

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.1012, 1013 & 1014/CHNY/2018.

निर्धारण वर्ष /Assessment years : 2008-09, 2009-10 & 2010-2011.

The Deputy Commissioner of
Income Tax,
Exemptions,
Chennai 600 034.

Vs. M/s. The Council of Seventh
day Adventist Educational
Institutions,
No.AA-148, Third Avenue,
Anna Nagar, Chennai 600 040.

(अपीलार्थी/Appellant)

[PAN AAATC 0175A]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. G.N. Raghavendra Rao, JCIT.
प्रत्यर्थी की ओर से /Respondent by : Shri. R.M. Narayanan, C.A.

सुनवाई की तारीख/Date of Hearing : 24-07-2019

घोषणा की तारीख /Date of Pronouncement : 25-07-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

There are appeals filed by the Revenue directed against common order of the Commissioner of Income Tax (Appeals)-17, Chennai ('CIT(A)' for short) dated 12.01.2018 for the Assessment Years 2008-09, 2009-10 & 2010-2011.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose the same vide this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal in ITA No.1012/Chny/2018 for assessment year 2008-09 are stated herein.

4. The Revenue raised the following grounds of appeal:

‘1. The order of the learned CIT(A) is contrary to the law and facts of the case.

2.1 The Id. CIT (A) erred in holding that the assessee is eligible to set off of brought forward excess application of funds to subsequent years.

2.2 The Id. CIT (A) failed to observe that there is no provision in the Income Tax Act which allows for determination of loss u/s 11 and carry forward of the same to subsequent year to be set off against income of the subsequent year.

2.3. The CIT(A) failed to observe that the income of the trust is not computed on the principles of business income which contains the provisions of carry forward of losses of earlier year and set off such losses against the income of the current year.

2.4 The Id. CIT(A) failed to consider the decision of ITAT, Delhi in the case of Pushpawati Singhania Research Institute for Liver, Renal & Digestive Diseases vs Dy.DIT (2009)29 SOT 316, ITAT, Chennai decisions in the case of Anjuman-E-Himayath-Islam vs.ADIT(Exemption) - IV, Chennai for the A.Y. 2009-10 reported in[2015] 59 taxmann.com 379 and M/s Inter Church Service Association in ITA NO.1253/Mds/2014 dated 05/02/2016.

2.5 The Id.CIT(A) failed to observe that carry forward of excess application of funds would result in notional application of income in subsequent year which is not permissible in law.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored’.

5. The brief facts of the case are as under:

The respondent-assessee namely ‘M/s. The Council of Seventh day Adventist Educational Institutions’ is a trust duly registered under the provisions of Section 12A of the Income Tax Act, 1961 (in

short 'the Act') and it is running educational institutions. The return of income for the assessment year 2008-09 was filed on 26.05.2009 disclosing total income of ₹42,07,29,087/- before claiming exemption u/s.11 of the Act. Against the said return of income, the assessment was completed by the Income Tax Officer, (OSD) Exemptions III, Chennai (hereinafter called "AO") vide order dated 31.12.2010 passed u/s. 143(3) of the Act without allowing the depreciation on application of income, placing reliance on the decision of Hon'ble Supreme Court in the case of *CIT vs. Escorts, 199 ITR 43*.

6. Being aggrieved, an appeal was preferred before the Id. CIT(A), contending that depreciation should be allowed on commercial principles and excess application of income on earlier years should be allowed to be carried forward and set off against subsequent year income. Ld. CIT(A) placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of *Medical Trust of the Seventh Day Adventists vs. DIT, Exemption-III, Chennai* in TCA No.949 of 2015 and 771 of 2016 dated 08.08.2017 directed the Assessing Officer to allow depreciation as application of income and also directed the Assessing Officer that excess application of income in earlier years should be allowed set off against current year income placing reliance on the judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. Matriseva Trust, 242 ITR 20* and Hon'ble Madhya Pradesh High

Court in the case of *CIT vs. Gujrati Samaj*, 213 Taxman 182, allowed the appeal of the assessee.

7. Being aggrieved by the decision of the CIT(A) in allowing set off of excess application of income in earlier years, the Revenue is in appeal before us in the present appeal.

8. It is contented that there is no provisions in the Income Tax Act allowing excess application of income to carry forward and set off against income of the trust in the subsequent years. Therefore, it is submitted that the Id. CIT(A) ought not have allowed set off of excess application of income of earlier years against the current year income.

9. On the other hand, the Id. Authorised Representative relied on the decisions of Hon'ble Jurisdictional High Court in the cases of *CIT vs. Matriseva Trust*, (2003) 128 Taxman 261 and *DIT, Exemption II and Chennai vs. Medical Trust of the Seventh Day Adventists*, (2017) 84 taxmann.com 202.

10. We heard the rival submissions and perused the material on record. The issue in the present appeal is whether or not excess application of income in earlier years can be carried forward for the purpose of set off against income of the trust in the subsequent years. Though there is no provision under the Income Tax Act to allow such excess application of income forward to the charitable trust in the

subsequent years. However, the Jurisdictional High Court in the case of Matriseva Trust (Trust) decided the issue in favour of the assessee and the relevant position of the judgment held as follows:

'5. With regard to the second question, the Tribunal has held that the trust is entitled to set off the amount of excess application of the last year against the deficiency of Rs. 82,516 of the present assessment year.

When similar questions came up before the Rajasthan High Court and the Gujarat High Court in the cases of CIT v. Maharana of Mewar Charitable Foundation [1987] 164 ITR 439 and CIT v. Shri Plot Swetamber Murti Pujak Jam Mandal [1995] 211 ITR 239, respectively, both the Rajasthan High Court and the Gujarat High Court have answered the questions in favour of the assessee and against the revenue.

Even the Hon'ble Supreme Court in the case of *CIT (E) vs. Subros Educational Society, (2018) 166 DTR 257* upheld the same proposition of law. However, from the perusal of the assessment order, we do not find any taxable income which is required to be set off, against excess application of income in the earlier years. Similarly, there is no material shown to us showing the availability of excess application of income which is eligible to be carried forwarded to the subsequent years. Further, material point that to be noted that excess application of income is required to be determined in the years of application of income in the earlier years. Therefore, we remand the matter back to the file of the Assessing Officer for limited purpose of verifying availability of excess application of income in the earlier years, if so available the same should be allowed to be carry forward to the

subsequent years for set off against the income in the subsequent year. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

ITA Nos.1013 & 1014/Chny/2018, for A.Y 2009-10 and 10-11

8. Since, the facts in the present appeals are identical to the facts in ITA No.1012/Chny/2018, for the reasons mentioned therein, we partly allow the appeals for statistical purpose on the above lines indicated in appeal ITA No.1012/Chny/2018 supra. Hence, the above captioned appeals filed by the Revenue are partly allowed for statistical purposes.

11. In the result, the appeals filed by the Revenue are partly allowed for statistical purposes.

Order pronounced on 25th day of July, 2019, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 25th July, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |