

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)  
And Saktijit Dey (Judicial Member)]**

ITA No. 3166/Mum/2018  
Assessment year: 2012-13

**Deputy Commissioner of Income Tax (E)-2 (1)** ..... **Respondent**  
*Mumbai*  
**Vs**

**Saifee Burhani Upliftment Trust,** ..... **Appellant**  
*19<sup>th</sup> Floor, Husaini Towers,  
43/45, Raudat Tahera Street,  
Bhendi Bazar, Mumbai 400003  
[PAN: AAITS3160K]*

**Appearances by**

**B. Jaya Kumar** for the respondent  
**Madhur Agarwal** for the appellant

Date of concluding the hearing: September 17<sup>th</sup>, 2019  
Date of pronouncement : December 16<sup>th</sup>, 2019

**ORDER**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 23<sup>rd</sup> February 2018, passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act 1961, for the assessment year 2012-13.

2. In Ground no. 1 the Assessing Officer has raised the following grievance:-

1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was erred to allow carry forward of deficit of Rs. 172,05,98,772/-, and directing the Assessing Officer to allow carry forward of deficit on account of excess expenditure without appreciating the fact that this would have the effect of granting double benefit to the assessee, first as 'accumulation' of income u/s 11(1)(a) or as corpus donation u/s 11(1)(d) in earlier years/current year and then as 'application' of income u/s 11(1)(a) in the subsequent years which was legally not permissible. ?

3. Learned representatives fairly agree that this issue is now covered in favour of the assessee by the Hon'ble Supreme Court judgement in the case of **CIT vs. Rajasthan and Gujarati Charitable Foundation [2018] 402 ITR 441 (SC)**. In this view of the matter, the conclusions arrived at by the Ld. CIT(A) do not call for any interference and the grievance raised by the Assessing Officer is required to be dismissed.

4. Ground no. 1 is therefore dismissed.

5. In the second ground of appeal the Assessing Officer has raised following grievance.

"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was erred in allowing the claim of the assessee for carry forward of the said deficit by relying upon the judgment of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection, ignoring the fact that the Department has not accepted the said decision of the jurisdictional High Court on merit of the case, but due to smallness of tax effect appeal was not filed before Hon'ble Supreme Court. However, on this issue the department has filed SLP

**before the Apex Court in the case of MIDC (SLP-(Civil) 9891 of 2014) in which leave has been granted by the Hon'ble Apex Court and the case has not reached finality.**

6. There is no dispute, as evident from a plain reading of ground of appeal itself, that the issue in appeal is covered in favour of the assessee by Hon'ble Jurisdictional High Court judgement in the case of **CIT vs Institute of Banking and Personnel Selection [131 Taxman 386 (203) Bombay HC]**. The mere fact that judgment of the Hon'ble Jurisdictional High Court is challenged before the Hon'ble Supreme Court does not dilute or curtail binding nature of the Hon'ble High Court judgement. There is thus no error in learned CIT(A)'s following the aforesaid relief and granting the impugned relief. We, therefore, decline to interfere in the matter.

7. Ground No. 2 is also dismissed.

8. In the result, the appeal is dismissed. Pronounced in the open court today on the 16<sup>th</sup> of December, 2019

Sd/-  
**Saktijit Dey**  
(Judicial Member)

Sd/-  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 16<sup>th</sup> of December, 2019**

*Nishant Verma Sr.PS*

Copies to: (1) The appellant (2) The respondent  
(3) CIT (4) CIT(A)  
(5) DR (6) Guard File

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Mumbai benches, Mumbai*