

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 3033/Del/2015  
Assessment Year 2010-11**

M/s KSD Charitable Trust,  
C/o Ganesh Cold,  
Storage,  
Railway Road, Meerut.  
(PAN: AABTK2686H)  
**(Appellant)**

VS. Assistant Commissioner of  
Income Tax, Circle-1,  
Meerut

**(Respondent)**

Appellant by : Shri K. Sampath, Advocate  
Respondent by : Shri Sridhar Dora, Sr. DR

**ORDER**

**H.S. SIDHU, JM:**

This appeal has been filed by the assessee against the order dated 20.3.2015 passed by the Ld. CIT(A), Meerut pertaining to relevant assessment year 2010-11 on the following grounds:-

1. That Ld. CIT(A) has failed to appreciate the content and tenor of various High Court and Tribunal judgments cited before him which are a direct authority on the issue at hand and has thereby violated the principles of judicial discipline.
2. That the Ld. CIT(A) has failed to appreciate that income has to be computed commercially even in cases covered u/s. 11-13 of the Income

Tax Act, 1961 and resultant loss, if any, arising due to surplus application of income, has to be computed and carried forwards to next year to be set off therein accordingly.

3. The Ld. CIT(A) has also failed to appreciate that neither section 11 nor section 72 of the Income Tax Act, 1961 have a mutual rider for computation of income or for its carry forward and set off and hence the impugned order deserves to be quashed.
2. Briefly stated the facts of the case are that the assessee is a society, running several educational institutions. The objects of the assessee's trust are primarily in the field of education. The return of income for the current year was filed on 8.10.2010 showing loss of Rs. 15,397/- and brought forward loss of Rs. 9059978/- was claimed. In this case the AO noted that the assessee in its computation of income has claimed, excess application made during the year and excess application of income of earlier year to be carried forward and to be set off against the future income receipts. The AO however, stated in the assessment order that even though the capital expenses in the case of a charitable institution are allowable as application of income, no claim for carry forward of loss on account of capital expenses is allowable. The AO therefore, did not allow the carry forward of either the current year loss or that of earlier year loss. The AO however, stated that the assessee satisfies the condition for exemption u/s. 11 and 12 and completed the assessment NIL vide order dated 23.1.2013 passed u/s. 143(3) of the Income Tax Act, 1961 (in short "Act").

3. Aggrieved by the order of the Assessing Officer's order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 20.3.2015 has upheld the action of the AO and dismissed the appeal of the assessee. Now against the impugned order, the Assessee is in appeal before the Tribunal.

4. Ld. counsel for the assessee has stated that Ld. CIT(A) has failed to appreciate that income has to be computed commercially even in cases covered u/s. 11-13 of the Income Tax Act, 1961 and resultant loss, if any, arising due to surplus application of income, has to be computed and carried forward to next year to be set off therein accordingly. He further submitted that the issue in dispute is squarely covered by the Coordinate Bench common decision dated 10.8.2015 in ITA No. 4056/Del/2014 (AY 2009-10) in the case of M/s City Educational and Social Welfare Society vs. Additional Commissioner of Income Tax and in assessee's own case in ITA No. 4326/Del/2014 (AY 2008-09) title M/s KSD Charitable Trust vs. Additional Commissioner of Income Tax, Range-1, Meerut. In this behalf he filed the copy of the aforesaid common decision dated 10.8.2015 of the Tribunal before us. Ld. counsel for the assessee also filed the copy of the Order dated 16.4.2018 of the Hon'ble Supreme Court of India in the case of CIT(E) vs. Subros Educational Society (2018) 303 CTR 0001 (SC) and stated that the issue in dispute is also covered by the order dated 16.4.2018 of the Hon'ble Supreme Court of India in the case of CIT(E) vs. Subros Educational Society (Supra) wherein the Hon'ble Court has dismissed the miscellaneous application of the Department.

5. We have heard both the parties and perused the records. We find that the Assessing Officer was of the view the loss suffered during the year was on account of capital expenditure and therefore loss cannot allowed to be carried forward. This issue according to us is no longer *res integra* in view of the Coordinate Bench common decision dated 10.8.2015 in assessee's own case for the AY 2008-09 passed in ITA No. 4326/Del/2014 and M/s City Educational and Society Welfare Society vs. Additional CIT in ITA No. 4056/Del/214 in AY 2009-10. The Tribunal has adjudicated the issue in dispute as under:-

“7. I have heard rival submissions and perused the material on record. I find that the AO was of the view the loss suffered during the year was on account of capital expenditure and therefore loss cannot be allowed to be carried forward. This issue according to me is no longer rest integra. I further find that the Tribunal in assessee's own case for the AY 2005-06 (Supra) by following the judgment of the Hon'ble Bombay High Court in the case of CIT Vs. Institute of Banking (reported in 264 ITR 110 (Bom.)) has decided the issue the similar in favour of the assessee. The relevant finding of the coordinate Bench order reads as follows:-

*“4. We have duly considered the rival contention and gone through the record*

*carefully. Learned CIT(A) while permitting the assessee to claim set off against the brought forward losses has put reliance upon the following decisions:-*

*“CIT Vs. Matri Sewa Trust, 242 ITR 20 (Mad.);*

*CIT Vs. Institute of Banking, 264 ITR 110 (Bom.);*

*CIT Vs. Maharana of Mewar Charitable Foundation 164 ITR 439 &*

*Govindu Naicker Estate Vs. ADIY, 248 ITR 368”*

*5. We have gone through the order of the CIT(A) in assessment years 2001-02, 2003-04 & 2004-05. In those years, the assessee has been permitted to carry forward the losses and also to claim set off of such losses against the income. The CIT(A) has made a reference in those assessment years to section 11(4) of the Income-tax Act. In the case of CIT Vs. Institute of Banking reported in 264 ITR page 110 an argument was raised before the Hon'ble Mumbai High Court by the revenue that in the case of a charitable trust, their income was assessable under self contained code mentioned in section 11 to 13 of Income-tax Act and that the income of the charitable trust was not assessable under the head “profit and gains of business” u/s 28 in which the provision for carry forward of losses was relevant. According to*

*the revenue, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against the income of subsequent years. This argument was rejected by the Bombay High Court and it has been held that 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 religious purpose in the earlier years against the income earned by the trust in the subsequent year will have to be regarded as application of the income of the trust for charitable and religious purpose. The learned CIT(A) has followed this decision apart from others referred above. The order of the CIT(A) in three assessment years have been accepted by the revenue. In this year, the learned CIT(A) has simply based his decision on the finding given in earlier assessment years. Keeping in view the principle of consistency, we do not see any reason to interfere in the order of learned CIT(A). In view of the above discussion, the appeal of the revenue is dismissed.*

*6. In result, the appeal of the revenue is dismissed.”*

6. We further note that the Hon'ble Supreme Court of India in the case of CIT(E) vs. Subros Educational Society (2018) 303 CTR 0001 (SC) vide its Order dated 16.4.2018 has adjudicated the similar and identical issue as under by

dismissing the Miscellaneous Application No. 941/2018 in Civil Appeal No 5171/2016 filed by the Department.

“1. In this application filed by the Income Tax Department it is stated that Civil Appeal No. 5171 of 2016 arises out of Special Leave Petition (C)...CC No. 8982/2016 was tagged with other appeals and the batch matters were decided by this Court on 13.12.2017. However, the following question was also raised in the instant appeal which was not the subject matter of those appeals:

“(a). Whether any excess expenditure incurred by the trust / charitable institution in earlier assessment year could be allowed to be set off against income of subsequent years by invoking Section 11 of the Income Tax Act, 1961?”

To this extent, Mr. K. Radhakrishnan, learned senior counsel appearing on behalf of the applicant / appellant is correct.

Therefore, we have heard him on the aforesaid question of law as well but did not find any merit therein.

The miscellaneous application is dismissed.”

7. Respectfully following the Coordinate Bench order of the Tribunal in assessee's own case passed in assessment year 2008-09 vide order dated 10.8.2015 and in view

of the Order dated 16.4.2018 Hon'ble Supreme Court of India in the case of CIT(E) vs. Subros Educational Society (2018) 303 CTR 0001 (SC) which is identical to the facts of the instant case, hence, we quash the orders of the lower authorities and allow the carried forward of current year's loss to be set off in the future years. It is ordered accordingly.

8. In the result, the appeal filed by Assessee is allowed.

This Order is pronounced on 13-12-2018.

**Sd/-**  
**(L.P. SAHU)**  
**Accountant Member**

**Sd/-**  
**(H.S. SIDHU)**  
**Judicial Member**

Dated: 13-12-2018.

SRBHATNAGAR

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi