

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

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

आयकर अपील सं./I.T.A. No. 2379/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2014-15)

Deputy Commissioner of Income-Tax (Exemptions) Circle-1, 2 ND Floor, Nature View Building, Near H. K. House, Ashram Road, Ahmedabad - 380009	बनाम/ Vs.	Kantilal Jaikishandas Choksi Charitable Trust Madhuban, Opp. Gujarat College, Madalpur, Ellisbridge, Ahmedabad 380006
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATK1759N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri L. P. Jain, Sr.D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri P. M. Mehta, A.R.

सुनवाई की तारीख / Date of Hearing	23/09/2019
घोषणा की तारीख /Date of Pronouncement	04/10/2019

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)-4, Ahmedabad (CIT(A)' in short), dated 16.08.2017 arising in the assessment order dated 19.12.2016 passed by the Assessing Officer (AO)

under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

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

- “1. *The Ld. CIT(A) has erred in the law and on facts in allowing carry forward excess expenditure of Rs.12,60,38,028/- for future years against its future income in absence of any express provision in the act regarding the same.*
- 2 *That the Ld. CIT(A) has erred in law on facts by adjudicating on an income which is not relevant for the year under consideration as the Hon'ble Supreme Court has absolved that the set-off of carry forward losses would be governed by the law as existing in year such of set off.*
- 3 *On the facts and circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the order of the Assessing Officer.”*

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 set off of deficits of Rs.12,60,38,028/- arising on excess application of income in various assessment years upto this year against its income to be generated in subsequent years. The AO while passing the assessment order under s.143(3) of the Act disallowed carried forward deficit for being set off alleging absence of any express provisions in the Income Tax Act regarding the same.

4. In the first appeal against the aforesaid action of the AO, the CIT(A) allowed carry forward of excess expenses over next years as application for charitable purposes under s.11(1)(a) of the Act.

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

7. We have carefully considered the rival submissions. The solitary question that arises for adjudication is whether where the trust has incurred deficit due to excess spending on the object of the trust during a particular year is eligible for carry forward and 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 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)*. 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. We also notice that identical issue came up in assessee's own case in AY

2012-13 where the claim of the assessee trust towards excess expenditure as application of income was endorsed by the co-ordinate bench and consequently, the appeal of the Revenue was dismissed in identical set of facts. We thus find no infirmity in the order of the CIT(A) and hence, we decline to interfere therewith.

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

This Order pronounced in Open Court on 04/10/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 04/10/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / 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 ।