IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH 'B', CHANDIGARH

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI T.R.SOOD, ACCOUNTANT MEMBER

ITA No. 1093/Chd/2013
(Assessment Year : 2010-11)

The Income Tax Officer, Ward VI(1), Ludhiana.	Vs.	Bhartiya Vidya Mandir Trust, New Rose Garden, Udham Singh Nagar, Ludhiana. PAN: AAATB4880H

And

C.O.No.2/Chd/2014

In

ITA No. 1093/Chd/2013
(Assessment Year : 2010-11)

Bhartiya Vidya Mandir Trust, New Rose Garden, Udham Singh Nagar, Ludhiana. PAN: AAATB4880H (Appellant)	Vs.	The Income Tax Officer, Ward VI(1), Ludhiana. (Respondent)

Assessee by : Shri Ashwani Kumar
Department by : Shri Manjit Singh, DR

Date of hearing : 27.04.2015
Date of Pronouncement : 30.04.2015

O R D E R

PER BHAVNESH SAINI, J.M. :

The Departmental appeal as well as Cross Objection by the assessee are directed against the order

of learned CIT (Appeals)-II, Ludhiana dated 11.9.2013 for assessment year 2010-11.

2. We have heard the learned representatives of both the parties and perused the material available on record.

3. The assessee in Cross Objection has challenged the order of the learned CIT (Appeals) in upholding the disallowance of claim of Rs.2,57,90,420/- made by the trust in respect of excess utilization made in the earlier years.

4. The brief facts are that assessee society was formed on 7.12.1968 and registered with the Registrar of firms and Societies on 17.12.1968. The Society was registered under section 12AA of the Income Tax Act vide order dated 4.3.1976. The Society is also approved under section 10(23C) by the Chief Commissioner of Income Tax. During the course of assessment proceedings, the Assessing Officer noted that the gross receipts declared by the assessee were Rs. 9,85,33,522/-. As provided under section 11(1)(b) of the Income Tax Act, 85% of this amount was required to be applied for charitable purposes during the year. Thus the assessee was required to apply an amount of Rs.8,37,53,494/- for charitable purposes towards the objects of the society. As against this the assessee had applied an amount of Rs.7,39, 11, 839/-. The Assessing Officer further noted that an amount of Rs.60,14,398/- was debited to the Profit & Loss Account on account of depreciation. After excluding this amount of

depreciation from the amount shown as expenditure, the total amount applied during the year was only Rs.6,78,97,441/-. There was thus a short fall of Rs.1,58,56,053/- towards the application of income as required under the Income Tax Act. The Assessing Officer further observed that no intimation in Form No. 10 was given by the assessee to the Assessing Officer before the due date of filing of return with regard to accumulation of income. In these circumstances, the Assessing Officer asked the assessee to explain why the short fall in application amounting to Rs.1,58,56,0537- may not be taxed. The assessee vide his reply dated 6.11.2012 submitted that the short fall had been computed wrongly by the assessee in as much as the amount of depreciation amounting to Rs.60,14,3987- although debited to the Profit & Loss Account had not been taken in the computation. Therefore, the short fall in application of income would amount to Rs.98,41,655/- and not Rs. 1,58,56,053/-. The assessee further submitted that the depreciation though not claimed in the return of income was allowable in view of the judgement of the Hon'ble Punjab and Haryana High Court in the case of **CIT** Vs. **Tiny Tots Education Society 330 ITR 21 (P&H) and CIT Vs. Market Committee, Pipli (2011) 238 CTR 103 (P&H).** The assessee submitted that even if there were two views on this issue, as the final verdict of the Apex Court is not there., the view of the Jurisdictional High Court is to be considered. With regard to the short fall in application of income, the assessee

submitted that there was excess utilization of income during the earlier years which had been adjusted against the short fall in the utilization during current year. In this regard, the assessee relied upon the following case laws:-

- **CIT Vs. Trustee of Seth Merwarjee Framji Pandey Charitable Trust** (2003) 177 **Taxman 19 (Bom), and CIT Vs. Maharana of Mewar Charitable Foundation (1987) 164 ITR 439**

5. The Assessing Officer was not satisfied with the assessee's submissions. With regard to the issue of depreciation, the Assessing Officer referred to the case of **Lissie Medical Institutions Vs. CIT, 348 ITR 344 (Ker),** wherein, the Hon'ble Kerala High Court held that depreciation is not considered to be application of income once the entire cost of asset has been treated as application under section 11(1)(b) of the Income Tax Act. In view of this decision, the Assessing Officer held that to keep the issue alive, the depreciation is not to be considered as application of income. Regarding the issue of excess utilization in the earlier years, the Assessing Officer discussed the case of CIT Vs. Maharana of Mewar Charitable Foundation (Supra) and pointed out that the expenses incurred by the assessee in the case of Maharana of Mewar Charitable Foundation were more than the receipts i.e. there was actual loss. The Assessing Officer observed that the facts in the assessee's case are different in as much as the assessee had claimed carry forward of expenses in excess of 85% of receipts which is not provided in the Act. The Assessing Officer thereafter

discussed in detail the quantum of receipts and expenses incurred by the assessee over the years and pointed out that actually there was no set off available with the assessee if the working was made in accordance with the case of CIT Vs. Maharana of Mewar Charitable Foundation (Supra). The Assessing Officer did the working in this case and established that there was no loss available to the assessee for set off in the current year. This working has been done in Para 4.4 of the assessment order. The Assessing Officer also referred to the case of **Pushpawati Singhania Research Institute for Liver, Renal & Digestive Disease Vs. DDIT (Exemption) by Delhi Bench of ITAT-29 SOT 316** on this issue. In view of these facts and case laws, the Assessing Officer once again issued a show cause notice to the assessee on 20.12.2012, wherein, the total income not applied towards the objects of the trust was worked out at Rs.2,46,21,6837- as under:-

i)	Total income i.e. receipts of the trust	Rs.9,85,33,522/-
ii)	Income applied towards objects of the trust	Rs.7,39,11,839/-
iii)	Amount of income not applied towards Objects of the trust/set apart	Rs.2,46,21,683/-
iv)	85% of the total income of the trust	Rs.8,37,53,500/-

6. The Assessing Officer asked the assessee to explain why this amount may not be taxed. The assessee vide his reply dated 28.12.2012 requested the Assessing Officer to allow the depreciation in the light of the judgement of the Hon'ble Punjab and Haryana High Court in the case of **CIT** Vs. **Tiny Tots Education Society.** The

assessee also relied upon the case of A.L.N **Rao Charitable Trust reported in 216 ITR 697(SC),** wherein, the Hon'ble Supreme Court has held that there was a blanket exemption of 25% of total income from the unspent amount of the trust. The assessee claimed that in view of this judgement, 15% of its total income from unspent amount was exempt. The Assessing Officer once again found the assessee's submissions unsatisfactory. Regarding the claim of depreciation, the Assessing Officer held that the same is not acceptable because the claim has not been made in the return of income filed by the assessee and time for filing revised return has expired. Regarding the issue of deficit, the Assessing Officer observed that no court had allowed deficit out of 85% of income to be adjusted against income of the following years as claimed by the assessee in the return of income. In view of these facts and circumstances total income of the assessee was computed at Rs.2,46,21,680/-.

7. The assessee challenged the addition before the learned CIT (Appeals) and written submission of the assessee is reproduced in the appellate order, which reads as under :

"Vide the next ground of appeal the appellant is agitating against the set off of excess expenditure incurred during the previous years against the surplus for the year under appeal. As per the provisions of Section 11 of the Income Tax Act, 1961, a trust has to apply its income up to 85% towards the objectives of the trust to get accumulation / set apart of income of the remaining 15% of the income. By taking this into

consideration, the appellant is claiming excess utilization of income over and above the expenditure incurred by 85% of the income of a particular year and the returns were being filed accordingly. The assessments for all the years from A/Y 2006-07 have been framed under section 143(3) of the Income Tax Act, 1961. Copies of computation charts of income alongwith copies of assessment orders for A/ys 06-07 to 09-10 are enclosed. The returned income filed by the appellant in all the respective years, have been accepted by the Department. As on the first day of the previous year, the appellant has excess utilization of expenditure in earlier years amounting to Rs.2,57,90,420/-. Out of which, a sum of Rs.98,41,655/- was adjusted against the short utilization of income for the year under appeal and the balance has been taken/carried to next year. For the purpose of the adjustment of excess utilization of income in earlier years against the surplus for the current year, various Hon'ble Courts have decided/held the issue in favour of the appellant.

Your Honour's kind attention is invited to the ratio of ***CIT vs Maharana Mewar Charitable Foundation reported in 164 ITR page 439 (Raj.)*** *wherein Their Lordships have held that the anomaly which has arisen that if the Trust takes a loan for the purposes of incurring expenditure for charitable and religious purposes in a particular year and the said loan is repaid out of the income of the subsequent year, the said repayment would be entitled to the exemption from tax u/s 11(1)(a) of the Act. But if the Trust instead of taking a loan, incurs the expenditure for charitable and religious purposes out of the corpus of the Trust and seeks to reimbursement of the said amount out of the income of the subsequent year, the Trust would not be entitled to claim exemption in respect of such reimbursement u/s 11(1)(a) of the Act. A construction which leads to such anomaly should be avoided. The adjustment of the expenditure incurred by the Trust for charitable or religious purposes in earlier years against the income earned by the Trust in subsequent year, would amount to applying the income of the Trust for charitable or religious purposes in the subsequent year in which such adjustment had been made and would have to be excluded from the income of the Trust u/s 11(1)(a) of the Act.*

The similar issue of adjustment of expenditure incurred earlier against the surplus of the subsequent year has also come before the ***Hon'ble Mumbai High Court in the case of CIT vs Institute of Banking reported in 264 ITR p. 110 (Bom.)*** *wherein the Assessing Officer did*

not allow carry forward of excess expenditure to be set off against the surplus of subsequent year on the ground that in the case of charitable trust, their income was assessable under self contained code mentioned in section 11 to 13 of the Income Tax Act and that the income of the charitable trust was not assessable under the head "Profits and gains from business profession" u/s 28 in which the provisions of carry forward of losses was relevant. That in a case of charitable trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of the subsequent years. Their Lordships have held that there is no merit in this argument of the Department. Income derived from the trust property has also got to be computed on commercial principals and if commercial principals are applied then adjustment of the expenditure incurred by the Trust for charitable or religious purposes in earlier years against the income earned by the Trust in subsequent year will have to be regarded as application of income of the Trust for charitable or religious purposes in subsequent year in which adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the Trust u/s 11(1)(a) of the Act.

Further, Your Honour's kind attention is drawn to the ratio of ***CIT vs Trustee of Seth Merwarjee Framji Pandey Charitable Trust [2003]*** *177* ***Taxman p. 19 (Bom)*** *wherein Their Lordship have held that if a Trust has incurred a deficit during a particular year, the surplus made by it in a subsequent year to make up for the past deficit should be set off against such deficit. Similar view was also taken in the case* ***of CIT vs Maharana of Mewar Charitable Foundation [1987) 164 ITR p. 439 (Raj)*** *and also in the case* ***CIT vs Institute of Banking Personnel Selection 264 ITR p. 110 (Bom)*** *wherein the AO has disallowed the claim for carry forward of deficit of earlier years for adjustment against the surplus of the subsequent years, on the ground that such carry forward was applicable only in the case of income under the head Business or Profession and was not permissible in the case of income assessable u/s 11 to 13 of the Act. The Hon'ble High Court held that income derived from the Trust property is to be computed on commercial principles. Accordingly, excess of expenditure incurred by the Trust for charitable and religious purposes in earlier years against the income earned by the Trust in subsequent year would have to be regarded as application of income of the Trust in subsequent year. The Court also held that section 11 being the benevolent provision and had to be liberally construed.*

From the above citations, it is very much clear that the appellant has rightly claimed the set off of extra expenditure than the income of earlier years against the surplus for the year under appeal and this ground of appeal be adjudicated accordingly."

8. The submissions of the assessee were forwarded to the Assessing Officer, who has submitted his report dated 30.8.2013, which reads as under :

"Vide his letter dated 18.06.2013, the counsel of the assessee has submitted that income was assessed at the Rs.2,46,21,680/- as against Nil Income wherein the AO negated the claim of the appellant of excess utilization of income in earlier years against surplus of the year. In support of his claim he cited the ratio of judgment of the Hon'ble Rajasthan in the case of CIT vs Maharana Mewar Charitable Foundation reported in 164 ITR page 439 (Raj.) wherein Their Lordships have held that the anomaly which has arisen that if the Trust takes a loan for the purposes of incurring expenditure for charitable and religious purposes in a particular year and the said loan is repaid out of the income of the subsequent year, the said repayment would be entitled to the exemption from tax u/s 11(1) (a) of the Act.

The judgment of the Hon'ble High Court of Rajas than does not favour the assessee as already discussed in the assessment order in detail relying on the decision in the case of Lissic Medical institution Vs CIT, Hon 'ble Kerala High Court (348ITR 344). The reason being facts of the present case are different from the case as citied above, because in the said case the expenses were more than the receipts i. e. there was actual loss. Whereas in the present case the assessee is claiming excess of application of income above 85% in earlier years against the current year Income which is not according to Law. As such this claim of the assessee may not be entertained.

The assessee also placed reliance on the judgment of the Hon'ble Mumbai High Court in the case of CIT vs Institute of Banking reported in 264 ITR p.110 (Bom.). The facts of this case are also different from that the present case of the assessee. In the present case the assessee is claiming excess of 85% of income application in previous year against the income of the subsequent year whereas in the case citied above the assessee has incurred debt in carrying out charitable objects in earlier years.

8.1 Copy of the Assessing Officer's report was provided to the assessee. The learned counsel for assessee once again placed reliance upon the submissions dated 18.06.2013.

9. The learned CIT (Appeals) considering the submissions of the assessee in the light of the material on record confirmed the addition and dismissed this ground of appeal of the assessee. The findings of the learned CIT (Appeals) in paras 4.5 to 4.9 of the appellate order are reproduced as under :

> *"4.5 I have carefully considered the rival submissions. The appellant had claimed that there was excess utilization during the earlier years over and above the amount applied upto 85% of the income in those years and this excess application of income had been claimed to be carried forward to the subsequent years. The appellant has claimed that the short fall in the application of income in the current year is adjustable against carry forward of expenses from the earlier years. In order to appreciate the full facts of the case, during the course of appellate proceedings, the AR of the appellant was requested to file evidence of excess utilization brought forward which was claimed to be set off against short fall during the current year. The appellant vide his reply dated 05.07.2013, submitted the following details:-*

	Income	Expenditure	%	Required to be incurred	Excess	Depreciation	O/Balance	Excess C/f
A.Y. 01-02	28728418	22197779	77.27	75%	651466	Nil	1884141	2535607
A.Y. 02-03	36850001	40351003	109.5	75%	12713502	Nil	2535607	15249109
A.Y. 03-04	46552799	44821832	96.28	85%	5251953	Nil	15249109	20501062
A.Y. 04-05	55789036	49101523	88.01	85%	1680842	Nil	20501065	22181904
A.Y. 05-06	62925625	54785893	87.06	85%	1299112	Nil	22181904	23481016
A.Y. 06-07	69119941	72972492	105.46	85%	14159342	Nil	23481016	37640358
A.Y. 07-08	71646870	63035045	87.98	85%	4564198	Nil	37640358	42204716

A.Y. 08-09	85439902	66264816	77.56	85%	(-) 6359101	Nil	42204716	35845615
A.Y. 09-10	92001695	68146246	74.07	85%	(-) 10055195	6771010	35845615	25790420
A.Y. 10-11	98533522	73911839	75.01	85%	(-) .9841655	6014398	25790420	15948765

Perusal of these details clearly show that except for the A/Ys 2002-03 and 2006-07, the income of the appellant in each of the years was more than the amount applied by the appellant in that year on charitable purposes. There was no deficit of income over application in any of the years except these two years. The appellant had worked out the deficit on the basis of income required to be applied with regard to section ll(l)(b) of the Income Tax Act and not on the basis of total income. The excess amount of application over and above this requirement was claimed to be eligible for carry forward even though the total expenditure was less than the total income in each year.

4.6 The actual excess amount applied in these years works out as under:-

	Income	**Expenditure**	**%**	**Excess**
A.Y. 01-02	28728418	22197779	77.27	Nil
A.Y. 02-03	36850001	40351003	109.5	3501002
A.Y. 03-04	46552799	44821832	96.28	Nil
A.Y. 04-05	55789036	49101523	88.01	Nil
A.Y. 05-06	62925625	54785893	87.06	Nil
A.Y. 06-07	69119941	72972492	105.46	3780551
A.Y. 07-08	71646870	63035045	87.98	Nil
A.Y. 08-09	85439902	66264816	77.56	(-) 6359101
A.Y. 09-10	92001695	68146246	74.07	(-) 10055195
A.Y. 10-11	98533522	73911839	75.01	(-) 9841655

From the aforesaid details it is evident that during the assessment year under reference, the appellant had no excess application of income or expenditure which could have been carried forward from the earlier years and which could have been adjusted against the short fall in application of income of the current year. Even if the claim of carry forward of excess application of incomeduringAY02-03and06-07 is considered, the same would amount to Rs.72,81,553/-.This excess application can at best be set off against shortfall of application in the AY 08-09 (Rs 6359101) and shortfall to the extent of Rs 9.22.4S2/- out of total shortfall of Rs 10055195/- during AY 09-10. There would still be a shortfall of Rs.91,32,643/- in the AY 2009-2010. Therefore, the claim of the appellant for set off of shortfall in application of income during AY 2010-2011 against carry forward of excess expenditure of earlier years is not tenable.

*4.7 The appellant's reliance on the case of **CIT** Vs. **Maharana Of Mewar Charitable Foundation** (supra) is misplaced. In this case, the facts were as under:*

> *"During the previous year relevant to the assessment year 1970-71, the assessee spent a sum of Rs. 95,863 towards the aims and objects of the trust and the income of the assessee during the said year was only Rs. 36,093 and thus a sum of Rs. 59,770 was spent in excess of the income during the period relevant to the assessment year 1970-71. In the previous year relevant to the assessment year 1971-72, the assessee claimed adjustment of the sum of Rs. 59,770 against the surplus of income over expenditure during the assessment year 1971-72. "*

The Hon'ble High Court held as under:

> *"The aforesaid discussion leads to the conclusion that the Tribunal was right in directing that the deficit of Rs. 59,770 arising out of the excess of expenditure over income during the previous year relevant to the assessment year 1970-71 should be set off against the surplus of income over expenditure relating to the assessment year 1971-72 in computing the taxable income of the latter assessment year. "*

*4.8 Similarly, in the case of **CIT** Vs. **Institute of Banking reported 264 ITR** 110, the facts were as under:*

> *"The assessee is a charitable trust. For the accounting year ending December 31, 1984 (assessment year 1984-85) a return of income was filed on June 28, 1985, by the asses see declaring a deficit of Rs. 74.97 lakhs. In the revised return filed by the asses see on April 3, 1986, the deficit was increased to Rs. 89.18 lakhs. During the assessment year in question the assessee had carried forward the deficit of the earlier years and had adjusted the deficit of the earlier years against the surplus of the subsequent years which was disallowed by the Assessing Officer on the ground that such carry forward was applicable only to income assessable under the head "Profits and gains of business" and such carry forward and adjustment was not permissible in case of income assessable under section 11 to section 13 of the Income-tax Act as the income of the charitable trust was not assessable under the head "Profits and gains of business".*

Hon'ble High Court held as under:

> *"Now coming to question No. 3, the point which arises for consideration is : whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in the subsequent year for charitable purposes? It was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilisation of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a charitable trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income-tax Act and that the income of the charitable trust was not assessable under the head "Profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a charitable trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of the subsequent years. We do not find any merit in this argument of the Department. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years against the income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the trust under section 11(1) (a) of the Act. Our view is also supported by the judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293. Accordingly, we answer question No. 3 in the affirmative, i.e., in favour of the assessee and against the Department. "*

4.9 In both the cases there was actual deficit, i.e. expenditure was more than the income. As discussed above, in the appellant's case there

is no actual deficit. It is thus evident that the appellant's claim of carry forward of excess utilization pertaining to the earlier years for set off against income of current year is not in accordance with the provisions of law and is not supported by any of the case laws relied upon by the appellant. This ground of appeal is accordingly dismissed."

10. After considering the rival submissions, we do not find any merit in this ground of Cross Objection of the assessee. The assessee claimed before the learned CIT (Appeals) that there was excess utilization during the earlier years over and above the amount applied upto 85% of the income in those years and excess application of income had been claimed to be carry forward to the subsequent years. The assessee further claimed that the short fall in the application of income in the current year is adjustable against carry forward of expenses from the earlier years. The learned CIT (Appeals) directed the assessee to file evidence of excess utilization brought forward which was claimed to be set off against short fall during the year. The details from assessment year 2001-02 to 2010-11 are reproduced above. The learned CIT (Appeals) on perusal of these details noted that except for the assessment years 2002-03 and 2006-07, the income of the assessee in each of the other years was more than the amount applied by the assessee in that year on charitable purposes. Therefore, there was no deficit of income over application in any of the years except these two years. The actual excess amount applied was also worked out and it was found that the assessee had no excess application of income or expenditure which could have been carried forward from the earlier

years and which could have been adjusted against the short fall in application of income of the current year. The learned CIT (Appeals) taking the total of excess application of income for these two assessment years 2002-03 and 2006-07 found that the amount could be set off against short fall of application in assessment years 2008-09 and 2009-10. Therefore, the claim of the assessee for set off of short fall in application of income during the assessment year under appeal i.e. 2010-11 against carry forward of excess expenditure of earlier years was not found tenable. The learned CIT (Appeals), therefore, noted that in assessee's case there is no actual deficit. Therefore, there is no question of allowing carry forward of excess utilization of earlier years. The findings of fact recorded by the learned CIT (Appeals) are based on the factual details provided by the assessee. Therefore, no infirmity has been pointed out during the course of arguments. Since the findings of fact recorded by the learned CIT (Appeals) have not been rebutted through any material on record, therefore, in the absence of any specific arguments against the learned CIT (Appeals), no interference is required in the matter. The learned counsel for assessee relied upon the order of the I.T.A.T., Agra Bench in the case of JCIT Vs. Sewa Education Trust, 40 Taxmann.com 143. The facts of this case are clearly distinguishable from the facts of the present case and the issue is altogether different. Therefore, the same order would not support the case of the assessee.

11. Considering the factual facts recorded by the learned CIT (Appeals) against the assessee and finding no case of actual deficit, there is no question of allowing carry forward as claimed by the assessee. Therefore, we do no find any merit in this ground of Cross Objection of the assessee. The same is accordingly dismissed.

12. In the result, the Cross Objection of the assessee is dismissed.

13. In the Departmental appeal, the Revenue challenged the order of the learned CIT (Appeals) in allowing credit for 15% of the gross receipts in working the short fall of the amounts spent when the assessee had not fulfilled the requirements by giving a notice under section 11(2)(a) of the Income Tax Act for accumulation of income intended to be applied for charitable purposes in future years.

14. The assessee challenged the order of the Assessing Officer before the learned CIT (Appeals) against the denial of credit for 15% of the gross receipts i.e. an amount of Rs.1,47,80,028/-. The facts are same as noted above while disposing of the Cross Objection of the assessee. It was submitted that as per the provisions of section 11 of the Act, “if a charitable trust incurred 85% of its income for the objectives of the trust, the balance 15% is free to be set apart/accumulated without any conditions and nothing is taxable”. The assessee explained that as per section 11 of the Act, a charitable institution is not charged to tax to the

extent of 15% of its income and relied upon the decision of the Hon'ble Apex Court in the case of Addl.CIT Vs. A.L.N. Rao Charitable Trust, 216 ITR 697. It was submitted that from the above judgment, it is clear that an amount upto 15% of the income is exempt from income tax and can be accumulated. The Assessing Officer reiterated the facts stated in the assessment order. The learned CIT (Appeals) following the provisions of section 11 of the Act and the judgment of the Hon'ble Supreme Court in the case of A.L.N. Rao Charitable Trust (supra) directed that the assessee is eligible for exemption of 15% of the gross receipts and allowed this ground of appeal of the assessee. The finding of the learned CIT (Appeals) in paras 5.5 to 5.12 of the impugned order are reproduced as under :

> *"5.5 I have carefully considered the rival submissions. It is seen from the assessment order that the appellant vide his submissions dated 28.12.2012 had claimed that there is a blanket exemption of 15% of the total income from the unspent amount of the trust. In this regard, the appellant had relied upon the decision of the Hon'ble Supreme Court in the case of A.L.N. Rao Charitable Trust reported in 216 ITR 697. The AO did not discuss this issue in the assessment order while rejecting the appellant's claim. During the course of appellate proceedings, the appellant once again referred to the provision of Section 11 of the Income Tax Act and reiterated his reliance on the case of A.L.N. Rao Charitable Trust(Supra). The appellant once again claimed that there is blanket exemption of 15% of total income from the unspent amount for charitable purposes out of the income of the Trust for that previous year. The AO in his counter comments dated 30.08.2013 merely mentioned that the details had already been considered in the assessment order at Page-11. No submissions were given by the AO as to why this case is not applicable in the appellant's case.*
>
> *The Hon'ble Supreme Court in the case of A.L.N. Rao Charitable Trust has held as under:-*

"A mere look at section 11(1) (a) as it stood at the relevant time clearly shows that out of the total income accruing to a trust in the previous year from property held by it wholly for charitable or religious purposes, to the extent the income is applied for such religious or charitable purposes, the same will get out of the tax net but so far as the income which is not so applied during the previous year is concerned at least 25 per cent, of such income or Rs. 10,000, whichever is higher, will be permitted to be accumulated for charitable or religious purpose and it will also get exempted from the tax net. Then follows sub-section (2) which seeks to lift the restriction or the ceiling imposed on such exempted accumulated income during the previous year and also brings such further accumulated income out of the tax net if the conditions laid down by sub-section (2) of section 11 are fulfilled meaning thereby the money so accumulated is set apart to be invested in the Government securities, etc., as laid down by clause (b) of sub-section (2) of section 11 apart from the procedure laid down by clause (a) of section 11(2) being followed by the assessee-trust. To highlight this point we may take an illustration. If Rs. 1,00,000 are earned as the total income of the previous year by the trust from property held by it wholly for charitable and religious purposes and if Rs. 20,000 are actually applied during the previous year by the said trust to such charitable or religious purposes the income of Rs.20,000 will get exempted from being considered for the purpose of income-tax under the first part of section 11(1). So far as the remaining Rs. 80,000 are concerned if they could not be actually applied for such religious or charitable purposes during the previous year then as per section 11 (1) (a) at least 25 per cent, of such total income from property or Rs. 10,000, whichever is higher, will also earn exemption from being considered as income for the purpose of income-tax, that is, Rs. 25,000 will thus get excluded from the tax net. Thus out of the total income of Rs. 1,00,000 which has accrued to the trust Rs. 25,000 will earn exemption from payment of income-tax as per section 11(1) (a), second part. Then follows sub-section (2) which states that the ceiling or the limit or the restriction of accumulation of income to the extent of 25 per cent, of the income or Rs. 10,000, whichever is higher, for earning income-tax exemption as engrafted under section 11(1) (a) will get lifted if the money so accumulated is invested as laid down by section ll(2)(b) meaning thereby, out of the total accumulated income

