, read with section 143, of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under (Application of income) - Assessee-trust received Rs. 81.17 lakhs as voluntary donations from various donors towards corpus fund created for specific purpose - All such funds were deposited by it as a fixed deposit in bank account and only interest part of it, which was shown as regular income, was applied or spent towards various purposes - Whether such donations were to be treated as capital receipts of assessee-trust, not includible in income of trust - Held, yes - Whether, further, provisions of section 11(2) with respect to granting exemption to amount accumulated would not apply with respect to such receipts - Held, yes [Para 14] [In favour of assessee]

FACTS-I

- The assessee was a trust.
- The Assessing Officer was of the view that the assessee should have first applied at least 85 per cent of the total income towards the object of the trust. Then only it could have accumulated 15 per cent of the total income under section 11(1)(*a*).

- The assessee-trust explained that it had received gross receipts of Rs. 52.93 lakhs against which it had applied the amount of Rs. 99 lakhs towards the object of the trust. However, the Assessing Officer noted that the deficit of Rs. 46.14 lakhs (*i.e.* excess of expenditure over income) was to be carried forward and set-off in subsequent year. Hence, there arose no question of accumulation of 15 per cent of the total income earned by it during the year.
- On the assessee's appeal, the Commissioner (Appeals) observed that there was excess of expenditure over income of amount Rs. 46.14 lakhs. There remained no income for the purpose of accumulation or setting apart to the expenditure at the rate of 15 per cent, hence, the provisions of section 11(1)(*a*) did not apply. It was possible only when the assessee would have applied its income less than 85 per cent of the gross income of the year.
- The Commissioner (Appeals) deleted the addition made by the Assessing Officer.
- On the revenue's appeal before the Tribunal:

HELD-I

- On perusal of the record, it is found that the assessee has already applied its income for the various charitable activities over and above the gross total income earned for the year, and for that purpose, the aggregated computation of income has been furnished by the written submissions dated 11-3-2013, but the same were not considered by the Assessing Officer, which is not permissible in law. Since, the assessee has already applied its income, therefore, no question arises of claiming 15 per cent of deduction or making disallowance of it by the Assessing Officer. In view of these facts, it is held that the Commissioner (Appeals) has perfectly deleted the said addition; therefore, this ground of appeal is to be dismissed. [Para 8]

FACTS-II

- The Assessing Officer observed that the assessee-trust had set apart or accumulated Rs. 81.17 lakhs under section 11(2), but this was not shown to him by furnishing Form No. 10. The Assessing Officer, therefore, disallowed the same. It, further, disallowed expenditure of Rs. 27.33 lakhs on the observation that the same was made out of earmarked funds (corpus fund) which was not allowable.
- Filing appeal before the Commissioner (Appeals), the assessee contended as -
  - The amount of Rs. 81.17 lakhs represented voluntary donations received from various donors towards corpus fund for specific purposes and such donations were out of the purview of the meaning of income and, therefore, not taxable.
  - The expenditure of Rs. 27.33 lakhs was incurred out of the accumulated fund, not from the corpus fund.

  The Commissioner (Appeals) concluded that the disallowance made by the Assessing Officer was not sustainable.
- On the revenue's appeal before the Tribunal:

HELD-II

- It is noticed from the facts of record that the amount of Rs. 81,16,651 has been

received by the assessee-trust towards the corpus fund created for the specific purposes, hence, such donation receipts towards corpus fund are to be treated as capital receipts of the trust and, on such donations, the provisions of section 11(2) granting exemption to the amount accumulated would not apply. All such funds have been deposited by it as a fixed deposit in the bank account and only the interest part of it, which has been shown as regular income, has been applied or spent towards various purposes. Therefore, the Commissioner (Appeals) has rightly deleted such addition made by the Assessing Officer. With regard to the expenditure of Rs. 27.33 lakh it is found that these expenditures were incurred out of its income accumulated from year to year and not from the earmarked corpus fund. The assessee has duly demonstrated by showing the details of the balance sheet of the current year as well as of earlier years that no amount has been spent out of the corpus fund received in various years. In this view, there is no infirmity in the order of the Commissioner (Appeals). [Para 14]

- The appeal of the revenue is to be dismissed.

Mitish Modi, CA *for the Appellant*. **Sreenivas Bidari**, CIT (DR) *for the Respondent.*

ORDER

O.P. Meena, Accountant Member. - This appeal filed by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-I, Surat(in short "the CIT (A)") dated 25.09.2014 pertaining to Assessment Year 2010-11 which in turn has arisen from the order passed by the Assistant Commissioner of Income Tax, Circle-6, Surat(in short "the AO") dated 19.03.2013 under section 143(3) of Income Tax Act,1961 (in short 'the Act').

2. The Revenue has raised following grounds of appeal :

"(*i*) The Ld. Commissioner of Income-Tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 7,64,805/- being disallowance of accumulation of income @ 15% of gross total income of Rs. 50,98,703/-.

(*ii*) The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in deleting the disallowance of amount set apart for specified purpose of Rs. 81,16,651/-.

(*iii*) The Ld. Commissioner of Income-Tax (Appeals) has erred in law and on facts in ignoring the stand of the Revenue that allowance of depreciation on the assets, the cost of which has already been allowed as a deduction on account of application of income, would amount to double deduction in view of the decision of the Hon'ble Supreme Court in the case of Escorts Ltd., 199 ITR 43, the decision of Kerala High Court in the case of *Lissie Medical institutions* v. *Commissioner of Income-tax, Kochi,* 348 ITR 344 and decision of Delhi High Court in the case of *DIT(E)* v. *Charanjiv Charitable Trust* in (2014) 43 taxmann.com 300 (Delhi).

(*iv*) The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts deleting the disallowance of expenditure of Rs. 27,32,9185/- stating that these expenses incurred out of its income accumulated from year to year and not from the earmarked fund.

(*v*) On the facts and circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the order of the Assessing

Officer."

3. Ground No. (i) relates to making addition of Rs. 7,64,805/- on account of alleged accumulation of income @ 15% of the gross total income.

4. The Assessing Officer (AO) was of the view that the assessee has accumulated 15% of gross total income of Rs. 50,98,703/-. However, the assessee should have first applied at least 85% of total income towards object of the Trust, then only it could have accumulated 15% of total income u/s. 11(1)(a) of the Act. The assessee has explained that it has received gross receipts of Rs. 52,92,614/- against it which has applied the amount of Rs. 99,07,454/- towards to object of the Trust. However, the AO noted that there is deficit of Rs. 46,14,840/- (i.e. excess of expenditure over income) to be carried forward and set-off in subsequent year, therefore, no question arises of accumulation of 15% of the total income earned by the assessee during the year, hence, the deduction claimed of Rs. 7,64,805/- was added to the total income of the assessee.

5. The assessee carried the matter before the CIT (A) wherein same facts were reiterated. The CIT (A) observed that the assessee disclosed income from other sources at Rs. 52,92,614/- as against application of income shown at Rs. 99,07,454/-. Thus, there is excess of expenditure over income Rs. 46,14,840/-. However, the AO has not given any opinion of his revised computation of income though it was in her knowledge during assessment proceedings. Since there remains no income for the purpose of accumulation or setting apart to the expenditure @15%, the provisions of section 11(1)(a) of the Act do not apply in the case of the assessee. It was possible only in the case when the assessee Trust would have applied its income less than 85% of the gross income of the year. The AO has wrongly drawn the conclusions by ignoring these vital facts in the case of assessee, therefore, the addition made by the AO was deleted.

6. Being aggrieved, the Revenue has filed this appeal. The ld. CIT-DR supported the order of the AO.

7. Per Contra, the ld.Counsel relying on the order of the CIT (A) submitted that there was no surplus amount left for accumulation or setting apart during the year, hence, no question arises of making any disallowance.

8. We have heard the rival submissions and perused the material on record, we find that the assessee has already applied its income for the various charitable activities over and above the gross total income earned for the year and for that purpose, aggregated computation of income has been furnished by the written submissions dated 11.03.2013, but the same were not considered by the ld.AO which is not permissible in law. Since, the assessee has already applied its income, therefore no question arises of claiming 15% of deduction or making disallowance of it by the AO. In view of these facts, we hold that ld.CIT (A) has perfectly deleted the said addition, therefore this ground of appeal is dismissed.

9. Ground No. (ii), (iii) & (iv) are against the deleting the disallowance of amount set apart for specified purposes of Rs. 81,16,651/- and disallowance of expenditure of Rs. 27,32,915/-which are co-related, hence being considered together.

10. Brief facts are that the AO observed that the assessee had set apart or accumulated the amount of Rs. 81,16,651/- u/s. 11(2) of the Act but this was not shown to the AO by furnishing Form No.10. The AO, therefore disallowed this amount the same. The AO further observed that the assessee has made expenses of Rs. 27,32,915/- from the year marked funds (corpus fund) which is not allowable. The reply of the assessee that said expenditure towards construction of party plot, and no expenditure for construction etc., has been incurred out of its income accumulated year to year no from the corpus fund was not accepted by the AO.

11. Being aggrieved, the assessee filed an appeal before the ld.CIT (A) wherein it was contended that the

amount of Rs. 81,16,651/- represents the voluntary donations received by the appellant Trust from various donors towards corpus fund for specific purposes and such donations towards corpus funds are out of the purview of the meaning of the income and therefore not taxable. Similarly, the assessee had filed Form No.10 along with resolution for accumulation of income along with Return of Income filed u/s. 139(1) of the Act, therefore no question arises for non-filing of Form Nol.10 separately. Further, the expenditure of Rs. 27,32,915/- was incurred out of the accumulated fund, not from the corpus fund as reflected from the balance sheet of the current year as well as earlier years that nothing has been debited out of corpus fund for making any expenditure. In view of these facts the CIT (A) observed that the amount of Rs. 81,16,651/- has been received by the appellant Trust towards corpus fund created for the specific purposes by giving nomenclature to building fund tabibi fund, bhajan Sandhya Fund, education fund, social development fund and the life membership fund with the specific directions in righting by all such donors expressing their desires to utilizing the donations towards the corpus of such specific funds of the appellate Trust. Therefore, it is clear from the provision of section 11(1)(d) of the Act that voluntary contributions made towards corpus of the Trust are not to be included in the income of the Trust. Thus, if a donor while making the donations make it clear that the donation so made shall form part of the corpus of the Trust, it would be capital receipts and shall be chargeable to tax. Consequently, the provisions related to accumulation of income and setting apart of that would not apply in such cases. In view of these facts, the CIT (A) concluded that the judgment relied by the AO in the assessment order become irrelevant to the case of the appellant. With regard to expenditure of Rs. 2,73,295/-, the CIT (A) observed that the assessee has demonstrated by filing the ledger account of corpus fund maintained for various years that no expenditure has been debited out of corpus fund during the year. Therefore, the conclusion drawn by the AO was wrong and the disallowance made by the AO was not found sustainable.

12. Being aggrieved, the Revenue has filed this appeal before the Tribunal. The ld. CIT-DR vehemently supported order of the AO.

13. Per Contra, the ld.Counsel for the assessee submitted that the donation were received towards corpus fund created for the specific purposes, hence, such voluntary contributions towards corpus of the Trust are not to be included in the income of the Trust as per provisions of section 11(1)(d) of the Act. Similarly, the expenditure of Rs. 27,32,915/- has not been made by utilizing the corpus fund, hence disallowance made by the AO were rightly deleted by the ld. CIT (A).

14. We have considered the rival submissions and perused the material on record. It is noticed from the facts of record that the amount of Rs. 81,16,651/- has been received by the assessee Trust towards corpus fund created for the specific purposes, hence, such donation receipts towards corpus fund are to be treated as capital receipts of the Trust and on such donations the provisions of section 11(2) granting exemption to the amount accumulated would not apply. All such funds have been deposited by it has fixed deposit in the bank account and only interest part of it, which has been shown as regular income, has been applied or spent towards various purposes. Therefore, the CIT (A) has rightly deleted such addition made by AO, accordingly ground no. (ii) & (iii) of the appeal is therefore dismissed. With regard to expenditure of Rs. 27,32,915/- we find that these expenditures were incurred out of its income accumulated from year to year and not from earmarked corpus fund the assessee has duly demonstrated by showing the details of the balance sheet of the current year as well as earlier years that no amount has been spend out of the corpus fund received in various years. In view of this matter we do not any infirmity in the order of CIT (A), accordingly same is upheld, therefore ground no. (iv) of appeal of the Revenue is accordingly dismissed.

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

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*In favour of assessee.