

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF NOVEMBER 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

ITA NO.300/2015

C/W

ITA NO.7/2016

IN ITA NO.300/2015:

BETWEEN:

1. COMMISSIONER OF INCOME TAX
(EXEMPTIONS) C.R. BUILDING,
BANGALORE
2. DEPUTY DIRECTOR OF INCOME TAX (EXE)
CIRCLE 17(1), BANGALORE

... APPELLANTS

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. GOKULA EDUCATION
FOUNDATION,
M.S. RAMAIAH NAGAR,

MSRIT POST,
BANGALORE-560 054

... RESPONDENT

(BY SRI A SHANKAR, ADVOCATE)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:30/12/2014 PASSED IN ITA NO.1091/BANG/2014, FOR THE ASSESSMENT YEAR 2010-2011 PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED: 30/12/2014 PASSED BY THE ITAT, 'C' BENCH, BENGALURU, IN APPEAL PROCEEDINGS NO. ITA NO. 1091/BNG/2014 FOR ASSESSMENT YEAR 2010-11, AS SOUGHT FOR IN THIS APPEAL; AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

IN ITA NO.7/2016:

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
(EXEMPTIONS)
C R BUILDINGS,
QUEENS ROAD,
BANGALORE 560001
2. THE ASSISTANT DIRECTOR OF INCOME TAX
(EXEMPTIONS)
CIRCLE 17 (2)

BANGALORE

... APPELLANTS

(BY SRI SANMATHI E I, ADVOCATE)

AND:

M/S VIDYANIKETAN
EDUCATION AND CULTURAL TRUST,
ULLAL CROSS ROAD,
ULLAL UPANAGAR,
BANGALORE-560056
PAN: AAATV 1618F

... RESPONDENT

(BY SRI A SHANKAR, ADVOCATE)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:23/06/2015 PASSED IN ITA NO.1349/BANG/2014, FOR THE ASSESSMENT YEAR 2009-2010 PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT, TO SET ASIDE THE APPELLATE ORDER DATED:23/06/2015 PASSED BY THE ITAT, 'C' BENCH, BENGALURU, IN APPEAL PROCEEDINGS ITA NOS. 1349/BANG/2014 FOR THE ASSESSMENT YEAR 2009-2010 AND GRANT SUCH OTHER RELIEF AS DEEMED FIT, INTEREST OF JUSTICE.

THESE APPEALS COMING ON FOR HEARING THIS DAY, **JAYANT PATEL J.**, DELIVERED THE FOLLOWING:

ORDER

In both the appeals, the only question which arise for consideration vide order dated 12.02.2016 in ITA No.300/2015 is as under:

“6. Whether, in the given facts and circumstances, the Hon’ble Tribunal is correct in law in holding that the assessee is eligible to claim accumulation under section 11(2) without appreciating the fact that the requirement of declaring the intention of the assessee to accumulate/set apart certain amount of income which could not be applied in the same assessment year as provided under section 11(2) is mandatory and the same should be spelt out in clear terms in the statutory Form No.10 filed along with the return of income and the assessee is required to invest or deposit such accumulated income in the forms or modes specified in section 11(5)?”

2. It may be recorded that when ITA No.300/2015 came to be considered for admission on 12.02.2016, the appeal was admitted only on the aforesaid question. However, so far as ITA No.7/2016 is concerned, the said appeal is so far not admitted. Hence, even if it is to be considered, the said appeal would require to be considered only on the above referred question. Hence, both the appeals are heard simultaneously.

3. We may also record that in ITA No.7/2016 so far as question No.1 is concerned, the learned Counsel for the respondents-Revenue has fairly declared that the said question is covered against the Revenue as per the decision dated 22.02.2016 of this Court in ITA No.1/2013 and allied matters. However, he stated that the matter is carried before the Apex Court.

4. Under the above circumstances, we find that even otherwise also, as question No.1 is already covered

by the above referred decision of this Court dated 22.02.2016 in ITA No.1/2013 and allied matters, such question would no more arise for consideration in the present appeal. So far as question Nos.2 and 3 are concerned, though formulated by the Revenue would stand covered in the above referred question formulated, resultantly both the appeals are to be considered only on the above referred question.