of Rs. 80,000 accruing during the previous year and which could not be spent for charitable or religious purposes by the trust, the balance of Rs. 55,000 if invested as laid down by sub-section (2) of section 11 will also get excluded from the tax net. But for such investment and if section 11(1) alone had applied Rs. 55,000 being the balance of the accumulated income would have been covered by the tax net. Learned counsel for the Revenue submitted that the investment as contemplated by sub-section (2)(b) of section 11 must be investment of all the accumulated income in Government securities, etc., namely, 100 per cent of the accumulated income and not only 75 per cent, thereof. And if that is not done, then only the invested accumulated income to the extent of 75 per cent, will get excluded from income-tax assessment. But so far as the remaining 25 per cent, of the accumulated income is concerned, it will not earn such exemption. It is difficult to appreciate this contention. The reason is obvious. Section 11, subsection (l)(a) operates on its own. By its operation two types of income earned by the trust during the previous year from its properties are given exemption from income-tax:

(i) that part of the income of the previous year which is actually spent for charitable or religious purposes in that year; and

ii) out of the unspent accumulated income of the previous year 25 per cent, of such total property income or Rs. 10,000, whichever is higher, can be permitted to be accumulated by the trust, earmarked for such charitable or religious purposes. Such 25 per cent, of the income or Rs. 10,000, whichever is higher, will also get exempted from income-tax. That exhausts the operation of section 11(1) (a). Then follows sub-section (2) which naturally deals with the question of investment of the balance of accumulated income which has still not earned exemption under subsection (l)(a). So far as that balance of the accumulated income is concerned, that also can earn exemption from income-tax meaning thereby the ceiling or the limit of exemption of accumulated income from income-tax as imposed by subsection (I) (a) of section 11 would get lifted if additional accumulated income beyond 25 per cent, or Rs. 10,000, whichever is higher, as the case may be, is invested as laid down by section 11(2) after following the procedure laid down therein. Therefore, sub-section

(2) only will have to operate qua the balance of 75 per cent, of the total income of the previous year or income beyond Rs. 10,000, whichever is higher, which has not got the benefit of tax exemption under subsection (l)(a) of section 11. If learned counsel for the Revenue is right and if 100 per cent, of the accumulated income of the previous year is to be invested under sub-section (2) of section 11 to get exemption from income-tax, then the ceiling of 25 per cent, or Rs. 10,000, whichever is higher, which is available for accumulation of income of the previous year for the trust to earn exemption from income-tax as laid down by section 11(1) (a) would be rendered redundant and the said exemption provision would become otiose. It has to be kept in view that out of the accumulated income of the previous year an amount of Rs. 10,000 or 25 per cent, of the total income from property, whichever is higher, is given exemption from income-tax by section 11(1) (a) itself. That exemption is unfettered and not subject to any conditions. In other words, it is an absolute exemption. If sub section (2) is so read as suggested by learned counsel for the Revenue, what is an absolute and unfettered exemption of accumulated income as guaranteed by section 11(1) (a) would become a restricted exemption as laid down by section 11(2). Section 11(2) does not operate to whittle down or to cut across the exemption provisions contained in section 11(1) (a) so far as such accumulated income of the previous year is concerned. It has also to be appreciated that subsection (2) of section 11 does not contain any non obstante clause like " notwithstanding the provisions of sub-section (1) ". Consequently, it must be held that after section 11(1) (a) has full play and if still any accumulated income of the previous year is left to be dealt with, and to be considered for the purpose of income-tax exemption, sub-section (2) of section 11 can be pressed into service and if it is complied with then such additional accumulated income beyond 25 per cent, or Rs. 10,000, whichever is higher, can also earn exemption from income-tax on compliance with the conditions laid down by sub-section (2) of section 11. It is true that sub-section (2) of section 11 has not clearly mentioned the extent of the accumulated income which is to be invested. But on a conjoint reading of the aforesaid two provisions of sections 11(1) and 11(2), this is the only result which can follow. It is also to be kept in view that under the earlier Income-tax Act of 1922, exemption was available to charitable

trusts without any restriction upon the accumulated income. There was a change in this respect under the present Act of 1961. Under the present Act, any income accumulated in excess of 25 per cent, or Rs. 10,000, whichever is higher, is taxable under section 11(1) (a) of the Act, unless the special conditions regarding accumulation as laid down in section 11(2) are complied with. It is clear, therefore, that if the entire income received by a trust is spent for charitable purposes in India, then it will not be taxable, but if there is a saving, that is to say, an accumulation of 25 per cent, or Rs. 10,000, whichever is higher, it will not be included in the taxable income. Section 11(2) quoted above further liberalizes and enlarges the exemption. A combined reading of both the provisions quoted above would clearly show that section 11(2), while enlarging the scope of exemption, removes the restriction imposed by section 11(1) (a), but it does not take away the exemption allowed by section 11(1) (a). On the express language of sections 11(1) and 11(2) as they stood on the statute book at the relevant time, no other view is possible.

In the light of the aforesaid discussion and keeping in view the illustration which we have given earlier, the combined operation of section 11(1) (a) and section 11(2) as applicable at the relevant time would yield the following result:

(i) If the income derived from property held under trust wholly for charitable or religious purposes during the previous year is Rs. 1,00,000 and if Rs. 20,000 therefrom are actually applied to such purposes in India then those Rs. 20,000 will get exempted from payment of income-tax as per the first part of section ll(l)(a).

(ii) Out of the remaining accumulated income of Rs. 80,000 for the previous year, a further sum of Rs. 25,000 will get exempted from payment of income-tax as per the second part of section 11(1) (a). Thus, out of the total income derived from property as aforesaid during the previous year, that is, Rs. 1,00,000, Rs. 45,000 in all will get excluded from the tax net on a combined operation of the first and the second part of section 11(1) (a).

(iii) The aforesaid ceiling of Rs. 25,000 of the accumulated income from property of the previous year, will get lifted under section 11(2) to the extent the balance of such accumulated income is invested as laid down by section 11(2). To take an

illustration if, say, an additional amount of Rs. 20,000 out of the balance of accumulated income of Rs. 55,000 is invested as per section 11(2), then this additional amount of Rs. 20,000 of accumulated income will get excluded from the tax net as per section 11 (2).

(iv) The remaining balance of the accumulated income out of Rs. 55,000, that is, Rs. 35,000 if not invested as per sub-section (2) of section 11, will be added to the taxable income of the trust and will not get exempted from the tax net.

(v) If, on the other hand, the entire remaining accumulated income of Rs. 55,000 is wholly invested as per section 11 (2), the said entire amount of Rs. 55,000 will get exempted from the tax net. "

5.7 This decision of the Hon'ble Supreme Court clearly held that there is a blanket exemption with regard to the 25% (now 15%) of gross receipts as per second part of Section ll(l)(a) of the Income Tax Act. This exemption of 25% is not dependent on any other condition except that the trust or society should be registered u/s 12AA of the Income Tax Act. The only issue to be examined here is whether the provisions of section 11(1) (a) and 11(2) have been since amended and if so, whether the aforesaid decision would apply to the amended provisions also?

5.8 The provisions of section ll(l)(a) and 11 (2) as they were in force in the year 1968-69 relevant to AY 69-70, i.e the year to which the case of A.L.N. Rao Charitable Trust (supra) relates have been reproduced in the order of the Hon'ble Supreme Court itself as under:

"These provisions as they stood at the relevant time read as under:

"11. (1) Subject to-the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purposes to the extent to which such income is applied to such purposes in India ; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not

in excess of twenty-five per cent, of the income from the property or rupees ten thousand, whichever is higher,...

(2) Where the persons in receipt of the income have complied with the following conditions, the restriction specified in clause (a) or clause (b) of sub-section (1) as respects accumulation or setting apart shall not apply for the period during which the said conditions remain complied with—

(a) such persons have, by notice in writing given to the Income-tax Officer in the 'prescribed manner, specified 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 in any Government security as defined in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944), or in any other security which may be approved by the Central Government in this behalf."

5.9 The provisions of section ll(l)(a) and 11 (2) as they were in force in the year 2009-2010, i.e the year to which the present case relates are reproduced as under:

"11. Income from property held for charitable or religious purposes.

(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

(2) Where eighty-five per cent, of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that subsection 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 Assessing Officer 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 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.

5.10 It is apparent from the reading of provisions referred to above that section11 (a) was almost identical during the AY 69-70 and during AY 20010-11. As regards the provisions of section 11(2) are concerned, even the amended sub section (2) operates qua the balance of 85 per cent, of the total income of the previous year which has not got the benefit of tax exemption under sub-section(l)(a) of section 11. Section 11(2), as amended, does not operate to whittle down or to cut across the exemption provisions contained in section ll(l)(a)so far as such accumulated income of the previous year is concerned. As held by the Hon'ble Supreme Court in the case of A.L.N. Rao Charitable Trust (supra),it has to be appreciated that sub-section (2) of section 11 does not contain any non obstante clause like "notwithstanding the provisions of sub-section(1)".Consequently, it must be held that after section ll(l)(a) has full play and if still any accumulated income of the previous year is left to be dealt with, and to be considered for the purpose of income-

tax exemption, sub-section (2) of section 11 can be pressed into service and if it is complied with then such additional accumulated income beyond 15 per cent, can also earn exemption from income-tax on compliance with the conditions laid down by sub-section (2) of section 11.

5.11 It may also be relevant to refer to the views expressed by 'Chaturvedi and Pithisaria' on this issue. These views read as under:

> *"Section 11 has undergone amendments more than once. In order to be able to better grasp the provisions as applicable from time to time, it will be better to put the effect of such provisions, except those of sub-section (1A) dealt separately hereunder, vis-a-vis exemption and taxability of income derived from property held under charitable or religious trust, in a tabular form subject-wise. Thus:-*
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> *Income derived from property held under trust of other legal obligation wholly for charitable purposes and such income or part thereof is not applied to such purposes in India during the previous year wherein it is derived, but is accumulated for application to such purposes in India: -*

1	*2*	*3*	*4*
1922 Act provisions	*1961 Act provisions applicable for AY 1962-63 to 1970-71*	*1961 Act provisions applicable for AY 1971-72 to 1975-76*	*1961 Act provisions applicable from 1976 onwards*
Unconditionally exempt {s.4(3)(i)}.	*Conditionally exemption - (a) if a notice in From No. 10 is given to the 1TO in accordance with rule 17 and income so accumulated {minus accumulation permitted under (b), below} is invested in Government securities, or other approved securities, the accumulation up to a period of ten years is exempt [s. ll(l)(a), latter part, read with s. 11(2)}; and (b) if conditions at*	*Conditionally exempt - (a) if a notice in Form No. 10 is given to the 1TO in accordance with rule 17 and income so accumulated accumulation permitted under (b), below] is invested in the Government securities or other approved securities or is deposited in Post Office Savings Bank accounts or under the Post Officer (Time Deposits) Rules,*	*Conditionally exempt - (a) same as in col. (3), for assessment years 1976-77 to 1982-83. For and from assessment year 1983-84, investment or deposit is to be made in the forms or modes specified in section 11(5).* ***(b) if conditions at (a) are not fulfilled, accumulation to the extent of 25% only is exempt. In computing the 25%, any voluntary contributions***

	(a) are not fulfilled, accumulation to the extent of 25 per cent of the income from the property or Rs. 10,000/- whichever is higher, is exempt. In computing the 25 per cent., the income from such property for the relevant previous year or the immediately preceding previous year, whichever is higher, may be taken [s. 11(1) (a), latter part, read with the Explanation].	*1970, or in a banking company to which the Banking Regulation Act, 1949, applies or co-operative land mortgage bank or a cooperative land development bank, or deposited in an account with an approved financial corporation, the accumulation up to a period of ten years is exempt [s. 11(2)]. [(b) No such exemption].*	***referred to in s. 12 shall be deemed to be part of the income [s. 11(1)(a), latter part read with Expl. (1)].***

5.12 As such, this judgement of the Hon'ble Supreme Court is squarely applicable to the appellant's case. The appellant is thus eligible for exemption of 15% of gross receipts i.e. 15% of Rs.9,85,33,522/- u/s ll(l)(a) of the Income Tax Act. The AO is accordingly directed to allow this exemption of 15% of the gross receipts amounting to Rs.1,47,80,028/-. This ground of appeal is accordingly allowed.

15. After hearing the rival contentions, we do not find any merit in this ground of appeal of the Revenue. The learned CIT (Appeals) on proper appreciation of facts in the light of the provisions of section 11 of the Act and the judgment of the Hon'ble Supreme Court in the case of A.L.N. Rao Charitable Trust (supra) rightly decided the issue in favour of the assessee. The issue is covered in favour of the assessee by the judgment of the Hon'ble Supreme Court noted above in the findings of the learned CIT (Appeals). The learned D.R for the Revenue did not

contribute much on this issue and merely relied upon the order of the Assessing Officer without pointing out any infirmity in the order of the learned CIT (Appeals) in allowing the exemption of 15% on the gross receipts. Thus we do not find any justification to interfere in the order of the learned CIT (Appeals). This ground of Departmental appeal is accordingly dismissed.

16. On ground No.2 of the Departmental appeal, the Revenue challenged the order of the learned CIT (Appeals) in allowing claim of depreciation, which was subsequently claimed during the course of assessment proceedings.

17. The learned CIT (Appeals) allowed the claim of depreciation by following the decision of Hon'ble Jurisdictional High Court. The Revenue is not aggrieved against this finding. The only issue raised in the ground of appeal is that the said claim of depreciation was raised subsequently during the course of assessment proceedings. The learned CIT (Appeals) followed the decision of I.T.A.T., Chandigarh Bench in the case of Budhewal Cooperative Sugar Mills Ltd. Vs. The A.C.I.T.(OSD) in ITA No.1077/Chd/2012 dated 24.5.2013, in which it was held that the assessee can raise additional ground and make claim during the assessment proceedings. The Tribunal followed the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Ramco International. Thje

learned CIT (Appeals) also relied upon Explanation-5 to section 32 of the Act, which provides "for the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income". The learned CIT (Appeals), therefore, noted that the depreciation has to be allowed to the assessee whether it is claimed while computing total income or not. He has also relied upon the order of the I.T.A.T., Bangalore Bench in the case of Rakesh Singh Vs. ACIT, 139 ITR 128 in support of his findings. The learned CIT (Appeals), therefore, following the above decisions and Explanation-5 to section 32 of Income Tax Act directed the Assessing Officer to allow the claim of depreciation. In principle, the Revenue did not agitate the allowing of depreciation to the assessee. Therefore, nothing survives in favour of the Revenue. Further the claim of depreciation was raised at the assessment stage, which is supported by the judgment of the I.T.A.T., Chandigarh Bench in the case of Budhewal Cooperative Sugar Mills Ltd. (supra), in which following the decision of the Hon'ble Jurisdictional High Court similar claim has been allowed. We, therefore, do not find any merit in this ground of appeal of the Revenue. The same is accordingly dismissed.

18. In the result, the Departmental appeal is dismissed.

19. In the result the Departmental appeal as well as Cross Objection by the assessee are dismissed.

Order pronounced in the open court on this 30th day of April, 2015.

Sd/-	Sd/-
(T.R.SOOD)	**(BHAVNESH SAINI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 30th April, 2015

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh