

THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri C.N. Prasad (JM)

I.T.A. No. 1941/Mum/2020 (Assessment Year 2015-16)

DCIT(Exemption)-2(1) Room No. 519 Piramal Chambers Lalbaug, Lower Parel Mumbai-400 012.	Vs.	Saifee Burhani Upliftment Trust 47-49, Raudat Tahera Street Bhendi Bazar Mumbai-400 003. PAN : AAITS3160K
(Appellant)		(Respondent)

Assessee by	Shri Z. Latifjiwala
Department by	Ms. Sunita Billa
Date of Hearing	03.11.2021
Date of Pronouncement	08.11.2021

ORDER

Per Shamim Yahya (AM) :

This appeal by the Revenue is directed against the order of learned CIT(A) dated 27.2.2020 pertains to assessment year 2015-16.

2. The grounds of appeal read as under :-

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of the assessee for carry forward of deficit, ignoring the fact that there is no express provisions in the Income Tax Act, 1961 allowing such claim, and 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 corpus donation u/s 11(a)(d) in earlier/current year exempt income u/s 10(34), and then as application of income u/s 11(1)(a) in subsequent years which is legally not permissible?".

2. "The appellant prays that the order of the Commissioner of Income Tax (Appeals)-1, Mumbai be set aside and that of the Assessing Officer be restored".

3. At the outset both the parties fairly agreed that issues raised stand covered in favour of the assessee. We may gainfully refer to learned CIT(A)'s order as under :-

“6.1 The assessee had claimed carry forward of deficit of Rs. 182.45 crores. The AO, for the reasons given at Para 4 of the assessment order, held that there is no provision in the Act which allows carry forward of such deficit. The AO took note of the assessee's reliance on the decision of Bombay High Court in the case of DIT(E) vs. MIDC (ITA No.2652 of 2011) [wherein reliance was placed on the decision of CIT vs. Institute of Banking (264 ITR 110)J but the AO noted that the department has filed SLP before the Apex Court in Civil Appeal No.9891 of 2014 and the matter was pending final decision. In view of the above, the AO disallowed the carry forward of assessed loss.

6.2 During the course of appellate proceedings, the AR of the appellant has made written submissions. The relevant extracts from the same are reproduced below :-

It is pertinent to mention that the aforementioned decision of the Bombay High Court on the issue has been affirmed by the Supreme Court and SLP of the Department dismissed In fact a Batch of appeals had been decided by the Supreme Court against the Department in the leading case of CIT V/s Rajasthan and Gujarati Charitable Foundation (2018) 402 ITR 441 (SC)- copy attached. However Department had filed Miscellaneous Application in the case of Commissioner of Income tax (exemption) New Delhi v/s Subros Educational Society) (303 CTR 1(SC); 166 DTR 257 (SC) miscellaneous application no. 941/2018 in civil appeal no 5171/2016 which was disposed of by the Hon'ble Supreme court.

Thus the issue involved in this appeal is settled in favour of the Appellant by the decision of the Supreme Court. It is now well settled principle of law that in computing income of a Trust/Institute under section 11 to 13 of the Income-tax Act 1961 the excess application in earlier year (Deficit) can be set off against the income in subsequent year (s).

It is pertinent to mention that for assessment year 2014-15 your predecessor has also decided the issue in favour of the Appellant even before the decision of the Supreme Court by following the decision of the jurisdictional High Court of Bombay in the case of CIT vs Institute of Banking and Personnel Selection [131 Taxman 386 (203) Bombay High Court]. (Copy of the order in Appeal No CIT(A)-1/IT/DCIT(E)-2(1)/144/2016-17 dated 28.03.2018 is attached).

6.3 I have considered the facts of the case, oral contentions and written submissions of the assessee and discussion of the AO in the assessment order. It is seen that the issue is squarely covered in favour of the assessee by the order of 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 appeal filed by the Revenue on the issue of carry forward of deficit was dismissed.

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 on this issue stands dismissed. Further, the same issue has been decided by the CIT(A) and the ITAT in favour of the appellant in A.Y. 2012-13 in the appellant's own case. 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 and current years and set off against future incomes in subsequent years is not found justifiable. Accordingly, both the grounds of appeal are allowed. However, for working out the deficit for the year, the benefit of accumulation of 15% of the income shall not be allowed to the assessee as has been held by the CIT(Appeal) in A.Y. 2014-15. This may be verified by the AO."

4. We note that ITAT in assessee's own case for A.Y. 2012-13 has held as under :-

"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 ITA No. 3166/Mum/2018 Assessment year: 2012-13 Page 3 of 4 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.
5. Since facts are identical, respectfully following the precedent in assessee's own case as well as decision of Hon'ble Jurisdictional High Court and Hon'ble Supreme Court, we uphold the order of learned CIT(A).
6. In the result, appeal filed by the Revenue stands dismissed.

Pronounced in the open court on 8.11.2021.

SD/-
(C.N. PRASAD)
JUDICIAL MEMBER

SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 08/11/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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