5. We may record that in ITA No.300/2015, the brief facts are that the respondent-assessee filed return and claimed setting apart of the amount Rs.93,46,716/- under Section 11(2) of the Income Tax Act, by filing Form No.10. In form No.10 the objects mentioned were "towards the objects of the Trust". The Assessing Officer disallowed the claim on the ground that specific object and itemised purpose was not mentioned. The matter was carried in appeal before CIT (Appeals). The CIT

(Appeals) during the course of hearing of the appeal, accepted the revised form No.10 wherein the purpose mentioned was “(a) towards development of infrastructure for furtherance of education” and “(b) towards meeting of operating and administrating expenses for providing education facilities”. The CIT (Appeals) found that since there were two divergent views of the High Court of Kerala and Madras, whereas the High Court of Delhi had taken the view that particular purpose is not required to be mentioned. He found that in absence of any decision of the jurisdictional High Court, the decision favourable to the assessee should be considered. Hence based on the decision of the High Court of Delhi, he allowed the appeal and directed the Assessing Officer to verify the form and allow the claim. In the further appeal the

Tribunal after considering the submissions observed at paragraph-6 which reads as under:

“6. We have heard the rival contentions and perused the order. In so far as depreciation on fixed assets are concerned, the issue had come up before this Tribunal in assessee's own case in ITA No. 600 & 601/Bang/2012, where it was held as under;

“7. Having heard both the parties and having considered the rival contentions, we find that the basic issue is whether the decision of the Hon'ble Supreme Court in the case of M/s Escorts Ltd., is applicable to the facts of the case before us. We find that a similar issues have arisen before this Tribunal in the case of Karnataka Reddy Jansangha as well as in the case of Shri Adichunchanagiri Shikshana Trust and this Tribunal after considering various decisions on the issue including the decision of the Kerala High Court in the case of Lessie Medical Institutions relied

upon by the learned DR) has held that the claim of depreciation of an asset, the entire cost of which has been allowed by way of application of income u/s 11(1) of the IT Act, 1961 is allowable. The relevant portion of the Tribunal's order is reproduced hereunder;

“9. We have heard the rival submissions and carefully perused the materials on record. The income of the trust is required to be computed under section 11 on commercial principles, without reference to the heads of the income specified under section 14 of the Act. In other words, it is to be computed as per the book income and not total income as defined in section 2(45) of the Act. This proposition is laid down by various judgments of Hon'ble High Courts, namely, (i) CIT v Trustee of H.E.H. Nizam's Supplemental Religious Endowment Trust 127 ITR 378 (AP); (ii) CIT v Rao Bahadur Calavala Cunnan Chetty Charities 135 ITR 485 (Mad.) & (iii) CIT v Estate of V.L.Ethiraj 136 ITR 12 (Mad.). This

position is also confirmed by the CBDT vide its Circular No.5-P (LXX-6) dated 19th June 1968. The income of the trust is to be computed on the commercial basis i.e. as per normal accounting. The normal accounting principles clearly provide for deducting depreciation to arrive at income. The income so arrived at (after deducting the depreciation) is to be applied for charitable purpose. Capital expense is application of the income so determined. The application of the income so determined cannot be stated to be a deduction to arrive at the income. The depreciation is to be deducted to determine the income under section 11 of the Act and it is not an application of income. Therefore, there is no double deduction as claimed by the DIT(E) in his order.

9.1 The controversy, according to us, is squarely covered by the judgment of the Hon'ble Bombay High Court in the case of CIT v Institute of Banking 264 ITR 110. The

Hon'ble Bombay High Court was considering the following question of law:-

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the Assessing Officer to allow depreciation on the assets the cost of which has been fully allowed as application of income u/s 11 in the past years?

9.2 Following are the facts of the case considered by the Hon'ble Bombay High Court:-

The assessee was a trust registered under the Bombay Public Trust Act and section 12A of the I T Act. The object of the assessee was charitable in nature. The income of the assessee was exempt u/s 11 of the I T Act. The assessee had claimed depreciation which was rejected by the Assessing Officer on the ground that capital expenditure incurred during the accounting year was allowed as a

deduction from the income of the assessee. Further, the assessee had claimed depreciation on furniture and fixtures to the tune of Rs.49,453/- at 10% of the written down value which was disallowed by the Assessing Officer on the ground that the said assets had been received by the assessee on transfer from National Institute of Bank Management. That institute was a charitable trust. Its income was also exempt u/s 11 of the I T Act. The Assessing Officer did not allow depreciation on fixtures and furniture on the ground that full deduction had been allowed in respect of capital cost of furniture and fixtures and if the depreciation was allowed, as claimed by the assessee, it would result in double deduction. The assessee carried the matter in appeal and the appellate authority decided the matter in favour of assessee. The decision of the appellate authority was confirmed by the Tribunal.

9.3 On reference, the Bombay High Court held “that the Tribunal was right in law in directing the Assessing Officer to allow depreciation on the assets, the cost of which had been fully allowed as application of income under section 11 in the past years”.

9.4 The Hon’ble jurisdictional High Court in the case of CIT v Society of the Sisters of St. Anne 146 ITR 26 had categorically held that the amount of depreciation debited to the accounts of a charitable institution is to be deducted to arrive at the available income for the purpose of application to charitable and religious purposes. The decision of the Hon’ble jurisdictional High Court has been followed by the Hon’ble Madhya Pradesh High Court in the case of CIT v Raipur Pallottine Society 180 ITR 579 and by the Hon’ble Madras High Court in the case of Gonvindu Naicker Estate v Assistant Director of Income Tax and Another 248 ITR 368. Further, in the case of CIT v Sheth Manilal Ranchhoddas Vishram Bhavan

Trust 198 ITR 598, it was held by the Hon'ble Gujarat High Court that depreciation should be allowed while computing the income under section 11(i)(a) of the Act.

9.5 The judgment of the Hon'ble Apex Court relied on by The Director of Income-tax (Exemptions) is distinguishable. The issue before the Hon'ble Supreme Court was that whether both depreciation under section 32 and capital expenditure on scientific research under section 35(1)(iv) can be claimed as deduction. In the case before the Hon'ble Supreme Court, both deductions were under the head 'business income' whereas in the case of a charitable trust, depreciation is a deduction to arrive at income and capital expenditure is application of such income. The aforesaid judgment of the Hon'ble Apex Court in the case of Escorts Limited (supra) cannot be applied to determine taxable income for a trust, as the provisions to determine taxable income of the trust are totally different and

normal provisions for computing income under the five heads cannot be applied. Though the Cochin Bench of the Tribunal is rendered on identical issue, we would prefer to follow the judgments of various High Courts, (cited supra) in preference to the order of the Cochin Bench Tribunal. Therefore, we hold the assessee is eligible for claiming depreciation and it is to be allowed as deduction in order to arrive at the income of the assessee-trust. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed.

To the aforesaid order, one of us i.e AM is the signatory. As the facts and circumstances in the case before us are exactly similar to the facts of the case before the Co-ordinate Benches of the Tribunal, respectfully following the said decisions the assessee's appeals are allowed and the orders u/s 263 of the DIT(Exemp.) are vacated.

7. As for the second issue, it is necessary to reproduce section 11(2) of the Act and Rule 17 which are on accumulation;

“Where(eighty five) percent of the Income referred to in clause(a) or clause(b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income provided the following conditions are complied with, namely

- a) such person specifies, by notice in writing given to the AO in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for

which the income is to be accumulated or set apart, which shall in no case exceed ten years.

b) The money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section(5)".

Provided that in computing the period of ten years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded;

Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words ten years at both the places where they occur, the words 'five years' had been substituted".

Rule 17... The notice to be given to the AO or the prescribed authority under sub-section(2)

of section 11 or under the said provision as applicable under clause(2) or clause(23) of section 10 shall be in Form No.10 and shall be delivered before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income’.

The requirement in the Act are (i) specification by notice in writing to the AO(ii) such specification should be in prescribed manner and (iii) and such specification should give the purpose of accumulation. The time limit has been mentioned in the Rules alone. The delegated power of rule making given in section 11(2) is only for prescribing the manner of filing the application. The power does not include fixation of time limits. Delegated legislative powers are circumscribed by the statute delegating such powers and transgression thereof can render the rules beyond the scope of such delegation. Hence, we cannot fault the learned CIT(A) taking cognizance of the revised Form No.10A filed by

the assessee. In any case, as observed by learned CIT(A), Hon'ble Delhi High Court in the case of Bharath Kalyan Pratisthan as well as Bharat Krishak Samaj(supra) had held that details of purpose of accumulation was not a requirement that can be read into section 11(2). Revenue has not been able to bring before us any decision of Hon'ble jurisdictional High Court on this issue, and therefore, assessee has to be given the benefit of the decision in its favour, in preference to the decisions going against it."

6. The Tribunal ultimately did not interfere with the order of the CIT (Appeals). Under the circumstances, the present appeal before this Court.

7. Whereas in ITA No.7/2016, the facts are that the assessee-Trust set apart the amount of Rs.75,00,000/- under Section 11(2) of the Act by filing Form No.10 and mentioned the purpose as under:

“To improve/develop the buildings of the trust and conduct educational/charitable activities.”

