

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “C” BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI P.K.KEDIA, ACCOUNTANT MEMBER**

**ITA No.6398/Del/2018  
[Assessment Year : 2015-16]**

DCIT, Exemption Circle, Ghaziabad.	vs	G.T.B. Charitable Trust, 227, West End Road, Meerut. PAN-AAATG1992R
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		Shri Kumar Padmapani Bora, Sr.DR
<b>Respondent by</b>		Shri Ramit Kakkar, Adv.
<b>Date of Hearing</b>		30.11.2021
<b>Date of Pronouncement</b>		04.01.2022

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the Revenue for the assessment year 2015-16 is directed against the order of Ld. CIT(A), Meerut dated 13.07.2018.

The Revenue has raised following grounds of appeal:-

1. *“The Ld.CIT(A) has erred in law and facts in allowing carry forward/set off of excess application of previous year while such excess utilization is not an allowable application, as per the provisions of I.T.Act.*
2. *The order of Ld.CIT(A) be cancelled and the order of the AO be restored.”*
2. Facts in brief are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income tax Act, 1961 (“the Act”) was framed vide order dated 29.11.2017. While framing the assessment, the Assessing Officer (“AO”) observed that during the year under consideration, the assessee disclosed total receipt of Rs.6,68,63,189/- against which total

revenue of Rs.4,89,67,077/- excluding depreciation has been claimed and surplus has been worked out to Rs.1,78,96,112/- in the income and expenditure account of the assessee. The AO observed that the assessee society had total receipts of Rs.6,68,63,189/- during Financial Year 2014-15. The assessee was required to apply Rs.5,68,33,710/-. However, the assessee applied excess amount of Rs.14,67,369/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the claim of the assessee.

4. Aggrieved against this, the Revenue is in appeal before this Tribunal.

5. At the outset, Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the Tribunal In ITA No.3028/Del/2015 pertaining to Assessment Year 2010-11 wherein the claim of the assessee was allowed.

6. Per contra, Ld. Sr. DR opposed these submissions and supported the assessment order.

7. We have heard the rival submissions and perused the material available on record and gone through the orders of the authorities below. We find that Ld. CIT(A) has decided the issue by observing as under:-

**4. Decision and Reasons:-**

*“I have gone through the assessment order as well as the submission of the assessee. It is true that section 11 to 13 are a self contained code in itself and are, infact, special provisions dealing with*

*taxation of trust and society etc that are registered in section 12AA of the Income Tax Act.*

*I have noticed that the Hon'ble Bombay High Court in the case of CIT vs Institute of Banking 264 ITR 110 had held that the Hon'ble Tribunal was right in directing the AO to allow depreciation of the asset, the cost of which had been fully allowed as application of income u/s 11 of the Income Tax Act in the past years. I have also noticed that before the Hon'ble High Court, the revenue had pleaded that allowing the depreciation would tantamount to a double deduction because the cost of asset had earlier been allowed as application of income already.*

*The Hon'ble High Court while negating the revenue's plea, went on to hold in favour of the assessee on the principal that income of any trust had to be computed commercially and so doing since there is no saving clause u/s 11 to 13 which would serve as rider to allowances of depreciation u/s 32 , the same must be allowed.*

*In CIT Vs Trustees of Seth Merwanjee Framji Panday Charitable Fund Trust, Bombay, The Hon'ble Judges have held as under:- "whether the tribunal was justified in holding that in working of the trust for application of section 11, the assessee was entitled to carry forward the deficit of the earlier years and settle it off against the surplus of the subsequent years?"*

*In view of the judgment in the case of CIT Vs Institute of Banking decided on 9<sup>th</sup> July 2003 vide ITR 197 of 1997 the question is answered in the affirmative i.e in favour of the assessee and against the department.*

*I have further noticed that set off of future income against application of past years surplus expenditure has been held possible in CIT V s Matri Sewa Trust 242 ITR 20 (Madras) and CIT Vs Shri Plot Swetambar Murti Poojak Jain Mandal 211 ITR 293 (Gujarat).*

*I have not been able to lay hands on any judgment of the jurisdictional High Court either way. I feel that the judicial opinion is that income of a trust must be computed commercially and if while doing so, a*

*loss due to surplus expenditure results, the same has to be appreciated and taken care of and cannot just be brushed aside especially when income is computed u/s 11-13 and since a loss cannot go beyond the provisions of section 80AB, in a given case, the net income may at best, work out to be nil, but in such a case, the remaining loss stares in the face for recognition.*

*A reference to the provisions of section 11-13 and section 72, if made collectively, makes it clear that there is no bar in either of the sections against computing, carry forward and set off of loss or surplus of expenditure over income. I, therefore, find that the contention of the assessee is correct and the loss of Rs (-) 1,37,33,288/- deserves to be brought forward, set off from the current income and if any excess spills over, it be earned forward to the subsequent years.*

*I am further fortified in my above finding by various judgments of the Hon'ble ITAT Delhi benches which have consistently held in favour of the assessee on this issue.*

*A similar issue was in question for the A!Y 2010-11 also in the case of the assessee itself, and the ITA T vide its order dated 27-07-2015 in appeal number 3028/Del/201.5 has duly allowed the loss as claimed by the assessee to be carried forward to the next year.*

*In the case of Director of Income Tax v. Raghuvanshi Charitable Trust [2011] 197 Taxman 170 (Delhi) it has been held that Section 11 of the Income Tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under - Whether a trust can be allowed to carry forward deficit of current year and to set off same against income of subsequent years - held, yes- whether adjustment of deficit of current year against income of subsequent year would amount to application of income of trust for charitable purposes in subsequent year within the meaning of section 11(1 )(a)- held yes.*

*Thus following the rule of consistency and in respectful agreement with the aforesaid order of the Honorable ITAT, I allow the surplus/loss of*

*Rs (-) 1,37,33,288/-as brought forward from earlier years be allowed to be carry forward to A.Y 2016-17. The AO is directed to compute the figures accordingly and allow the same to be carried forward to A/y: 2016-17. In regards to grounds nos 2 and 3, I hold that the AO has rightly not allowed the claim of "Decrease in Current Liabilities", "Decrease in Current Assets" as well as "repayment of loan and has not considered them while calculating the "Application of Income" . According to me, the assessee have already been taken effect of the same in revenue and capital expenditure claimed in the "Application of income " and allowing the same would tantamount to double deduction. Thus this ground of appeal is rejected."*

8. The Revenue has not disputed that the identical issue has been decided by the SMC Bench of this Tribunal in ITA No.3028/Del/2015 in favour of the assessee. Moreover, the Revenue has not brought to our notice any other binding precedent in favour of Revenue on this point. Therefore, we do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 04<sup>th</sup> January, 2022.

**Sd/-**

**(P.K.KEDIA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI