

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

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No.5393/M/2016
Assessment Year: 2009-10**

Dy. Commissioner of Income Tax (Exemptions)- 2(1), Room No.519, 5 th Floor, Piramal Chambers, Lalbaug, Lower Parel, Mumbai - 400077	Vs.	M/s. Maharashtra State Road Transport Corporation (MSRTC), Maharashtra Vahatuk Bhavan, Dr. Anant Rao Nair Marg, Mumbai-400 008 PAN: AAACM 4699J
(Appellant)		(Respondent)

&

**ITA No.5327/M/2016
Assessment Year: 2009-10**

M/s. Maharashtra State Road Transport Corporation (MSRTC), Maharashtra Vahatuk Bhavan, Dr. Anant Rao Nair Marg, Mumbai-400 008 PAN: AAACM 4699J	Vs.	Assistant Director of Income Tax (Exemption)-I(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Girish Dave, A.R. &
Shri K.K. Naulakha, A.R.

Revenue by : Shri R.P. Meena, D.R.

Date of Hearing : 24.08.2017

Date of Pronouncement : 10.11.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The above titled appeals-one by the Revenue and the other by the assessee have been preferred against the order dated 29.06.2016

of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

ITA No.5393/M/2016 (Revenue's appeal)

2. The short facts of the case are as under:

The assessee is a company established under the Road Transport Corporation Act, 1950 mainly with the object of providing passenger transport facility. The assessee has claimed Exemption u/s 11 of the Act, 1961 as in earlier years by stating that its objective is charitable in nature. Before the Assessing Officer (hereinafter referred to as the AO) the assessee has also relied upon the decision of Hon'ble Supreme Court in case of CIT vs. A.P.S.R.T.C. (159 ITR 1) and the decision of Hon'ble Supreme Court in ITA No.3316 of 1984 wherein it has been held that the assessee is entitled to exemption u/s 11. The main activity of the corporation continues to be same as in earlier years. The assessee is registered u/s 12A of the Income Tax Act, 1961. During assessment proceedings, the AO restricted the expenses claimed by the assessee to Rs.35,66,76,55,317/-, being income earned by assessee after setting apart 15% accumulation under section 11(1)(a).

3. The Matter was contested before Ld. CIT(A) and the Ld. CIT(A) has allowed the appeal by observing as under:

“5 I have carefully considered the facts of the case and the submission of the Ld. AR. During the appellant proceeding, the Ld. AR explained that only one issue is involved in this appeal which is clearly spelt out in the additional ground. The operating expenses net of depreciation was Rs.37,88,50,35,994/- and the non-operating expenses was Rs.73,82,48,475/-. Thus, the total expenses on objects were Rs.38,62,32,84,469/-. The AO has restricted the expenses as objects to the income of the year at

Rs.35,66,76,55,317/- and has not allowed the loss of Rs.295,56,29,152/- to be carried forward. The Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection (supra) has held that excess expenditure in the earlier years can be adjusted against income of subsequent years and such adjustments would be application of income in subsequent years. Respectfully following the above decision and other decisions relied on by the appellant, the AO is directed to allow carry forward the deficit darned by appellant after verification. The ground is allowed for statistical purpose.”

Aggrieved, the revenue is in further appeal before us.

4. We have heard the rival contentions of both the parties. We find that the Ld. CIT(A) while deciding the appeal has relied upon the decision of Hon'ble Bombay High Court in case of Institute of Banking Personnel and held that excess expenditure in earlier years can be adjusted against the income of subsequent year and such adjustment would be regarded as application of income in subsequent year. We reproduce the judgment of Hon'ble Bombay High Court wherein it is held as under:

“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 the 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 utilisation 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 the 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. Accordingly, we answer question No. 3 in the affirmative, i.e., in favour of the assessee and against the Department.”

5. Respectfully following the judicial precedent, we dismiss the Departmental appeal.

ITA No.5327/M/2016 (Assessee’s appeal)

6. The assessee’s appeal is in respect of not allowing the statutory allowance of current year depreciation of Rs.1,73,01,94,464/- and carry forward of unabsorbed depreciation and also the deficits of earlier years as per records even though raised before Ld. CIT(A).

7. We find that the Ld. CIT(A) has not adjudicated this matter by a speaking order and the issue remains unclear and figures require verification. Therefore, without delving much deeper, the matter is restored back to the file of Ld. CIT(A) for adjudication by way of speaking order. The assessee is directed to substantiate the same.

8. In the result, appeal of the Revenue is dismissed and the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10.11.2017.

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 10.11.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.