

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.216/M/2019
Assessment Year: 2013-14**

M/s. Piramal Foundation for Education Leadership, Piramal Tower, Ganpatrao Kadam Marg, Lower Parel (W), Mumbai – 400 013 PAN: AAGCP1673D	Vs.	DCIT (Exemption)-2(1), Room No.519, 5 th Floor, Piramal Chambers, Lal Baug, Parel, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ronak Doshi, A.R.
Revenue by : Ms. Shreekala Pardeshi, D.R.

Date of Hearing : 05.11.2020
Date of Pronouncement : 14.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 30.10.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in restricting the set off of deficit of earlier years against the surplus of current year on the ground that the Appellant was not registered for the entire year in which the deficit arose.

2. The Appellant prays that the AO be directed to allow the set off of entire brought forward deficit of earlier years amounting to Rs.3,29,49,480/- against the surplus of current year.

Without Prejudice to Ground No.1:

Ground No.2: Lower Deduction of Accumulation of Income Applied for in Form 10 u/s 11(2) of the Act:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not adjudicating and therefore, not allowing deemed accumulation u/s 11(2) of the Act to the extent claimed vide Form 10 even though the same was in compliance with the provisions of section 11(2) of the Act.
2. The Appellant prays that the CIT(A)/AO be directed to give effect in full to the Form 10 in accordance with section 11(2) of the Act.”
3. The issue raised in first ground of appeal is that the Ld. CIT(A) has erred in restricting the set off of deficit of earlier years against the surplus of current year on the ground that appellant was not registered for the entire earlier year in which the deficit was incurred.
4. The facts in brief are that the assessee claimed an amount of Rs.3,29,49,480/- as brought forward deficit for setting it off in future years. According to the AO since the assessee trust has obtained the registration and status of charitable trust on 27.03.2012 and therefore came to conclusion that expenses incurred prior to 31.03.2012 could not be allowed to assessee as the trust was not granted registration w.e.f. 27.03.2012 and thus denied set off to the tune of Rs.3,29,49,480/- by framing assessment under section 143(3) of the Act vide order dated 18.03.2016.
5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee on this issue by observing and holding as under:

“6.3 I have considered the facts of the case, oral contentions and written A submissions of the assessee and discussion of the AO in the assessment order It is seen that the issue is covered in favour of the assessee by the order of Hon'ble jurisdictional High Court in the case of DIT(E) vs MIDC (supra) wherein placing reliance on the decision of CIT vs. Institute of Banking (264 ITR 110) the Hon'ble High Court has dismissed the appeal filed by the department on the issue of carry

forward of deficit. This fact has been mentioned even by the AO at the last para of para no.4.1 of the assessment order. The AO therein has observed that the department has filed SLP before the Apex Court against such decision of the Hon'ble Bombay High Court and the matter is pending before the Hon'ble Supreme Court. Under these facts and circumstances, there remains no dispute that the issue is covered in favour of the appellant by the decision of Hon'ble jurisdictional High Court in the aforesaid cases. Further, the issue also has been decided by the Hon'ble Supreme Court in the case of CIT(E) vs. Subros Educational Society in Misc. Appeal No.941 of 2018 in Civil Appeal No.5171 of 2016 wherein the Misc. Application filed by the department has been dismissed. In view of such facts and circumstances of the case and in view of the decisions of Hon'ble jurisdictional High Court and the Hon'ble Apex Court, the action of the AO in not allowing carry forward of deficit of earlier years and set off there of as also not allowing loss of current year be carried forward for adjustment in subsequent years is not found justifiable.

6.3.1. In view of the findings given herein above, the deficit of the appellant of the current year as well as of the earlier year is allowable in principle to be carried forward for set-off. However, at para 4.2 of the assessment order, the AO has noted that the trust has obtained Registration and status of Charitable Trust on 27.03 2012. Therefore, it was not possible to apply income from property of the trust of the current financial year towards the expenses in the earlier year and therefore the claim of application of income towards object of the trust in the earlier year was not acceptable. The appellant in their submission have contended that though registration certificate has mentioned that registration is granted w.e.f. 27.03.2012, the same dates back to the date of their application which was 09.09.2011. The appellant trust placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT v. Radomir Dzelatovic (206 ITR 320) (supra) to support its contention. In this regard, it is stated that in the said decision the Hon'ble Bombay High Court had held that when the assessee was entitled to the benefit of exemption u/s 10(6)(vna)(B) of the Act, the same cannot be denied simply because there was delay on the part of the Central Govt. in granting the statutory approval required under that section though application for approval was made well within the time, and that the approval so granted would relate back to the date of application. It is, therefore seen that what the Hon'ble High Court has held is that the benefit of exemption would date back to the date of application, provided the assessee otherwise was entitled for exemption for which the application was made. It is seen, in this case Certificate u/s 12AA(1)(b)(i) of the Act is dated 30.03.2012 but para 1 of the said certificate clearly mentions that registration is granted w.e.f. 27 03.2012 The difference in these two dates i.e., the date of certificate and the grant of registration w.e.f. a different date clearly would suggest that the needed compliance or the requirements which may have been required or the allowability for registration by the registration granting authority must have found to be from 27.03 2012. Had it been a situation that only date of issue of certificate of registration was mentioned in the certificate so issued, the assessee could have been said to be entitled for the claim registration w.e.f. the date of application as per the decision of the Hon'ble Bombay High Court in the case of CIT v. Radomir Dzelatovic(Supra). However, the facts of the case are not so. Accordingly, the contention of the assessee that its registration should be deemed to have been

granted w.e.f. the date of application is not found to be acceptable and the decision relied by the appellant is found to be distinguishable on the facts as mentioned hereinabove. The AO is accordingly directed to work out the deficit for its allowability and for carry forward, as may have been incurred by the assessee on and after 27.03.2012 and allow the same.

This ground of appeal is accordingly treated as partly allowed.”

6. After hearing both the parties and perusing the material on record, we observe that in this case the Ld. CIT(A) has rightly rejected the claim of the assessee in not allowing the setting off of deficit incurred during the period during which the assessee was not registered as charitable trust. In other words, the deficit relates to the period which falls prior to the date of granting registration i.e. 27.03.2012. In our opinion the order of Ld. CIT(A) is very reasoned and speaking one passed after taking into consideration the decisions of Supreme Court decision & High Courts in the cases as discussed above in the appellate order. We are, therefore, inclined to dismiss the ground No.1 raised by the assessee.

7. The issue raised in ground No.2 is without prejudice ground in which the assessee has challenged the order of Ld. CIT(A) on the ground that Ld. CIT(A) has not adjudicated the issue of accumulation under section 11(2) to the extent claimed vide Form 10.

8. After hearing both the parties and perusing the material on record, we observe that Ld. CIT(A) has not adjudicated this issue at all by holding that this is without prejudice ground, however, the said finding of the Ld. CIT(A) is not correct and therefore we are restoring the issue back to the file of Ld. CIT(A) on the issue of accumulation u/s 11(2) of the Act to be decided afresh as per

the facts and law of the case. Accordingly, ground No.2 is allowed for statistical purposes.

9. The appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 14.12.2020.

**Sd/-
(Mahavir Singh)
VICE PRESIDENT**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 14.12.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.