

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri B.R.Baskaran, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 4131/Mum/2017
(Assessment Year: 2013-14)**

ITO(E)2(3)
Room No. 513,
Piramal Chambers,
Lal baug Parel,
Mumbai-400 012

Shri Sushilaben Ramniklal
Jhaveri, Charitable Trust,
Vs. 705, Majestic Shopping Centre,
144, Girgauj Road,
Mumbai-400004
PAN – AACTS1816L

Revenue

Assessee

Revenue by: Shri Nishant Samaiya, D.R
Assessee by: Mr. Nitesh Joshi, Advocate &
Mr. P.P. Bhandari, C.A

Date of Hearing: 26.09.2018
Date of Pronouncement: 28.09.2018

ORDER

Per Ravish Sood, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-1, Mumbai, dated 06.03.2017, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 19.02.2016 for A.Y 2013-14. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

- “1. Whether on the facts of the case and in the law the ld. CIT(A) erred in allowing the carry forward of deficit of Rs.2,05,54,360/- 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 ld. CIT(A) erred in allowing the claim of the assessee for carry forward of the said deficit by relying upon the judgment of the 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)-1, Mumbai be set aside and that of the Assessing Officer be restored.*
5. *The appellant craves leave to amend or alter any ground or add a new grounds which may be necessary."*

2. Briefly stated, the assessee which is a trust registered with the DIT(E), Mumbai, under Sec. 12A, and also with the Charitable Commissioner, Mumbai, had filed its return of income for A.Y 2013-14 on 30.09.2013 along with the income and expenditure account, balance sheet and audit report in Form 10B, declaring total income at Rs. Nil. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had adjusted the brought forward loss of A.Y 2008-09 of Rs.13,42,372/-, against the surplus for the year under consideration viz. A.Y 2013-14. Further, it was noticed by him that the assessee had claimed carry forward of the deficit of Rs.2,05,54,360/- for the earlier years to be adjusted against the surplus of the subsequent years. The aforesaid claim of the assessee did not find favour with the A.O. The A.O was of the view that the expenditure incurred in the earlier years could not be met out of the income of the subsequent year and, the utilisation of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. The A.O supported his aforesaid conviction on three grounds viz. (i) that the corpus donations received by the assessee trust was not the income derived from property held under trust; (ii) that the expenditure incurred out of/from corpus funds/donations could not be considered as application of income under Sec.11(1)(a) of the Act; and (iii) that only income derived from property held under trust wholly for charitable or religious purposes, to the extent to

which such income is applied to such purposes in India was to be considered as application of income, as per the provisions contemplated under Sec. 11(1)(a) of the Act. In the backdrop of his aforesaid observations, the A.O was of the view, that as a conjoint reading of Sec.2(24)(ia) r.w.s.12(1) and Sec. 11(1)(d) revealed that corpus donations/funds did not constitute the income of the assessee trust from the property held under trust, thus, the application of the same would not fall within the sweep of Sec. 11(1)(a). Further, the A.O was of the view that the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Institute of Banking (2003) 264 ITR 110 (Bom), having been rendered in context of the pre-amended Sec. 12 of the Act, thus, would not be applicable to the case of the present assessee. On the basis of his aforesaid deliberations, the A.O disallowed the adjustment made by the assessee of the brought forward loss against the surplus for the year under consideration.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) observing that the issue under consideration was covered by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Institute of Banking (2003) 264 ITR 110 (Bom), thus respectfully followed the same and directed the A.O to allow the carry forward of deficit in the succeeding year, after due verification of facts.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Departmental Representative (for short 'D.R') relied on the order of the A.O. It was submitted by the Id. A.R that as the utilisation of the corpus donations/funds could not be construed as the "Income derived from property" held under trust wholly for charitable or religious purposes, hence the application of the same could not be brought within the sweep of Sec. 11(1)(a) of the Act. The Id. D.R in order to buttress his aforesaid contention drew our attention to Sec. 12(1) of the Act, and submitted that voluntary contributions received by the trust created wholly for charitable or religious purposes with a specific direction that they shall form part of the corpus of the trust or institution, was not to be deemed as income derived from property held under trust wholly for