8. The Assessing Officer found that there is no specific activity mentioned and the language used is general and therefore he disallowed the claim. The matter was carried in appeal before CIT (Appeals) and he concurred with the view of the Assessing Officer and allowed the appeal in part on other aspect which is not touching to the question involved. The Income Tax Appellate Tribunal in further appeal has more or less recorded the same reasoning and it relied upon its earlier decision in case of **DDIT(E) Vs. Gokula Education Foundation** in ITA No.1091/Bang/2014 dated 30.12.2014 (which is subject matter of ITA No.300/2015 being simultaneously heard and considered) and the Tribunal thereafter found that the issue could be said as covered by its earlier decision,

wherein the reliance was placed upon the decision of Delhi High Court in case of ***Director of Income-Tax (Exemption) Vs. Daulat Ram Education Society*** reported at **(2005) 278 ITR 260 (Delhi)** and therefore ultimately allowed the appeal of the assessee by the impugned order. Under the circumstances, the present appeal before this Court.

9. We have heard Mr.E.I.Sanmathi, learned Counsel appearing for the appellants-revenue in both the appeals and Mr A.Shankar, learned Counsel appearing for the respondent-assessee in both the appeals.

10. The learned Counsel for the appellants-Revenue mainly contended that unless there is a specific purpose mentioned in Form No.10, the language 'for general purpose' would not permit the assessee to claim the benefit under Section 11(2) of the Income Tax

Act. He further submitted that in ITA No.300/2015 'too vague' and 'too general purpose' was mentioned, but the CIT (Appeals) during the course of hearing accepted the revised Form No.10 which was not permissible.

11. He submitted that if the revised Form No.10 is taken out, then the purpose mentioned for setting apart for claiming benefit under Section 11(2) of the Act is too vague and too general and therefore rightly disallowed by the Assessing Officer and the Tribunal ought not to have maintained the benefit claimed by the assessee under Section 11(2) of the Act.

12. Whereas Mr.A.Shankar, learned Counsel appearing for the respondents-assessee contended that as such, as per the decision of the Delhi High Court in the case of ***Daulat Ram Education Society*** (supra), no specific purpose is required to be mentioned so long as the purpose/s are within the objects of the Trust. He

also contended that even otherwise also, the appeal before the CIT (Appeals) is a continuous proceeding and therefore, it cannot be said that CIT (Appeals) could not permit revised Form No.10 during the course of hearing of the appeal. He submitted that the view taken in both the appeals by the Tribunal is correct and the appeals of the Revenue may be dismissed.

13. We may at the outset mention that since Section 11(2) as well as Rule 17 of the Income Tax Act, are already reproduced in the above referred portion of the order of the Tribunal, we need not repeat the same so as not to burden the judgment. However, it needs to be emphasized that the issue centre rounds for compliance of Section 11(2) (a) of the Act only which provides for specification of the purpose for which the income is being accumulated or set apart. Since there is no controversy for the period for which the amount is

set apart, we find it appropriate not to make any further observations in this regard. The only question therefore may arise is as to “whether the specification of the purpose in the present case could be said as sufficient compliance for claiming the benefit under Section 11(2) (a) of the Act or not”.

14. As we have recorded earlier in ITA No.300/2015 initially there was a broad purpose as “towards objects of the Trust”. Thereafter, it is in the revised Form No.10, it has been specified under sub head (a) and (b) which speaks for the ‘development of infrastructure for furtherance of education’ and ‘towards meeting of operating and administrating expenses for providing education facilities’. Whereas in ITA No.7/2016 the objects specified is “to improve/develop the buildings of the trust and to conduct educational/charitable activities”. Be it

recorded that it is not the case of the Revenue that any of the purposes specified in Form No.10 are not falling as the object of the Trust. But the only case of the Revenue is that the purpose should be specifically mentioned, though it may be one of the objects of the Trust and it may be more than one of the objects of the Trust.

15. It is true that in case of ***Daulat Ram Education Society*** (supra), Delhi High Court observed that so long as one or more purposes are specified by the assessee find place in the objects for which the Society has been incorporated and so long as the said purpose/s are charitable in character, the benefit admissible under section 11 must flow to the assessee. If the matter is considered as it is, in view of the decision of the High Court of Delhi in case of ***Daulat Ram Education Society*** (supra), we do find that the

question since is already covered by the decision of High Court of Delhi, it may not arise for consideration.

16. However, the learned Counsel appearing for the revenue by relying upon the decision of Calcutta High Court in case of ***Director of Income Tax (Exemption) Vs. Trustees of Singhania Charitable Trust*** reported at **(1993) 199 ITR 0819** contended that as per the view taken by Calcutta High Court unless a specific purpose is mentioned, the benefit under Section 11(2) of the Act, would not be available.

17. At this stage we may refer to the decision of this Court in case of ***Director of Income-tax, Exemptions, Bangalore Vs. Envisions*** reported at **(2015) 232 Taxman 164/58**, wherein the decision of Calcutta High Court was also relied upon by the Revenue and this Court at paragraph-10 had observed thus:

10. In the present case, we find that the revenue does not dispute the fact that all the three purposes specified by the Assessee in Form 10 are for achieving the objects of the trust, and that the purposes as well as objects, are both charitable. Merely because more than one purpose has been specified and details about the plan of such expenditure has not been given, the same would not, in our view, be sufficient to deny the benefit u/s 11(2) of the Act to the Assessee. As long as the objects of the trust are charitable in character and as long as the purpose or purposes mentioned in Form 10 are for achieving the objects of the trust, merely because of non-furnishing of the details, as how the said amount is proposed to be spent in future, the assessee cannot be denied the exemption as is admissible under sub-section (2) of Section 11 of the I.T.Act, 1961.

The aforesaid shows that as per the view taken by this Court as long as the objects of the trust are charitable

in character and as long as the purpose or purposes mentioned in Form No.10 are for achieving the objects of the Trust, merely because the details are not furnished, the assessee cannot be denied benefit of the exemption under Section 11(2) of the Act.

18. In our view, the aforesaid view taken by the Co-ordinate Bench of this Court is concurring with the view taken by the Delhi High Court in case of **Daulat Ram Education Society** (supra). In any case, the aforesaid view taken by this Court in case of **Envisions** (supra) is binding on us and hence we do not find that the decision of the Calcutta High Court in case of **Trustees of Singhania Charitable Trust** (supra), upon which reliance has been placed by the learned Counsel for the Revenue would be of any help to the Revenue.

19. The learned Counsel for the appellants-Revenue did contend that if the revised Form No.10 was found to be not acceptable, then in ITA No.300/2015 the purpose is too general and too vague. Hence, the assessee would not be entitled to claim benefit under Section 11(2) of the Act. In furtherance to his submission, he relied upon the decision of the Apex Court in case of **Commissioner of Income Tax Vs. Nagpur Hotel Owners' Association** reported at **(2001) 247 ITR 0201** and contended that in the said decision, the Apex Court found that if Form No.10 was not filed by the assessee, the benefit could not be claimed nor could be granted under Section 11(2) of the Act.

20. Whereas, learned counsel appearing for the assessee contended that the appeal is a continuous proceeding and hence, if the Commissioner (Appeals) has permitted the assessee to file Revised Form No.10,

such could not be said as prohibited by law. He also submitted that the aforesaid decision of the Apex Court in the case of **Nagpur Hotel Owners' Association (supra)** came to be considered by a Division Bench of the High Court of Gujarat in the case of **Commissioner of Income Tax -versus- Mayur Foundation** reported at **(2005) 274 ITR 562** and the High Court of Gujarat, after considering the aforesaid decision of the Apex Court, found that additional ground can be entertained when the appeal is pending even before the Tribunal. Hence, he submitted that it is not a case where no Form No.10 whatsoever was filed.

21. In the decision of the Apex Court in the case of **Nagpur Hotel Owners' Association (supra)**, the facts were that the assessee did not file Form No.10 at all, which is not the fact situation in the present case. The facts situation in the present case are that Form No.10

was already filed and the Revised Form No.10 filed for sub-head of the purposes falling under the main head of the objects of the Trust, was accepted by the Commissioner (Appeals) in the proceedings of the appeal. If the matter is considered in light of the above referred decision of the High Court of Gujarat in the case of **Mayur Foundation** and is considered that the appeal is a continuous proceeding, it cannot be said that the CIT (Appeals) had no authority to accept Revised Form No.10 nor can it be said that Revised Form No.10 could not at all be considered for allowing the claim made under Section 11(2) of the Act.

22. In view of the aforesaid, we find that the Tribunal was right in allowing the claim of the assessee under Section 11(2) of the Act. Hence, the question is answered in the affirmative in favour of the assessee against the Revenue.

23. Resultantly, no interference would be required to be made to the impugned order passed by the Tribunal. Hence, the appeals are dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

JT/MV