

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 5278/MUM/2016 : A.Y : 2011-12

ITO (E)-2(1),
Mumbai
(Appellant)

Vs. Nanikram Menghraj Trust
Navjivan Society
Lamington Road
Mumbai – 400 007
(Respondent)
PAN : AAATN2215N

Appellant by : Shri Rajesh Kumar Yadav

Respondent by : Shri M.A. Gohel

Date of Hearing : 31/10/2017

Date of Pronouncement : 31/10/2017

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the Revenue is directed against the order of CIT(A)-1, Mumbai dated 17.06.2016 pertaining to the Assessment Year 2011-12, which in turn has arisen from the order passed by the Assessing Officer dated 10.03.2014 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In its appeal, Revenue has raised the following Grounds of appeal:-

1. "Whether on the facts of the case and in law the Id. CIT(A) erred in allowing the carryforward of deficit of Rs.1,03,57,475/- and allowing set off against the income of the subsequent years."

2. "Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the claim of the assessee for carry forward of the said deficit, ignoring the fact that there was no express provision in the I T Act, 1961 permitting allowance of such claim."

3. "Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the claim of the assessee for carry forward of the said deficit by relying upon the judgment of Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection*, ignoring the fact that the Department has not accepted the said decision of the jurisdictional High Court on merit of the case."

4. The appellant prays that the order of the Commissioner of Income Tax (Appeals)-I, Mumbai be set aside and that of the Assessing Officer be restored.

5. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

3. Although the Revenue has raised multiple Grounds of appeal, but the solitary dispute involved in this appeal is against the action of the CIT(A) in allowing the assessee the benefit of carry forward of the deficit for future set-off.

4. In this background, now we may refer to the relevant facts. The respondent-assessee is a charitable organisation registered u/s 12A of the Act and is engaged in carrying on activities of charitable nature. The Assessing Officer noticed that assessee had shown Rs.1,03,57,475/- as deficit and claimed benefit of carry forward for future set-off. The Assessing Officer denied the benefit by observing that loss/deficit cannot be determined while computing income u/s 11 of the Act. The CIT(A) has since allowed the claim of the assessee following the judgment of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection*, 264 ITR 110 (Bom).

5. Before us, the plea of the Department is that the decision of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection (supra)* has not been accepted by the Department on merits. So, however there is no controversion by the Revenue to the fact that the

decision of the CIT(A) is in line with the judgment of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection (supra)*.

6. We find that the Hon'ble Bombay High Court subsequent to the decision in the case of *Institute of Banking Personnel Selection (supra)* considered a similar argument of the Revenue in the case of *M/s. Mumbai Education Trust, ITA No. 11/2014 dated 3.5.2016* and allowed the claim of the assessee. In fact, one of the Grounds of appeal urged by the Revenue before the Hon'ble High Court in the case of *Mumbai Education Trust (supra)*, which reads as under :-

“(b) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in confirming the order of the CIT(A) to allow to carry forward of deficit of earlier years relying on the decision of this Court in the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 (Bom) while the revenue did not file SLP against the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR110 (Bom) due to low tax effect?”.

stands on the same footing as is being canvassed before us in the instant case. Thus, there is no error on the part of the CIT(A) in following the decision of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection (supra)* and allowing the stand of the assessee. The other argument taken by the Revenue that its SLP filed before the Hon'ble Supreme Court is pending on a similar issue is of no consequence in as much as the binding judgments of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection (supra)* as well as in the case of *M/s. Mumbai Education Trust (supra)* continue to subsist. Therefore, in this background, we find no

merit in the Ground raised by the Revenue and the same is accordingly dismissed.

8. In the result, appeal of the Revenue is dismissed, as announced in the court in the presence of both the parties on the conclusion of hearing on 31st October, 2017.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 31st October, 2017
Karuna

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai