

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3373/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

Dy. CIT (Exemption)-1(1), Room No. 506, 5 <sup>th</sup> Floor, Piramal Chamber, lalbaug, Mumbai-400 012	<b>बनाम/</b> Vs.	Indo Italian Chambers of Commerce & Industry, 502, Bengal Chemicals Compound, Veer Savarkar Marg, Prabhadevi, Mumbai-400 025
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCT 1939 R		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Ms. Hemalatha
प्रत्यर्थी की ओर से/Respondent by	:	Shri R. P. Acharya

सुनवाई की तारीख / Date of Hearing	:	31.08.2017
घोषणा की तारीख / Date of Pronouncement	:	01.11.2017

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This is an appeal by the Revenue arising out of the order of learned CIT(A), Mumbai dated 10.02.2017, pertaining to the assessment year 2010-11.

2. The grounds of appeal read as under

1. "Whether on the facts of the case and in law the Id. CIT(A) erred in allowing the carry forward of deficit of Rs.2,12,66,151/- 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 Id OT(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. LD. CIT(A) erred in allowing the claim of the assessee for carry forward of the said deficit 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, but due to smallness of tax effect appeal was not filed before Hon'ble Supreme Court. However, on this issue the department has filed SLP before the Apex Court in other cases inclusive the case of MIDC(SPL (Civil) 9891 of 2014) in which leave has been granted and the matter is pending in all cases for adjudication before the Hon'ble Supreme Court,"
  4. "The appellant prays that the order of the Commissioner of Income Tax (Appeals)-f, Mumbai be set aside and that of the Assessing Officer be restored."
3. The assessee in this case is a trust. There is only one issue arising out of the above grounds of appeal relating to carry forward of deficit to be set off against the income of the subsequent years.
4. I have heard the Id. Departmental Representative and perused the records. It transpires that upon assessing officers disallowance on the above issue, the learned CIT-A has allowed the assessee's appeal by following Hon'ble jurisdictional High Court direct decision on the issue. The Id. Departmental Representative could not dispute the proposition that the issue is covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court relied upon by the learned CIT-A. The Revenue has also agreed to this in the grounds for appeal raised herein above as it is

mentioned that Department has not accepted the Hon'ble High Court's decision on this issue. Be that as it may, the Hon'ble Jurisdictional High Court decision is binding upon the ITAT. In this regard, I may gainfully refer to the order of learned CIT-A on the issue as under:

6.2 I have considered the facts and circumstances of the case, gone through the assessment order of the A.O and the submissions of the appellant and also discussed the case with the AR of the appellant. The contentions and submissions of the appellant are being discussed and decided here in under:

i. Appellant relying upon several case laws stated that deficit of the earlier years/current year is required to be carried forward to the subsequent years. On perusal of the facts I find that the case of appellant is squarely covered by the judgement of Hon'ble Bombay High Court in the case of Institute of Banking Personnel 264 ITR 110 wherein the Hon. Jurisdictional High Court has observed as under -

....."5. 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 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 utilization 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 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 (Cuj). Accordingly, we answer question No. 3 in the affirmative i.e., in favour of the assesses and against the department."

ii. Respectfully following the ratio laid down by the Hon. Jurisdictional High Court as above, the AO is directed to allow the carry forward of deficit in the succeeding years after due verification of facts.

5. Since the Id. CIT(A) has followed the Hon'ble Jurisdictional High Court decision mentioned here-in-above, I do not find any infirmity in the same. Hence, I uphold the order of Id. CIT(A).

6. In the result, this appeal filed by the Revenue stands dismissed.  
परिणामतः राजस्व की अपील खारिज की जाती है ।

*Order pronounced in the open court on 01.11.2017*

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01.11.2017

व.नि.स./Roshani, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**