

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

AND

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.124/Bang/2014
(Assessment Year : 2010-11)

Deputy Director of Income-tax (E),
Circle -17(1), Bangalore .. Appellant

v.

Karnataka Food and Civil Supplies Ltd,
No.16/1, Miller Tank Bed Area,
Vasanthanagar, Bangalore 560 052 .. Respondent
PAN : AAACK8523F

Assessee by : Smt. Pratibha, Advocate
Revenue by : Shri. I. P. S. Bindra, CIT-DR-I

Heard on : 15.10.2015
Pronounced on : 20.10.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by the Revenue its grievance is that the CIT (A) vide his order dt.25.10.2013 allowed set off of carry forward losses to the assessee.

02. Ld. DR strongly assailing the order of CIT (A) submitted that assessee was a trust registered u/s.12AA of the Income-tax Act, 1961 ('the

Act' in short). As per the Ld. DR once the assessee was assessed as a trust registered u/s.12A of the Act, there was no question of any business loss being computed or carried forward. As per the Ld. DR excess of expenditure over income resulting in a loss would arise only if a computation is made under the head 'profits and gains of business or profession'. In any case, according to him, claim of the assessee for the impugned assessment year were for carry forward of losses from A Ys.2005-06 and 2006-07. As per the Ld. DR, at the most what could be allowed was set off was losses of the immediately preceding assessment year and not any earlier assessment years. As per the Ld DR, the impugned assessment year was 2010-11 and carry forward losses pertained to A. Ys.2005-06 and 2006-07. Reliance was placed on the judgment of Hon'ble Madras High Court in the case of Govindu Naicker Estate v. ADIT [248 ITR 368].

03. Per contra, Ld. AR supported the order of CIT (A) and placed on record a decision of coordinate bench in the case of ITO v. Academy of Liberal Education [ITA No.687/Bang/2014, dt.20.02.2015].

04. We have perused the orders and heard the rival contentions. Assessee had claimed carry forward of brought forward losses of Rs.16,62,77,393/- for A. Y. 2005-06 and Rs.23,54,61,542/- for A. Y. 2006-

07 and set it off against its income for A. Y. 2010-11. Question whether an assessee registered u/s.12A of the Act is eligible for claim of carry forward of deficit of an earlier year has been a subject matter which had come up before the coordinate benches of this Tribunal in various cases. In the case of Academy of Liberal Education (supra), relied on by the Ld. AR on a similar issue it was held as under at paras 4 to 8 of the order dt.20.02.2015 :

“4. The issue is with regard to claim of assessee for carry forward of deficit of current year and unabsorbed deficit of earlier assessment years. The AO rejected the claim of assessee observing as follows:-

“The assessee trust has claimed carry forward of excess amount applied during the year for charitable purposes. The assessee has relied on various judicial decisions including the decision of the Hon,ble ITAT, Bangalore in the case of Medical Relief Society of South Kanara. It is observed that in the case of Medical Relief Society of South Kanara, the department has filed an appeal before the Hon’ble High court of Karnataka vide ITA 1034 of 2008 on the similar issue against the order of the Hon’ble ITAT allowing excess application to be carried forward and set off. The same is pending before the jurisdictional High Court as on date. Since the matter is pending before the jurisdictional High Court, the loss declared of Rs.3,08,66,139/- for the A.Y. 2011-12 is not allowed to be carried forward to the A.Y 2012-13 in order to keep the issue alive.”

5. On appeal by the assessee, the CIT(A) directed the AO to allow claim of the assessee and in doing so, held as follows:-

“This issue was also before me in the following Trusts cases, wherein I have decided the issue in favour of the assessee trusts.

- i) *Manipal Hotel & Restaurant Management College Trust, (Manipal in ITA Nos. 187/UDP/CTI(A)MNG/10-11, dated 14.3.2013.*
- ii) *ii) Manipal Academy of Higher Education, Manipal in ITA No. 43/UDP/CIT(A) MNG/13-14, dated 21.1.2014.*
- iii) *Academy of General Education, Manipal, in ITA No. 75/UDP/CIT(A)MNG/10- 11, dated 14.3.2013.*

- iv) *Dr.T.M.A. Pal Foundation, Manipal in ITA No. 76/UDP/CIT(A)MNG/12-13, dated 14.3.2013.*

Respectfully following the decision of the Jurisdictional ITAT, which is binding and following my own decisions in the above cases, I hold that, the appellant's current year's unabsorbed deficit amounting to Rs.3,08,66,139/- along with brought forward unabsorbed deficit of Rs.25,78,08,575/- to be carried forward to the subsequent assessment years to set off the same as application of income. Hence, the first grounds of appeal is allowed."

6. Aggrieved by the order of CIT(A), the Revenue has filed the present appeal before the Tribunal.

7. In the grounds of appeal, the Revenue accepts the fact that the issue raised in this appeal is squarely covered by the decisions referred to by the CIT(A), but has only contended that the department has not accepted the decisions of the Tribunal and an appeal is pending before the Hon'ble High Court of Karnataka on the issue. The ld. DR reiterated the stand of the Revenue as contained in the grounds of appeal.

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).”

05. We find that the above decision has considered the judgment of Hon’ble Madras High Court in the case of Govindu Naicker Estate (supra), relied on by the Ld. DR before us. In so far as the argument of the Ld. DR that only the deficit of immediately preceding assessment year can be considered, in our opinion, this issue also stands covered by the above mentioned decision of the coordinate bench in the case of Academy of Liberal Education (supra). Relevant para 3 is reproduced here under :

“3. The assessee is a trust registered u/s. 12A of the Act. For the A.Y. 2011-12, the assessee filed a return of income showing application of income by more than Rs.3,08,66,139 of its receipts. The assessee also had a carry forward unabsorbed deficit of Rs.25,78,08,575 from A.Ys. 2005-06 to 2010-11. The unabsorbed current deficit and unabsorbed deficit for the A.Ys. 2005-06 to 2010-11 were sought to be carried forward for setting off and on treatment as application of income in the subsequent assessment years. The income declared in the return of income was NIL.”

06. Thus this Tribunal had allowed set off of losses even for years prior to the immediately preceding assessment year. We do not find any reason to differ from the view taken by the coordinate bench.

10. In the result, appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 20th day of October, 2015.

Sd/-

Sd/-

(SMT. ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar