IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA No. 2920/Mum/2023 for A.Y. 2016-17

The Bombay Society of the Salesian Sisters India, Auxilium Convent High School, Wadala, Mumbai 400 031. PAN AAATT3215C	Vs.	ITO 2(4), Mumbai
(Appellant)		(Respondent)

Appellant By : Shri Mandar Vaidya
Respondent By : Shri Sunny Kachhwaha Sr.AR

Date of Hearing : 11.12.2023		Date of Pronouncement : 12.12.2023

O R D E R

Per Justice (Retd.) C V Bhadang :

Whether the expenditure incurred by the assessee on the repairs of the school building and the amount paid towards property tax of the said building during the F.Y. 2015-16 (A.Y. 2016-17) is exempted under section 11(1)(a) of the Income Tax Act 1961, is the question, which falls for determination in this appeal.

2. The appellant, The Bombay Society of the Salesian Sisters India, Wadala, Mumbai is a society registered under the Societies Registration Act, 1860 and a public trust under the Maharashtra Public Trusts Act, 1950. The appellant-society was registered on 21.12.1970 with the object to establish the "Auxilium School,

Wadala, Bombay" as per clause 3(a) of the Memorandum of Association (MoA). It is not in dispute that the building where the said school is being conducted by the appellant, since December 1970, is owned by another charitable trust viz. Salesian Sisters Society (India) (hereinafter referred to as "SSSI") which is based at Kodambakkam, Madras (now Chennai). It appears that SSSI earlier conducted a school in the said building at Wadala upto December 1970 whereafter the activity of conducting the school was handed over to the appellant. It is undisputed that the ownership of the school building continues to be with SSSI.

3. During the financial year 2015-16 (Assessment year 2016-17) appellant had incurred an expenditure of Rs.43,45,646/- on repairs/renovation of the school building and an amount of Rs.61,425/- towards payment of property taxes.

4. The Assessing Officer (AO) disallowed the expenditure towards repairs of the building and the property taxes on the ground that the building in respect of which such expenditure was incurred does not belong to the appellant-society.

5. The appellant carried the matter in appeal before the CIT(A) which was made over to the National Faceless Appeal Centre (NFAC). The CIT(A) by its order dated 27.06.2023 has dismissed the appeal, inter alia, on the ground that the appellant did not respond to the notices and failed to avail of the opportunity of hearing. Nonetheless, the CIT(A) proceeded to decide the appeal on the basis of the material available on record. The CIT(A) has found that the appellant did

not provide any agreement or Memorandum of Understanding (MoU) between the appellant-society and the owner of the building viz. SSSI with regard to the maintenance of the building. Thus, in the opinion of the CIT(A), in absence of any such agreement or MOU, while minor repairs of smaller quantum are eligible for deduction, huge expenditure of capital nature and the property tax paid is not allowable when the building is not owned by the appellant-assessee. That is how the appellant-assessee is before us.

6. We have heard the parties and perused the record.

7. It is submitted by learned counsel for the appellant that, indeed written submissions were filed before the CIT(A) and thus the CIT(A) is in error in finding that the appellant did not avail of the opportunity to pursue the appeal, inspite of notices. Insofar as the merits are concerned, it is submitted that the only question is whether such income, is applied for charitable or religious purposes. It is submitted that the nature of expenditure, being capital expenditure or otherwise is not relevant in the context of section 11(1)(a) of the said Act. Reliance in this regard is placed on the decision of Hon'ble Gujarat High Court in Satya Vijay Patel Hindu Dharmashala Trust vs CIT, 86 ITR 683 (Guj) and the decision of the Hon'ble Supreme Court in S.R.M.CT.M Triuppani Trust vs CIT, 230 ITR 636 (SC)

8. It is submitted that even the owner of the building viz. SSSI, Chennai is also a charitable trust, and was engaged in the similar activity of conducting school. It is submitted that the object of both the trusts being similar, the

building was handed over to the appellant without any consideration which is continuously in possession of the building since 1970 and is running a school for girls therein. In the submission of the learned counsel, the appellant should be considered as 'de facto' owner of the said building. It is thus submitted that the AO as well as the learned CIT(A) were in error in disallowing the expenditure on the ground that the building is not owned by the appellant and that it is a capital expenditure.

9. The learned CIT-DR has submitted that the appellant is neither the owner of the building nor there is any agreement or MoU under which the building is handed over to the appellant and/or permitting the appellant to carry out the repairs and to incur such huge expenditure, as has been rightly found by the learned CIT(A). He therefore submitted that there is no case for interference made out.

10. We have carefully considered the rival circumstances and the submissions made.

11. The material facts are not in dispute. It is not in dispute that the building where the appellant society is conducting the school from December, 1970 is owned by SSSI, Chennai. There is also no dispute about the expenditure towards repair and payment of property tax in respect of the said building incurred by the appellant during the relevant year. Thus, the only question is whether the expenditure so incurred can be said to be 'application of the income for charitable purpose', within the meaning of Section 11(1)(a) of the said Act. As

noticed earlier, this has been disallowed only on the ground that the expenditure is in the nature of capital expenditure on a building, which is not owned by the appellant assessee.

12. In the first place, the expenditure towards payment of taxes (although of minor nature as compared to the expenditure on the repairs) cannot be considered as capital expenditure. That apart, we are of the opinion that the nature of such expenditure being either capital or revenue expenditure would not be relevant for the purpose of deciding whether it is an 'application of income for charitable purpose', within the meaning of section 11(1)(a) of the said Act.

13. A useful reference in this regard can be made to the decision of Gujarat High Court in Satya Vijay Patel Hindu Dharmashala Trust (supra). In that case, the appellant trust was created with the dominant purpose to establish a Hindu Dharmashala. The trust had incurred expenditure for constructing a new Dharmashala. In that case, the contention of the revenue, which found favour with the Tribunal, was that the construction of the new Dharmashala was an expenditure of capital nature, for acquiring a capital asset and therefore could not be regarded as expenditure for carrying out objects of the charitable trust. The High Court, while negativing the contention, found that the only requirement of section 11(1)(a) is that the income of the trust must be applied to the charitable purpose for which properties are held on trust by the Trustees. It has been found that the section does not require that the application of income should be such that it necessarily results in revenue expenditure. The charitable purpose may, in a given case, require for its fulfilment, purchase of capital asset

and where income is applied for purchase of such capital asset, it would still be application of income for the charitable purpose.

14. In S.R.M.CT.M Triuppani Trust (supra) the Hon'ble Supreme Court held that the assessee had applied Rs.8 lakhs for charitable purposes in India by purchasing a building which was to be utilised as a hospital. The Supreme Court has found that the assessee was entitled to claim benefit of section 11(1)(a).

15. It is not necessary to multiply authorities on the point.

16. We find that the renovation/repairs of the school building are essential for the security of children and others who are using the building for running of the school and thus would be in consonance with the objects of the trust and consequently the expenditure incurred on such repairs and obviously the payment of taxes can be said to be application of the income towards charitable purpose.

17. In that view of the matter, the appeal has to succeed. In the result, the appeal is allowed and the impugned order disallowing the exemption for assessment year 2016-17 is hereby set aside.

Order pronounced in the open court on 12th December, 2023.

Sd/-	Sd/-
(B R Baskaran)	(Justice (Retd.) C V Bhadang)
ACCOUNTANT MEMBER	PRESIDENT

Mumbai, Dated :12th December, 2023
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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'SMC' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai