

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

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

आयकर अपील सं./I.T.A. No. 261/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2014-15)

The Dy. Commissioner of Income-tax (Exemptions) Circle-1, Ahmedabad 2 nd Floor, Nature View Building, Nr. H. K. House, Ashram Road, Ahmedabad - 380009	बनाम/ Vs.	Dawat Properties Trust Qutbi Mazar, Syedna Qutbuddin Shaheed, Amdupura, Ahmedabad 382345
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATD1474D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mudit Nagpal, Sr.D.R.
प्रत्यर्थी की ओर से/Respondent by :	None

सुनवाई की तारीख / Date of Hearing	16/07/2019
घोषणा की तारीख /Date of Pronouncement	23/07/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-7, Ahmedabad, ('CIT(A)' in short), dated 17.11.2017

arising in the assessment order dated 28.12.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

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

“1. The Ld. CIT(A) has erred in law and on facts in allowing the benefit of the deficit of Rs.5,78,95,663/- for earlier years against the income of subsequent year in absence of any express provision in the Act regarding the same and also by overlooking the decisions in favour of revenue in this regard.”

3. The assessee is a public charitable trust and has been granted registration under s.12A(a) of the Income Tax Act. During the year under consideration, the assessee trust has claimed allowability of deficit to be carried forward amounting to Rs.5,78,95,663/-. The AO while passing the order under s.143(3) of the Act disallowed the carry forward of deficit for being set off in the forthcoming year.

4. In the first appeal against the aforesaid action of the AO, the CIT(A) allowed carry forward of excess expenses over next years.

5. Aggrieved by the order of the CIT(A), the Revenue is in appeal before the Tribunal.

6. The learned DR for the Revenue relied upon the order of the AO. None appeared on behalf of the assessee.

7. We have carefully perused the orders of the authorities below. 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 excess expenditure incurred in earlier years or in the current year by the trust could be allowed to be set off against the income of subsequent year by invoking Section 11 of the Act. 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 an 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)*. Whatever little controversy might be existing has been put to rest by the recent decision of the Hon'ble Supreme Court in the case of *CIT(Exemption) vs. Subros*

Education Society (2018) 303 CTR 1 (SC). 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.

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

This Order pronounced in Open Court on 23/07/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 23/07/2019

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 ।