

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1545/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2013-14)

Deputy Commissioner of Income-tax (Exemptions) Circle-2, Ahmedabad 2 nd Floor, Nature View Building, Opp: H. K. House, Ashram Road, Ahmedabad 380009	बनाम/ Vs.	M/s. Kasturben Jagjivanbhai Bhalodia Charitable Trust., Dwarkadhish Complex, Tagore Road, Virani Chowk, Rajkot – 360 002
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABTK7076P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 1546/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2013-14)

Deputy Commissioner of Income-tax (Exemptions) Circle-2, Ahmedabad 2 nd Floor, Nature View Building, Opp: H. K. House, Ashram Road, Ahmedabad 380009	बनाम/ Vs.	Prabhudas Valjibhai Patel Smarak Trust., C/o S. N. K. School, University Road, Rajkot – 360 005
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATP3940L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./I.T.A. No. 1547/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2013-14)

Deputy Commissioner of Income-tax (Exemptions) Circle-2, Ahmedabad	बनाम/ Vs.	Lancer Army School Society, G-5, Anand Mahal
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2 nd Floor, Nature View Building, Opp: H. K. House, Ashram Road, Ahmedabad 380009		Apartment, New Rander Road, Surat - 395009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATL1730A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Vinod Tanwani, Sr. D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Prakash R. Udeshi, A.R. / Written Submission

सुनवाई की तारीख / Date of Hearing	29/03/2019
घोषणा की तारीख /Date of Pronouncement	30/04/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned three appeals have been filed at the instance of the Revenue in case of three different assesseees against the orders of the Commissioner of Income Tax (Appeals)-9, Ahmedabad ('CIT(A)' in short), dated 04.04.2017, 05.04.2017 & 03.04.2017 arising in the assessment order dated 28.01.2016, 28.01.2016 & 15.02.2016 respectively passed by the Assessing Officer (AO) under S. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

ITA No. 1545/Ahd/2017 (M/s. Kasturben Jagjivanbhai Bhalodia)

2. The ground of appeal raised by the Revenue reads as under:

"1. The Ld.CIT(A) has erred in law and on facts in directing the A.O. to allow the carry forward of deficit of Rs.66,41,691/- while there is no provision in Income-tax Act to carry forward the excess expenditure incurred by the trust during the year and set off it against the income of subsequent year."

3. The assessee is a charitable trust engaged in education services. The return filed by the assessee trust was subjected to scrutiny

assessment for the AY 2013-14 in question. In the course of the scrutiny assessment, the AO observed that the assessee trust has shown income of Rs.5,24,91,569/- and expenses of Rs.5,91,33,260/- in the return of income. It was thus found that the net result of the above income and expenses works out to 'deficit' of Rs.66,41,691/- which was claimed to be carried forward in the subsequent year for its utilization as application of income in the subsequent year. The AO disallowed the aforesaid carry forward of deficit i.e. excess application during the year to the subsequent year on the ground that Section 11 of the Act does not provide for set off of excess expenditure incurred during the year against the income of the latter years.

4. Aggrieved by the denial of carry forward of excess expenditure (excess application of income) over income, the assessee preferred appeal before the CIT(A).

5. The CIT(A) found merit in the claim of carry forward of excess expenditure and consequently reversed the action of the AO. The relevant operative para of the order of the CIT(A) is reproduced hereunder:

"4.2 I have carefully considered the rival contentions, case law relied upon and the observations made by the A.O. in the assessment order. The appellant has relied upon the order of jurisdictional High Court in the case of CIT vs Shri Plot Shwetarnbar Murtipujak Jain Mandal 211 ITR 293(Guj.) and CIT v/s. Sacred Heart Church 278 ITR 180. Hon'ble Gujarat High Court in the case of Shri Plot Shwetambar Murtipujak Jain Mandal has held as follows :-

"A bare perusal of section 11 of the Income-tax Act, 1961, shows that the 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 is to be excluded for the purposes of computing the income of the trust for the purpose of assessment There are no words of limitation in this section providing that the income should have been applied for charitable or religious purposes only in the year in which the income had arisen, The word "apply" means "to put to use" or "to turn to use" or "to make use" or "to put practical use". Having regard to the provisions of section 11 of the Act, it is clear that when the income of a

trust is used or put to use to meet the expenses incurred for religious or charitable purposes, it is applied for charitable or religious purposes. The application of the income for charitable or religious purposes takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. In other words, even if expenses for charitable and religious purposes have been incurred for the earlier year and the said expenses are adjusted against the income of a subsequent year, the income of that year can be said to have been applied for charitable and religious purposes in the year in which the expenses incurred for Charitable and religious purposes had been adjusted. There is nothing in the language of section 11(1)(a) of the Act to indicate that the expenditure incurred in the earlier year cannot be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the earlier year, would not amount to such income being applied for charitable or religious purposes. Income derived from trust property has to be determined on commercial principles and if commercial principles for determining the income are applied, it is but natural that the adjustment of the expenses incurred by the trust for charitable and religious purposes in the earlier year against 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 such adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and will have to be excluded from the income of the trust under section 11 (1) (a)."

4.3 I agree with the contention of the appellant as well as the reliance placed on the decision of Jurisdictional Gujarat High Court in the case of CIT vs Shri Plot Shwetambar Murtipujak Jain Mandal (supra) and hereby direct the A.O to allow the carry forward of deficit of Rs.66,41,691/- against future income. Accordingly, ground of appeal No.1 raised by the appellant is allowed."

6. Further aggrieved by the aforesaid action of the CIT(A), the Revenue is in appeal before the Tribunal.

7. The learned DR for the Revenue relied upon the order of the AO while the learned AR for the assessee relied upon the order of CIT(A) as well as various judicial pronouncements in this regard.

8. We have carefully considered the rival submissions. The solitary question that arises for adjudication whether the trust has incurred deficit due to excess spending on the object of the trust during the particular year and whether such past deficit should be allowed to be set off against the surplus made by the assessee in the subsequent year. The issue is no longer *res integra*. The Hon'ble

Gujarat High Court in CIT vs. Shri Plot Shwetamber Murti Pujak Jain Mandal (1995) 211 ITR 0293 (Guj) has rendered decision favourable to the assessee on the very issue. The Hon'ble Gujarat High Court has held that there is nothing in the language of Section 11(1)(a) of the Act to indicate that the income from trust property should have been applied for charitable or religious trusts only in the year in which such income has arisen. The expenditure incurred in the earlier year can be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the earlier year would amount to such income being applied for charitable or religious trusts. The Hon'ble Gujarat High Court further held that income derived from Trust property has to be computed on commercial principles and consequently deficit arising out of expenditure over income for the previous year should, therefore, be set off against surplus of income over expenditure relating to the subsequent year. Similar view has been expressed in CIT vs. Maharana of Mewar Charitable Foundation (1987) 164 ITR 439 (Raj) and CIT vs. Matriseva Trust (2000) 242 ITR 20 (Mad). Hence, the CIT(A) in our view has correctly applied the law as evolved by the judicial precedents. In the absence of any infirmity in the order of the CIT(A), we decline to interfere therewith.

9. In the result, the appeal filed by the Revenue is dismissed.

ITA No. 1546/Ahd/2017 (Prabhudas Valjibhai Patel Smarak Trust)

10. The ground of appeal raised by the Revenue reads as under:

“1. The Ld.CIT(A) has erred in directing the A.O. to allow the carry forward of deficit of Rs.2,72,31,546/- while there is no provision in Income-tax Act to carry forward the excess expenditure incurred by the trust during the year and set off it against the future income.”

11. The issue involved in captioned appeal is identical to ITA No.1545/Ahd/2017. In parity, we do not see any merit in the controversy raised by the Revenue.

12. In the result, the appeal filed by the Revenue is dismissed.

ITA No. 1547/Ahd/2017 (Lancer Army School Society)

13. The grounds of appeal raised by the Revenue read as under:

- I. The ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.3,26,272 made u/s. 40(a)(ia) of the Act and considering that the assessee was not liable to deduct tax at source from the payment made to Reliance Capital Ltd., which is non-banking finance institution.*
- II. The Ld.CIT(A) has further erred in directing the A.O. to allow the carry forward of deficit of Rs.84,73,737/- while there is no provision in Income-tax Act to carry forward the excess expenditure incurred by the trust during the year and set off it against the income of subsequent year.”*

14. Ground No.1 concerns disallowance of Rs.3,26,272/- towards interest on loan taken for vehicles from Reliance Capital Ltd. by resorting to Section 40(a)(ia) of the Act on the ground that the assessee was under statutory obligation to deduct TDS from interest payment made to above company in which the assessee has failed.

15. When the matter was called for hearing, the learned AR for the assessee submitted that the provisions of Section 40(a)(ia) of the Act are applicable only for computing business income and the same is not applicable to assessee being a charitable trust in view of the decision of the co-ordinate bench in Mahatma Gandhi Seva Mandir vs. DDIT (Exemption) (2012) 52 SOT 26 (Mum-Trib.). The learned AR accordingly submitted that interference with the order of the CIT(A) is called for.

16. In view of the issue already looked into by the co-ordinate bench in Mahatma Gandhi Seva Mandir (supra), we do not see any reason to

interfere with the order of the CIT(A). The CIT(A) has rightly held that Section 40(a)(ia) of the Act denying deduction of expenditure on the ground of non-deduction of TDS is not applicable in the case of charitable trust or institution where income and expenditure is computed in terms of Section 11 of the Act. Ground No. 1 of the Revenue's appeal is accordingly dismissed.

17. Ground No.2 is identical to the appeal of the Revenue in ITA Nos. 1545 & 1546/Ahd/2017. In parity, we do not see any merit in the controversy raised by the Revenue. Accordingly, Ground No.2 of the Revenue's appeal is dismissed.

18. In the result, appeal filed by the Revenue is dismissed.

19. In the combined result, all three Revenue's appeals are dismissed.

This Order pronounced in Open Court on 30/04/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 30/04/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।