IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 4517/DEL/2018 (A.Y 2014-15)

Church's Auxiliary for Social Action, 4th Floor, Rachna Building, 2–Rajendra Place, Pusa Rd. New Delhi – 110 008 PAN No. AAAFC3693F (APPELLANT)	Vs.	ACIT, (Exemptions) Circle : 1 (1) New Delhi. (RESPONDENT)

Assessee by :	Ms. Vandna G. Sharda, C. A.;
Department by:	Md. Gayasuddin Ansari, Sr. D. R.;

Date of Hearing	19.07.2022
Date of Pronouncement	26.07.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2014-15 against the order of the Ld. Commissioner of Income Tax (Appeals)–40, New Delhi, dated 02.04.2018.

2. The assessee has raised the following grounds of appeal:-

"1. The order of the Hon'ble Commissioner of Income Tax (Appeals) - XII, New Delhi confirming the order of Learned Assessing Officer is bad in law and on facts and against the principals of natural justice and must be quashed.

2. That the Hon'ble Commissioner of Income Tax (Appeals) has grossly erred in disallowing the partial amount of Rs.10,15,818.00 being spent on account of amounts spent abroad on account of boarding and lodging and travel out of total expenditure of Rs. 21,54,776.00 on foreign travel. The expense of staff travelling abroad amounts to the application of income in accordance with section ll(l)(a) towards main objects of the society as assessee is a charitable organization. The order passed is bad in law and on facts and circumstances of the case. The impugned illegal order needs to be quashed immediately.

3. That the Hon'ble Commissioner of Income Tax Appeals has wrongly applied the judgment of Hon'ble Delhi High Court in the case of Director of Income-Tax (Exemption! vs. National Association of Software Services Companies and the case of India Brand Equity Foundation vs. Assistant Commissioner of Income Tax (E) 1. Trust Ward II. New Delhi [(2012) 23 Taxman.com 323 (Del)] in the present case as facts of the case are very different, Rs.10,15,818/- is the amount reimbursed to the employees towards Boarding, Lodging, Conveyance etc.. The order passed is bad in law and on facts and circumstances of the case and needs to be quashed immediately.

4. The assessee craves leave to add / alter any of the grounds of appeal on or before the date of final hearing."

3. Brief facts of the case are that, the assessee was accorded Registration u/s 12A of the IT Act vide No. DLI (C(I-696 dated 22/09/1976) in addition the Assessee society has been granted approval u/s 80G (5) (vi) of the Act for the period of Assessment Year 2012-13 onwards till it is rescinded. The object of the society claimed to be chargeable in nature within the meaning of Section 2(15) of the Act and benefit u/s 11 & 12 are allowed to the assessee. During the year under consideration, the assessee society incurred expenses to the tune of Rs. 21,54,776/- on account of foreign travel and claimed it as application of income during the year. During the assessment proceedings the assessee has been given the opportunity to justify and substantiate the nature of foreign travel and purpose of the visit with supporting documents. In reply, assessee submitted the details of visit, but failed to substantiate it with supporting documents stating that the 'Office of the Society has already been closed'. The reply of the assessee found not satisfactory by the A.O. Therefore, disallowed the foreign expenses of Rs. 21,54,776/- and passed assessment order dated 22/12/2016. As against the assessment order dated 22/12/2016, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 02/04/2018, disallowed the expenditure amount to Rs. 10,15,818/- which was spent outside India on account of boarding and lodging local transport etc. Further, allowed a sum of Rs. 11,38,958/- out of the amount of Rs. 21,54,716/- as application of income by partly allowing the appeal.

4. Aggrieved by sustaining of the disallowance of Rs. 10,15,818/- by the CIT(A), the assessee has preferred the present Appeal on the grounds mentioned above.

5. We have heard the parties, perused the material on record and gave our thoughtful consideration. The moot question for consideration in the preset Appeal is that, whether the expenditure incurred by the assessee outside India

on account of boarding and lodging, local transport etc. is to be considered as application income are not.

