

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 4562/Del/2018
(Assessment Year: 2015-16)

DCIT, Exemption Circle, Ghaziabad.	Vs.	M/s. Fateh Chand Charitable Trust, 115 Km., NH-58, Delhi Road, Muzaffar Nagar. PAN: AAATF1445N
(Appellant)		(Respondent)

Assessee by :	Shri Ramit Kakkar, Advocate;
Department by :	Shri J. K. Mishra [CIT] – D. R.;
Date of Hearing :	29/09/2021
Date of pronouncement :	29/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Dy. Commissioner of Income Tax, Exemption Circle, Ghaziabad, against the order passed by the office of Commissioner of Income Tax (Appeals), MuzaffarNagar, dated 10.04.2018 for assessment year 2015-16.
2. The only ground of appeal raised is that the Id. CIT (Appeals) has erred in allowing claim of carry forward of losses to the appellant.
3. The brief facts of the case shows that assessee is a charitable trust running educational institute, filed its return of income on 29.09.2015 declaring 'NIL' income. The assessee is registered under Section 12AA of the Income Tax Act, 1961 (the Act). Assessee is running Medical college, Nursing college and also running a hospital.
4. Assessment under Section 143(3) of the Act was passed on 18.12.2017 computing the income of the assessee at Rs. 'NIL'.

5. During the year the assessee has carried forward sum of Rs.117.53 crores from earlier years. The same was not allowed as a set off against the current year's income of the assessee. Thus, assessee is aggrieved amongst others with this issue also.
6. Assessee preferred an appeal before the Id. CIT (Appeals) stating that assessee has claimed brought forward losses of Rs.117.53 crores along with current loss of Rs.11.17 crores. This is excess of expenditure over income of the assessee for the previous year as well as the current year respectively. This detail was submitted by the assessee vide letter dated 30th September, 2015 and requested the Assessing Officer that same shall be allowed for carry forward to assessment year 2016-17. The Id. Assessing Officer did not allow such carry forward of losses. It was stated that the identical issue in the case of the assessee has been decided by the co-ordinate bench for assessment years 2006-07 and 2008-09 in ITA. No. 1665/Del/2012 and ITA. No. 290/Del/2012, which was allowed by the ITAT vide order dated 17.01.2014. The Id. CIT (Appeals), therefore, following the decision of the co-ordinate bench in the case of the appellant itself allowed carry forward and set off of the losses. Thus, the Revenue is aggrieved by the above order in this appeal.
7. The Id. CIT-DR vehemently supported the order of the Assessing Officer whereas the Id. AR relied upon the order of the CIT (Appeals) as well as the order of the co-ordinate bench in assessee's own case for assessment years 2006-07 and 2008-09.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. It is apparent that assessee has excess application of income in earlier years and has claimed that such excess application of earlier years should be allowed to be adjusted as application of income in subsequent years. This issue has been decided by the co-ordinate bench in assessee's own case for assessment years 2006-07 and 2008-09 as stated above. This issue is also squarely covered in favour of the assessee by the decision of Hon'ble Supreme court Court in the case of DCIT (Exemption) New Delhi Vs. Subros Educational Society [2018] 96 taxmann.com 652 (SC)/[2018] 303 CTR 1 (SC) . In view of this, we do not find any infirmity in the order of the Id. CIT (Appeals). Thus, we hold that the Id. CIT (Appeals)

has correctly directed the ld. Assessing Officer to allow the excess application of income being excess of expenditure over income of the previous year to be set off against the income of the current year. Thus, we dismiss the solitary ground of appeal. Accordingly, appeal of the Assessing Officer is dismissed.

Order pronounced in the open court on : 29/09/2021.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 29/09/2021.

MEHTA

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1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	29.09.2021
Date on which the typed draft is placed before the dictating member	29.09.2021
Date on which the typed draft is placed before the other member	29.09.2021
Date on which the approved draft comes to the Sr. PS/ PS	29.09.2021
Date on which the fair order is placed before the dictating member for pronouncement	29.09.2021
Date on which the fair order comes back to the Sr. PS/ PS	29.09.2021
Date on which the final order is uploaded on the website of ITAT	29.09.2021
date on which the file goes to the Bench Clerk	29.09.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	