

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD

(Through Virtual Court)

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2208/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2015-16)

Gnyan Dham Vapi Charitable Trust 11, GIDC Estate, Vapi 396195	बनाम/ Vs.	The Deputy Commissioner of Income-tax (Exemptions) Circle - 2, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATG7795C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Soparkar, Sr. Advocate & Shri Parin Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Vidhyut Trivedi, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	10/08/2020
घोषणा की तारीख /Date of Pronouncement	19/08/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-9, Ahmedabad ('CIT(A)' in short), dated 30.08.2018 arising in the assessment order dated 28.12.2017 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. The substantive ground of appeal raised by assessee read as under:

“1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in holding that the 15% of gross receipts allowed to be accumulated under section 11(1)(a) ought to be reduced from the amount allowed to be carried forward as deficit.”

3. The assessee is a public charitable trust engaged in educational activities and registered under s.12AA of the Act. In the course of assessment proceedings for the AY 2015-16, it was noticed by the AO that assessee has claimed carried forward deficit of Rs.72,03,285/- for the year under consideration together with deficits of other assessment years. It was claimed by the assessee trust that it has incurred excess expenditure over voluntary contributions received by it for assessment year in question and in some other assessment years amounting to Rs.3,79,25,029/- in aggregate. The AO while passing the assessment order under s.143(3) of the Act denied the carry forward of excess application over such contributions being ‘deficit’ for the purposes of set off against the contributions to be received in the subsequent assessment years.

4. In the first appeal against the aforesaid action of the AO, the CIT(A), in principle, allowed carry forward of excess expenses being eligible for set off over next years. While holding in favour of the assessee, the CIT(A) applied the law interpreted by the jurisdiction High Court in the case of *CIT vs. Shri Plot Shwetambar Murtipujak Jain Mandal 211 ITR 293 (Guj)*. However, while granting relief to the assessee towards allowability of carry forward of deficit, the CIT(A) directed the AO to exclude 15% of income from the quantum of deficit observing the same to be not a real

deficit but a notional deduction. Hence, the CIT(A), in effect, reduced the quantum of deficit eligible for carry forward and set off in subsequent years.

5. Aggrieved by the reduction in quantum of deficit to the extent of 15% of income as entitled to be accumulated by a trust under s.11(1)(a) of the Act, the assessee has preferred appeal before the Tribunal.

6. The learned senior counsel for the assessee while adverting to the issue, made reference to the decision of the co-ordinate bench in *Maharshi Karve Stree Shikshan Samstha Karvenagar vs. ITO 174 ITD 591 (Pune)* which, in turn, *inter alia* relied upon the observations made by the Hon'ble Supreme Court in the case of *CIT vs. Programme for Community Organisation [2001] 248 ITR 1 (SC)* and *Addl.CIT vs. A. L. N. Rao Charitable Trust [1995] 216 ITR 697 (SC)*. It was thus contended on behalf of the assessee that trust is entitled to whole of the deficit resulting from excess application of its income without any artificial reduction equivalent to 15% entitlement contemplated under s.11(1)(a) of the Act.

7. The learned DR, on the other hand, relied upon the observations made by the CIT(A) for reduction in the quantum of deficit allowed to be carried forward by 15% of income of respective years as per statutory formula provided under s.11 of the Act.

8. We have carefully considered the rival submission. The solitary question that arises for adjudication is whether where a trust has incurred shortfall due to its excess spending on the objects of the Trust in a particular year, such deficit or shortfall could be

allowed to be carried forward in full for set off against the incomes generated in the subsequent years or the quantum of carry forward of deficit for set off against income of subsequent years is to be restricted to a recalibrated amount after deduction of 15% of receipts contemplated under s.11(1)(a) and Section 11(1)(b) of the Act.

8.1 Under s.11 of the Act, income derived from property held under trust wholly for charitable or relates purposes shall not be included in the total income subject to certain conditions. On a combined reading of Section 11(1)(a) and Section 11(2) of the Act, it emerges that the trust is allowed to accumulate 15% of its income without any time limit and balance 85% can be set apart for specified period to five years. In the instant case, the assessee in the assessment year in question as well as in some other assessment years have made spendings in excess of its receipts resulting in certain deficit. Owing to excess spending over receipts, a peculiar situation has arisen in the present case towards the manner of computation of quantum of deficit eligible to be carried forward for set off in subsequent assessment years having regard to statutory permission towards 15% accumulation under s.11(1)(a)/11(1)(b) of the Act without any time limit.

8.2 To delineate on the issue, it may be pertinent to note that in order to be eligible for claiming exemption, it is essential that the income of the trust is applied for charitable objects. A charitable trust or institution is required to apply at least 85% of income derived from trust property towards charitable purposes. If the income spent on charitable or religious purposes during the previous year falls short of 85% of the income derived during the year, such shortfall may be subjected to tax in certain circumstances. Hence, a

statutory obligation has been cast on beneficiary trusts to utilize at least 85% of the income derived from the trust property unless accumulated or set apart for application in subsequent years subject to certain stipulated conditions. Section 11(1)(a) & (b) r.w.s. 11(2) of the Act however grants an entitlement to a charitable trust to retain or accumulate 15% of income derived from property held in trust without any time limit and is thus benevolent in nature. In this backdrop, it is noticed that the situation herein is quite opposite. The assessee in the instant case has, in fact, utilized its income for charitable purposes in excess of its receipts without any accumulations resulting in certain 'deficits'. The CIT(A) has applied the governing principles of Section 11(1)(a) of the Act to a totally converse situation of excess spending rather than accumulation and has brought down the entitlement of deficits carry forward.

8.3 Ostensibly, the assessee has not availed the entitlement of accumulation of 15% of income in the instant case. Needless to say, the statutory postulations towards accumulation of 15% of income for indefinite period is an entitlement or a right of absolute nature vested upon the assessee but, however, cannot be regarded as an obligation envisaged in law. The law applicable to accumulation of income cannot be extended to application thereof. Where an assessee trust has made excess application of its income, the option or entitlement vested upon an assessee to accumulate 15% for indefinite period in our view cannot operate as an obligation enforceable against it in the absence of accumulation. The method of computation of deficit to be truncated artificially 15% based on an entitlement (opposed to an obligation) as suggested by first appellate authority is totally devoid of any logic. This would tantamount to application of concession conferred on assessee in a

reverse manner and thus put the assessee in a worser position in the event of accelerated application of receipts for salutary purposes. The action directed by CIT(A) has the effect of deprivation of concession granted and is repugnant to the intended outcome. The Pune Bench of Tribunal in *Maharshi Karve Stree Shikshan Samstha Karvenagar vs. ITO 174 ITD 591 (Pune)* has also essentially held that relaxations conferred under s. 11(1)(a)/(b) r.w. Section 11(2) of the Act to the extent of 15% of income would not nullify the entitlement of such absolute nature by way of reduction in quantum of deficit. We thus have no hesitations to quash the observations of the first appellate authority towards exclusion of 15% of income for the purposes of determination of quantum of deficit to be carried forward for set off in ensuing years in accordance with law.

9. In the result, appeal of the assessee is allowed.

This Order pronounced on 19/08/2020

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 19/08/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।