6. In the case of Director of Income-tax (Exemption) Vs. National Association of Software and Services Companies in ITA No. 17/2011 and other connected matters, the Jurisdictional High Court vide order dated 10/05/2012 held that, the expenditure incurred by the assessee trust outside India cannot be considered as application of the income of the trust in India for charitable purpose. The relevant portions of the judgment are hereunder:-

> *"The next question is whether the expenditure incurred by the assessee-trust on events/activities held in connection with the exhibition in Germany amounts to application of the income in accordance with section 11(1)(a). The argument put forward by the Revenue was that the expenditure, even if it is considered as application of the income, was outside India and the mandate of the section is that the income should be applied in India to charitable purposes and this condition not having been satisfied, the Tribunal was clearly wrong in holding that the expenditure should be considered as application of the income of the trust in India. The argument of the assessee is that there is no such mandate in the section to the effect that the income of the trust should be applied in India and that the only requirement is that the purposes should exist in India and if that is satisfied, the income can be applied for such purposes even outside India. According to the assessee, so long as the purposes are in India, it does not matter as to where the sites of the application is. [Para 13]*
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> *A little historical background is necessary to be brought out in understanding the mandate of section 11. Section 11 corresponds to*

section 4(3)(i) of the Indian Income-tax Act, 1922. [Para 14]

Under the provision as it existed prior to 1-4-1952, there was no difference maintained between application of the income of the trust within or without the taxable territories. The provision as it existed after the amendment made with effect front 1-4-1952 makes a reference to application or accumulation for application of the income of the trust to such religious of charitable purposes as revenue to anything done within the taxable territories'. The assessee contended that the words 'as relate to anything done within the taxable territories' clearly show that the charitable purposes must be executed within the taxable territories and that it was immaterial where the income is actually applied. It is difficult to conceive of a situation under which the charitable purposes are executed within the taxable territories but the income of the trust is applied elsewhere in the implementation of such purposes. Be that as it may, the position is put beyond doubt by the proviso to section 4(3)(i) of the old Act. It says that the income of the trust shall stand included in its total income if it is applied to religious or charitable purposes throughout/within the taxable territories. The proviso is indicative of the object of the main provision. In the main part, it ions provided that the income of the trust should be applied within the taxable territories to religious or charitable purposes and in the proviso an exception was carved out to provide that if the income is applied outside the taxable territories, even though to religious or charitable purposes, the trust will not secure the exemption from tax in respect of such income. Two situations were anticipated for which provision was made in the proviso itself. In these two situations, the Central Board of Revenue (CBR, the present CBDT) was empowered to direct by general or special order, that in such cases the income of

the trust shall not be included in the total income merely because the income was applied to charitable purposes outside the taxable territories. The first situation was where the property was held under a trust or other legal obligation created before 1-4-1952. The second situation was where the property was held under trust or other legal obligation created after the aforesaid date and the income there from is applied outside the taxable territories to charitable purposes as are done to promote international welfare in which India is interested. In these two cases the income of the trust could be applied or spent outside India without losing exemption, provided the CBR passes an appropriate order, [Para 17}

It may be noticed that sub-clause (ii) of Clasue (c) of subsection (i) of section 11, in substance provides for the same condition which was imposed by sub-clause (I) of clause (a) of the proviso to section 4(3)(i) of the old Act. Sub-clause (i) of clause (c) of sub-section (1) of section 11 is in the same terms as sub-clause (ii) of clause (a) of the proviso to section 4(3)(i) of the old Act [Para 21].

The assessee's contention that the words 'to the extent to which such income is applied to such purposes in India' appearing to section ll (l)(a) only require that the charitable purposes should he confined to India and the application of the income of the trust to the execution of such purposes can be outside, India, appears to be opposed to the natural and grammatical meaning that can be ascribed to the words. The word 'applied' is a verb used in past tense. In the provision, it is used in the transitive form because it is followed by the words 'to such purposes in India'. It answers three questions which would arise in the mind of the reader: apply what? Applied to what? And where? The answers would then make the meaning obvious. The answer to the first question would be apply

the income of the trust. The answer to the second question will be applied to charitable purposes. The answer to the third question will be applied in India. Thus even grammatically speaking it scents that the group of words 'to such purposes in India' qualifies the preceding verb 'applied'. It is a case of a verb being qualified by two prepositions which follow, viz 'to' and 'in'. So read, it seems clear that grammatically also it would be proper to understand the requirement of the provision in this may, that is, that the income of the trust should be applied not only to charitable purposes, but also applied in India to such purposes. The submission of the assessee that the words 'in India' qualify only the appear to be the natural and grammatical way of construing the provision. That would break or clog the natural flow of the entire group of words 'To the extent to which such income is applied to such purposes in India'. The meaning sought to be attached by assessee to the words 'in India' as qualifying only the 'purposes' places a strain on the natural or grammatical interpretation of the group of words. If what assessee contends is correct then section 11(1) (c) may become redundant and otiose. If as assessee says, the income of the trust can be applied even outside India so long as the charitable purposes are in India, then there is no need for a trust which tends to promote international welfare in which India is interested and which was created after 1- 4-1952 to apply to the CBDT for a general or special order directing that the income to the extent to which it is applied to the promotion of international welfare outside India shall not be denied the exemption, nor would it be necessary for a charitable or religious trust created before the aforesaid date to seek such an order front CBDT in respect of its income which is applied to charitable or religious purposes outside India. Therefore, the words 'in India[1] appearing in section 11(1)(a) and the words 'outside India' appearing

in section ll(l)(c) of the Act qualify the verb 'applied' appearing in these provisions and not the words 'such pur}}oses'. {Para 221]

In view of the above, it is held that the amount of Rs. 38,29,535 spent by the assessee-trust in Hanover, Germany cannot be considered as application of the income of the trust in India for charitable purposes... [Para 31]

7. In the case of India Brand Equity Foundation vs. Assistant Commissioner of Income Tax (E), Trust, Ward-II, New Delhi [(2012) 23 taxman.com 323 (Del)] it was held that amount spent outside India for participating in a fare held outside India cannot be treated as application of income of trust for purpose of section 11(1)(a). The Hon'ble 1TAT observed that if the income of die trust can be applied even outside India so long as the charitable purposes are in India, then there is no need for die trust which tends to promote international welfare in which India is interested and which was created after 04/01/1952 to apply to the CBDT for a general or special order directing dial the income to the extent to which it is applied to die promotion of international welfare outside India shall not be denied die exemption nor would it be necessary for a charitable or religious trust created before die aforesaid date to seek such a order from CBDT in respect of its income which is applied to charitable or religious purposes outside India. It was further held that the words "in India" appearing in section ll(l)(a) and the words "outside India" appearing in section 11(l)(c) qualified the word "applied" appearing in these provisions and not the words "said purposes."

8. Thus, it is well settled law that the expenditure incurred by the trust outside India cannot be considered as application of income as per Section 11(1)(a) of the Act. Therefore in the present case, the disallowance of Rs. 10,15,818/- which was spent outside India on account of boarding and

lodging local transport etc. cannot be considered as application income as per Section 11(1)(a) of the Act.

9. The Ld. Counsel for the assessee submitted that, the disallowance of Rs. 10,15,818/- sustained by CIT(A), will result in addition of the amount twice to the gross total income of the assessee, once through foreign contribution received reimbursed amount is already included in the total income and in a second time by disallowance made in the assessment order, therefore submitted that the order impugned deserves to be quashed. We find that assessee has not raised such ground either before the CIT (A) or before us, apart from the same the Assessee has not even produced any iota of evidence/materials before the AO/CIT(A) or before us to suggest that the assessee has received foreign contribution as per law to meet the expenditure of Rs. 10,15,818/- incurred by the assessee for boarding and lodging, local transport etc. outside India. Therefore we are not in a position to uphold the theory of reimbursement taken by the Assessee.

10. In view of the above discussions we are of the opinion that the Order passed by the Ld. CIT (A) is just and proper, which requires no interference, accordingly we dismiss the Grounds No. 1 to 3 of the assessee.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 26th th July,2022.

Sd/-	Sd/-
(SHAMIM YAHYA)	(YOGESH KUMAR U.S.)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated : 26/07/2022

R.N Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI