

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.773/Ahd/2017  
&  
CO No.63/Ahd/2017  
(Assessment Year :2012-13)

DCIT (Exemption),  
Circle – 2,  
Ahmedabad-380 009.

Vs. Animal Breeding Research  
Organization (India),  
Off NDDDB Campus,  
Anand – 388 001.

[PAN No. AAATA 3919 Q]

(Appellant)

..

(Respondent/Cross Objector)

Appellant by : Shri S. K. Dev, Sr. D.R.  
Respondent by: Shri Sanjay R. Shah, A.R.

Date of Hearing 10/01/2019  
Date of Pronouncement 28/02/2019

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the Revenue along with a cross objection by the assessee is against the order dated 13.01.2017 passed by the Commissioner of Income Tax (Appeals)-9, Ahmedabad arising out of the order dated 27.03.2015 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “The Act”) for the Assessment Year 2012-13 with the following grounds:

1. *“Whether on the facts and in the circumstances of the case is the Ld CIT(A) justified in allowing the benefit of exemptions u/s 11 ignoring the fact that the assessee is involved in widespread commercial activities in nature of business.*
2. *Whether on the facts and in the circumstances of the case is the Ld CIT(A) justified in allowing the set off of carry forward losses of earlier years against the income of current year in spite of the fact that there is no express provision in law allowing the same.*

3. *On the facts and circumstances of the case, the ld CIT(A) ought to have upheld the order of the Assessing Officer.*
4. *It is, therefore, prayed that the order of the ld CIT(A) may be set aside and that of the AO be restored.”*

2. The assessee, a trust registered u/s 12AA of the Act vide registration No.BRD/SIB/1108-A/92-93 dated 03.08.1993. The same is also registered u/s 80G of the Act on 23.07.2007 filed its return of income on 27.09.2012 declaring total income of Rs.53,640/-. Upon scrutiny a notice u/s 143(2) of the Act was issued on 06.08.2013. Subsequently, another notice u/s 142(1) of the Act was issued on 04.02.2015 asking for various details on the basis of which the return was filed. Admittedly, the assessee's society has been established with a view to undertake and promote activities connected with the development of cattle and buffaloes with special reference to the breeding and genetic improvement and to engage in other allied activities such as development of draught animal power systems, feed and fodder development for live stock and to extend necessary support persons including dairy farmers for carrying out any of such activities in different parts of India and generally to promote economic upliftment of the farmers segment. It appears from the records since during the assessment year 2011-12 and 2010-11 the activities of the trust was not considered as charitable in nature in view of the first proviso to Section 2(15) of the Act, show-cause was issued on 10.02.2015 as to why the activities of the trust should not be covered under first proviso to Section 2(15) of the Act taking into consideration the nature of trade of business of the assessee. The justification so furnished by the assessee was not accepted by the Learned AO and ultimately the AO held that the object of the assessee for relief of the poor but activities are rendered for advancement of other object of general public utility for which the assessee is receiving sales consideration. The activities of the assessee were no longer charitable. The surplus income over expenditure to the tune of Rs.1,64,76,190/- has therefore been treated as business income. The Learned AO has further not granted the set off of unabsorbed

depreciation on the ground that this loss was not a business loss but deficit of earlier years when provisions of Section 11 was applicable to the assessee. In appeal, the Learned CIT(A) granted full relief to the assessee by holding that the appellant is eligible for exemption u/s 11 of the Act following the order passed by his predecessor for A.Y. 2010-11 in assessee's own case. Further that, the benefit of deficit of earlier years against the income of the current year was also allowed by the Learned CIT(A) relying on the order passed by the Hon'ble Jurisdictional High Court in the case of CIT-vs-Sheth Manilal Ranchhoddas Vishram Bhavan Trust 198 ITR 598 (Guj). Hence, the appeal filed by the Revenue is before us.

3. At the time of hearing of the instant appeal the Learned Advocate appearing for the assessee submitted before us that the issue involved in this matter is squarely covered by the assessee's own case for A.Y. 2011-12 passed in ITA No.2496/Ahd/2015 with CO No.184/Ahd/2015 which was subsequently upheld by the Jurisdictional High Court in Tax Appeal No.522 of 2018 in favour of the assessee copies whereof have been placed on record before us. The Learned DR however fail to controvert such contentions made by the Learned AR.

4. Heard the respective parties perused the relevant materials available on record including the judgment relied upon by the Learned AR passed in assessee's own case. It appears that the issue involved in this particular case is similar to that of the issue decided in ITA No. 2496/Ahd/2015 with CO No.184/ahd/2015 for Asst. Year 2011-12 relevant portion whereof is as follows:

*“3. While deciding the appeal, the ld.CIT(A) held that since facts of the present case were exactly similar to the assessee's case decided by the CIT(A) in para 5.14 . The ld.AR relied on the order of the co-ordinate Bench of the Tribunal in assessee's own case, and on similar grounds, the ITAT held that we have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the facts of the assessee trust are similar to the facts of Sabarmati*

*Ashram Gaushala Trust, and in its order Hon'ble High Court's decisions have been discussed and the same is as under:*

*"We are wholly in agreement with the view of the Tribunal. The objects of the Trust clearly establish that the same was for general public utility and where for charitable purposes. The main objectives of the trust are-to breed the cattle and endeavour to improve the quality of the cows and oxen in view of the need of good oxen as India is prominent agricultural country, to produce and sale the cow milk; to hold and cultivate agricultural lands; to keep grazing lands for cattle keeping and breeding, to rehabilitate and assist Rabaris and Bharwads; to make necessary arrangements for getting informatics and scientific knowledge and to do scientific, research with regard to keeping and breeding of the cattle, agriculture, use of milk and its various preparations, etc.; to establish other allied institutions like leather work and to recognize and help them in order to make the cow keeping economically viable; to publish study materials, books, periodicals, monthlies etc., in order to publicize the objects of the trust as also to open schools and hostels for imparting education in cow keeping and agriculture having regard to the trust objects.*

*All these were the objects of the general public utility and would squarely fall under section 2 (IS) of the Act. Profit making was neither the aim nor object of the Trust. It was not the principal activity. Merely because while carrying out the activities for the purpose of achieving the objects of the Trust, certain incidental surpluses were generated, would not render the activity to the nature of trade, commerce or business. As clarified by the CBDT in its Circular No. 11/2008 dated 19th December 2008 the proviso aims to attract those activities which are truly in the regarded as business even when profit motive cannot be established/proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business. The test as prescribed in Raipur Manufacturing Company [1967] 19 STC 1 (SC) and Soi Publication fund [2002] 258 ITR 70 (SC); {2002} 126 STC 288 (SC) can be applied. The six indicia stipulated in Lord fisher [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts.*

*In view of the aforesaid enunciation, the real issue and question is tht whether the petitioner-Institute pursues the activity of business, trade or commerce. To our mind, the respondent while dealing with the said*

*question has not applied their mind to the legal principles enunciated above and have taken a rather narrow and myopic view by holding that the petitioner-Institute is holding coaching classes and that this amounts to business."*

*In the result, we do not find that the Tribunal has committed any error and the Tax Appeal is therefore dismissed."*

4. *Respectfully following the Hon'ble High Court's order and ITAT's order in assessee's own case, department allowed the claim and similar exemption was given by the department. In view of the above, we dismiss the appeal of the Revenue.*

5. *So far as CO is concerned, in CO the assessee has taken following grounds:*

3. *The Assessing officer while holding the appellant's income as business income erred in not granting set off of brought forward unabsorbed depreciation on the ground that it was deficit of earlier years which cannot be treated as business loss. It is submitted it be so held now.*

3.1 *The Assessing officer erred in holding that in earlier years, appellant would have got deduction of the capital expenditure as application of funds and set off of unabsorbed depreciation now would result in double deduction. The appellant submits that in the earlier years it has not claimed deduction of capital expenditure but had claimed only depreciation accordingly there is no double deduction. It is submitted it be so held now.*

3.2 *The Assessing officer erred in not appreciating the settled legal position that the unabsorbed depreciation can be set off against any income. It is submitted it be so held now.*

4. *The Assessing officer has erred in computing tax on the total income determined by him at flat rate of 30% in place of correct slab rate as applicable to an Association of Persons (AOP). It is submitted it be so held now.*

6. *The Assessing officer has erred in charging interest under section 234B of the Act & has erred in withdrawing interest under section 244A."*

6. *We have gone through relevant material. In connected appeal, ITA No.2496/Ahd/2015 we have given relief to the assessee and dismissed the appeal*

of the department. The ld.AR cited an order of this co-ordinate Bench in assessee's own case in ITA NO.2016/Ahd/201 and CO No.260/Ahd/2014, Asstt.Year 2010-11. It was held by the co-ordinate Bench that coming to the cross objection of the assessee, we find that the deficit shown in the earlier years is eligible to be given set off for surplus, if any for the year under consideration. Therefore, the AO is directed to allow the set off of brought forward deficit while giving appeal effect to our order. In view of the ITAT's order, we allow ground nos.1, 2 and 3 in CO. So far as ground no.4 is concerned, the same has become infructuous and as far as charging of interest under [section 234B](#) of the Act and withdrawing interest under [section 244A](#), it needs not to be adjudicated because the same is consequential.

7. In the result, the appeal of the Revenue is dismissed and CO of the assessee is partly allowed.”

The appeal preferred by the Revenue against such order dated 09.11.2017 passed by the Hon'ble Tribunal before the Hon'ble Gujarat High Court was also rejected by its order dated 11.06.2018 relevant portion is as follows:

“4. The assessee carried the matter in appeal. Commissioner of Income Tax(Appeals) allowed the assessee's appeal, upon which, the Revenue approached The Tribunal. The Tribunal by the impugned judgment, referring to the earlier judgment in case of this very assessee and relying upon the judgment of Division Bench of this Court in case of Director of Income Tax (Exemption) v. Sabarmati Ashram Gaushala Trust reported in [2014] 362 ITR 539 (Guj), rejected the Revenue's appeal.

5. In case of Sabarmati Ashram Gaushala Trust (supra), under somewhat similar background, this Court had observed as under:

"11. We are wholly in agreement with the view of the Tribunal. The objects of the Trust clearly establish that the same was for general public utility and where for charitable purposes. The main objectives of the trust are to breed the cattle and endeavour to improve the quality of the cows and oxen in view of the need of good oxen as India is prominent agricultural country; to produce and sale the cow milk; to hold and cultivate agricultural lands; to keep grazing lands for cattle keeping and breeding; to rehabilitate and assist Rabaris and Bharwads; to make

*necessary arrangements for getting informatics and scientific knowledge and to do scientific research with regard to keeping and breeding of the cattle, agriculture, use of milk and its various preparations, etc.; to establish other allied institutions like leather work and to recognize and help them in order to make the cow keeping economically viable; to publish study materials, books, periodicals, monthlies etc., in order to publicize the objects of the trust as also to open schools and hostels for imparting education in cow keeping and agriculture having regard to the trust objects.*

6. *In the result, this tax appeal is dismissed.”*

Respectfully, relying upon the order passed by the Co-ordinate Bench subsequently confirmed by the Hon’ble High Court, we dismiss the appeal preferred by the Revenue.

5. So far as Cross Objection No.63/Ahd/2017 is concerned same is consequential to the relief ask for by the Revenue. Since Revenue’s appeal is dismissed the CO becomes infructuous. Hence, the same is dismissed as infructuous.

6. In the result, revenue’s appeal is dismissed and assessee’s Cross Objection is also dismissed as infructuous.

**This Order pronounced in Open Court on**

**28/01/2019**

Sd/-  
( PRAMOD KUMAR )  
VICE PRESIDENT

Sd/-  
( Ms. MADHUMITA ROY )  
JUDICIAL MEMBER

Ahmedabad; Dated 28/01/2019  
*Priti Yadav, Sr.PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-9, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad