IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA
BEFORE SHRI SANDEEP GOSAIN (JM) &
M BALAGANESH (AM)

ITA No.181/Pat/2014
Assessment year: 2006-07

ACIT Circle-1, Muzaffarpur. (Appellant)	Vs.	M/s.Agriculture Produce Market Committee., Bagaha. (Respondent) PAN-AABTA1325M

And

ITA No.190/Pat/2014
Assessment year: 2005-06

ACIT Circle-1, Muzaffarpur. (Appellant)	Vs.	M/s.Agriculture Produce Market Committee., Darbhanga. (Respondent) PAN-AAKFA2078C

Department by : Shri Ram Babu, DR.
Assessee by :Shri Sikesh Jha, Adv .

Date of hearing:-09/10/2017
Date of Pronouncement:- 13/10/2017

ORDER

PER BENCH:

These appeals by the Revenue directed against the order of the CIT (A)-1 dated-07.08.2014 and pertain to assessment years 2005-06 & 06-07.

2. The effective issue raised in grounds of appeal read as under:

In ITA No.181/Pat/2014

"1. The Ld. CIT(A) has erred in law and in fact in deleting the additions made by the AO on account of commission.
2. Any other ground will be taken at the time of hearing."

In ITA No.190/Pat/2014

"1. The Ld. CIT(A) has erred in law and in fact in deleting the additions made by the AO by denying the benefit u/s. 11(2) of the I. T. Act, 1961.
2. Any other ground will be taken at the time of hearing."

Since the facts of both the appeals are similar, therefore, we first of all we take up ITA No. 181/Pat/ 2014.

3. The only effective ground raised by the Revenue is challanging the order of Ld. CIT(A) in deleting the additions made by the AO, denying the benefit u/s 11(2) of the Income-tax Act, 1961 to the assessee.

4. We have heard the counsel for both the parties and perused the material placed on record as well as the orders of the authorities below.

5. Before we decide the merits of the case, it is necessary to evaluate and analyse the orders passed by the Ld. CIT(A) while dealing with this ground. The Ld. CIT(A) has dealt with this ground at page nos. 4 to 7 in its order. The effective portion is reproduced below:

"*Ground No. 3, 4 & 5 – Relates to denial of benefit u/s 11(2) of the I.T, Act and not accepting form no. 10 submitted by the appellant with the original return. The A.O. observed that the assessee committee has not given a notice by way of declaration in form no. 10 along with the return of income. In absence of declaration form no. 10, it cannot be ascertained how the* *accumulated fund shall be utilized for charitable purposes. In the present case the committee stood dissolved just a few months after the end of the assessment year. In other words the assessee rnarketinq committee stopped it's operation w.e f. 30.08.2006 thus the chances of utilization of the accumulated fund for charitable purposes reduced to nil. Therefore, the benefit of section 11(2) of the I.T. Act, 1961 cannot be allowed.*

The appellant submitted that we have filed our return on 31.10.2005. claiming exemption u/s 11 of the I.T. Act 1961 and filed form NO.10 along with return for accumulation of fund u/s 11(2) A.O. has disallowed it on the following grounds :-

(A) Form 1(1 IS not accompanied by a copy of resolution.

(B) Time frame of six months as given in form 10 for investment has not been fulfilled.

(C) Ground for accumulation is general in nature and not specific.

That in view of the above it is submitted as under:

(A) That entire proceeding register was produced 'before A.O. during the course of assessment proceedings.

(B) That it is humbly submitted that all investment has been made in the SBI AMY Branch Chapra in the form of F.D. and all details regarding this had been furnished before A.O. during the course of assessment proceedings. However we are again giving the details of investment for your kind perusal and records vide annexure 1, to this written submission.

(C) That it is humbly submitted that specific reasoning details has been given in form No.10 itself.

The Ap pellant submitted the following judicial decisions:

(A)Bharat Kalian Pratisthan Vs OIT(Exemption) 299 ITR 486 (Delhi)
(B)CIT Vs Anjuman M, oinia Fakharia 208 ITR 568 (Rajasthan High Court)
(C)DIT (Exemption) Vs. Oaulat Ram Education Society (2005) 278 ITR-260 Delhi.
(D)Sri Mayur Foundation Vs. ITO 94 CTR (TRI) 112 (AHD.)

(E)Nagpur Hotel Association Vs. CIT 247 ITR

That in view of the judgment ot has been held that where the genuineness of the trust is not in doubt and the investment of money has been made by the trust in the prescribed securities or even if they are willing to d posit the amount in the prescribed security some time befo e asking for grant of benefit, trust should not be denied the benefit of section 11(2) and the application u/s 11(2) filed beyond the time limit prescribed under rule 17 should be entertained and delay should be condoned.

The submissions of the appellant have been considered. As per the provisions of section 11(5) the forms and modes of investing or depositing the money referred in clause (b) of sub-section 2 ·have been outlined. The appellant has deposited the amount with State Bank of India, Agriculture Market Yard Branch and would thus be requirement of section 11(2), It is however a matter of fact that the market committee was dissolved on 30.08.2006 and the amount accumulated would not have been a plied in full for charitable or religious purposes as per the provisions of section 11(3) which are reproduced below:

[(3) Any income rete.red to in sub-section (2) which-.

(a) *is applied to purposes other than charitable or religious urposes as aforeseid or ceases to be accumulated or set apart for application th ereto, or*

[(b) ceases to remain tnvested or deposited in any of the forms or modes specified in sub-section (5), or)

(c)- iS not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause la) of that sub-section or in the year immediately following the expiry thereof,

7[(d} is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to In sun-clause(iv) or sub-clause (v) or sub-clause(vi) or sub clause (via) of clause (23C) of section 10.]
shall be deemed to be the income of such person of the previousyear in which it is so applied or ceases to be so accumulated or set apart or ceases

to remain so invested or deposited or [credited or paid or).as the case may be of the previous year immediately followin the expiry of the period aforesaid.}

As per section 11 sub-section(3) the income set .apert for the specified purposes which is not utilized for the purpose for which it is accumulated for set apart shall be deemed to be income of the previous year in which it ceases to be so accumulated. On the dissolution of the market committee the accumulated fund for charitable purposes would not have been used. However, it would be the ,deemed income of the previous year 2006-07 i.e .A.Y.2007-08 and should have been assessed accordingly. As it is not assessable in A.Y.2004-05, the addition is accordingly deleted."

6. After having gone through the orders of the authorities below and having heard the counsel for both the parties at length, we find that the identical issue has already been decided by the co-ordinate bench of ITAT in the assessee's own case in ITA No.186/Pat/2013, the operating portion of the order reads as under:

> *"7. After having gone through the orders of the authorities below and having heard the counsel for both the parties at length, we find that while dealing with this ground the Ld. CIT(A) has duly considered all the facts of the present case and has rightly concluded that where the genuineness of the trust is not in doubt and the investment of money has been made by the trust in the prescribed securities or even if they are willing to deposit the amount in the prescribed security some time before asking for grant of benefit, trust should not be denied the benefit of Section 11(2) and the application u/s.11(2) filed beyond the time limit prescribed under rule 17 should be entertained and delay should be condoned.*
>
> *8. As per the facts of the present case, the assessee is an Agriculture Produce Market Committee and was granted registration u/s.12AA of the Act. The assessee had deposited the*

amount in the State Bank of India, Agriculture Market Yard Branch and had thus complied the requirement of Section 11(2) of the Act.The Ld. CIT(A) has also consided the factual posititionin the present case as a matter of fact, the market committee was disssolve on 30.08.2006 and, therefore, as per Section 11 sub – section (3), if the income set apart for the specific purpose which is not utilized for the purpose for which it is accumulated for set apart shall be deemed income of the previous year, in which it ceases to be so accumulated. Thus, on the dissolution of Market Committee, the Accumulated funds for charitable purpose would be deemed income of the previous year 2006-07 i.e. A. Y- 2007-08 thus not assessable of in assessment year 2004-05.Therefore, considering those facts the Ld. CIT(A) rightly deleted the additions."

8. Since, we have already adjudicated the identical ground while dealing with the appeal filed by the revenue in ITA No.186/Pat/2014. Therefore, our findings in this regard are binding and also applicable in ITA Nos. 181 & 190 /Pat/2014. Therefore, keeping in view our own finding in ITA No. 186/Pat/2014 we dismiss the ground raised by the revenue.

9. In the result, both the appeals i.e. in ITA Nos. 181 & 190/ Pat/ 2014, filed by the revenue stand dismissed.

Order is pronounced in the open court on 13th October, 2017.

Sd/- Sd/-

(M. Balaganesh) (Sandeep Gosain)
Accountant Member Judicial Member

Date of order: 13th October, 2017.
S.Sinha(PS)

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent:
3. The CIT(A)-Patna
4. CIT , Patna
5. Income Tax Appellate Tribunal,Patna
6. Guard file.

//True Copy//

BY ORDER

PRIVATE SECRETARY