charitable or religious purposes. The ld. D.R further in order to fortify his aforesaid contention carried out a conjoint reading of Sec. 2(24)(ia) and Sec.12 of the Act. On being confronted with the fact that the issue involved in the present appeal was covered by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Institute of Banking (2003) 264 ITR 110 (Bom), the ld. D.R relied on the order of the A.O and submitted that as the said judgment was rendered in context of the pre-amended Sec. 12 of the Act (that is prior to amendment made available on the statute, vide the Finance Act, 1972 w.e.f 01.04.1973), thus, the observations therein arrived would not be applicable to the facts of the present case.

6. Per contra, the ld. Authorized Representative (for short 'A.R') submitted that the issue involved in the present case was squarely covered by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Institute of Banking (2003) 264 ITR 110 (Bom). It was averred by the ld. A.R, that the Hon'ble High Court had clearly held that the income derived from the trust property was to be computed on commercial principles, and adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years was to be adjusted against the income earned by the trust in the subsequent year. The ld. A.R drawing our attention to the aforesaid judgment submitted that it was explicitly held that the adjustment of the deficit of the earlier years was to be excluded from the income of the trust for the subsequent year under Sec. 11(1)(a) of the Act. The ld. A.R further submitted that the issue under consideration was no more *res-integra* in light of the recent judgment of the Hon'ble Supreme Court in the case of CIT (Exemption) Vs. Subros Educational Society (2018) 166 DTR (SC) 257. The ld. A.R drawing our attention to the aforesaid judgment, submitted that the Hon'ble apex court while dismissing the appeal of the revenue had affirmed the order of the High Court of Delhi, wherein it was concluded that any excess expenditure incurred by the trust/charitable institution in an earlier assessment year, could be allowed to be set off against the income of subsequent years by invoking Sec. 11 of the Income Tax Act, 1961. It was thus submitted by the ld. A.R, that as the CIT(A) going by the rule of judicial

discipline had rightly followed the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Institute of Banking (2003) 264 ITR 110 (Bom), thus, no infirmity did emerge from his order.

7. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence has been sought by the revenue to adjudicate, as to whether, the CIT(A) was right in law and facts of the case in allowing the carry forward of the deficit of earlier years, for being set off against the surplus of subsequent years of the assessee trust. We have deliberated at length on the issue under consideration, and are of the considered view that the issue involved in the case before us is squarely covered by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Institute of Banking (2003) 264 ITR 110 (Bom). We find, that the Hon'ble High Court while dismissing the appeal of the revenue had observed, that as the income of the trust was to be computed on commercial principles, thus 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, was to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year. We find that the Hon'ble High Court had in unequivocal terms observed, that the adjustment of the expenses incurred by the trust in the earlier years, against the surplus of the subsequent year, will have to be excluded from the income of the trust under Sec. 11(1)(a) of the Act. Still further, a similar view had been taken by the Hon'ble Supreme Court in the case of CIT(Exemption) Vs. Subros Educational Society (2018) 166 TDR (SC) 257. The Hon'ble Apex Court, while affirming the judgment of the Hon'ble High Court of Delhi, had in the aforementioned case dismissed the appeal of the revenue and had declined to dislodge the observations of the High Court, that the excess expenditure incurred by the charitable trust/charitable institution in an earlier assessment year were to be allowed to be set off against the income of subsequent years by invoking Sec. 11 of the Act. We are of the considered view, that as the issue involved in the appeal before us

is no more *res-integra*, hence going by the rule of judicial discipline, we respectfully follow the same. In terms of our aforesaid observations, finding no infirmity in the order of the CIT(A), which is found to be in conformity with the aforesaid judicial pronouncements, we thus, uphold his order.

8. The appeal of the revenue is dismissed.

Order pronounced in the open court on 28.09.2018

Sd/-

Sd/-

(B.R.Baskaran)
ACCOUNTANT MEMBER

(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 28.09.2018

Ps. Rohit

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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

