

आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SRI KULDIP SINGH, JM AND SRI PRASHANT MAHARISHI, AM

आयकर अपील सं./ ITA No. 17/Mum/2021

(निर्धारण वर्ष / Assessment Year 2011-12)

Dy. Commissioner of Income Tax (Exemption)-2(1), Room No. 519, 5 th Floor, Piramal Chambers, Lalbaug, Lower Parel, Mumbai-400 012	बनाम / Vs.	M/s UTI Institute of Capital Markets (Now known as M/s National Institute Securities Markets) NISM Bhavan, Plot NO. 82, Sector 17, Vashi, Navi Mumbai-400 705
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAAN4685M		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri Achal Sharma, DR

सुनवाई की तारीख / Date of hearing:	30.12.2021
घोषणा की तारीख / Date of pronouncement:	06.01.2022

आदेश / ORDER

प्रशांत महर्षि, लेखा सदस्य के द्वारा /
PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Dy. Commissioner of Income Tax (Exemption) 2(1), Mumbai against the order passed by the Commissioner of Income Tax (Appeals)-1, Mumbai [in short 'the CIT(A)'] on 19.08.2020, wherein the appeal filed by the assessee against the assessment order passed under section 143(3) of the Income-Tax Act, 1961 (hereafter referred as 'Act') dated 19.03.2014 was allowed.

02. The only issue raised by the learned Assessing Officer is allowance of carry forward of deficit to the assessee's trust.
03. The brief facts of the case shows that the assessee is a trust registered under section 12A of the Act and also with the Charity Commissioner, Mumbai. The assessee filed its return of income on 29.09.2011 having a total income of Rs. 3,93,86,346/-. The assessment order was passed under section 143(3) of the Act by the learned Assessing Officer on 19.03.2014 determining the total income of the assessee as nil. The learned Assessing Officer disallowed the deficit carry forward from the earlier years amounting to Rs. 1,50,38,577/- and also current years under deficit of Rs.3,93,86,346/-. The Assessing Officer rejected the claim holding that the provision 11 of the Act does not permit the determination of deposit.
04. Aggrieved by that order assessee preferred the appeal before the learned CIT(A) , who allowed the claim of the assessee following the decision of the Hon'ble Jurisdictional High Court in the case of DIT(Exemption) vs. MIDE in ITA No. 2652 of 2011 dated 20.03.2013, wherein following the decision of CIT vs. Institute of Banking Personnel Selection (2003) 264 ITR 110 (Bom), the claim of the assessee was allowed. The learned CIT(A) also noted that 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 has allowed the

claim of the assessee. Therefore, he passed an order allowing the deficit of the assessee to be carried forward. The learned Assessing Officer is aggrieved and has preferred this appeal before us.

05. The learned DR supported the order of the learned Assessing Officer.
06. Despite notice, none appeared on behalf of the assessee and therefore, the issue is decided on the merits of the case as per information available on record.
07. We have carefully considered the contentions of Id DR and perused the orders of the lower authorities. Vide Para No. 7.3.1 the learned CIT(A) has allowed the deficit to the assessee to be carried forward following the decision of the Hon'ble Jurisdictional High Court. He also supported such decision by the decision of Hon'ble Supreme Court wherein the Special SLP filed by the Revenue was dismissed. The learned CIT(A) has dealt with the whole issue as under:-

"7.3.1 It is seen that the issue of allowing or not allowing carry forward of deficits in the case of Trust is covered in favour of the assessee by the order of jurisdictional High Court in the case of DIT (E) vs. MIDC in ITA No. 2652 of 2011 dated 20.03.2013 wherein placing reliance on the decision of CIT vs.

Institute of Banking Personnel selection reported in 264 IR 110/131 Taxmann 386 (Bombay) the appeal filed by the department on the issue of carry forward of deficit was dismissed. Further, the issue has also 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 stands 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 Assessing Officer in not allowing carry forward of deficit of earlier years (and set off thereof) as also not allowing loss of current year be carried forward for adjustment in subsequent years is not found justifiable. Accordingly, this ground of appeal no.2 of the assessee is also allowed but the Assessing Officer is directed to adopt the correct figures before they are allowed to be carried forward and setoff."

08. We are also conscious of the facts that with effect from 1-4-2022 explanation (2) is inserted after explanation 1



u/s 10(23C) of the Finance Act, 2021, which provides that

Explanation 2.—For the purposes of this clause, it is clarified that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding to the previous year;

09. However Notes on clauses to Finance Bill 2021 says that These amendments will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-2023 and subsequent assessment years. Therefore it does not apply for the impugned assessment year.

010. No infirmity was pointed out by the learned Departmental Representative in the order of the learned Commissioner of Income Tax (Appeals). We also do not find any infirmity in his order and therefore the same is upheld. Solitary ground of appeal of the learned Assessing Officer is dismissed.

011. In the result, the appeal filed by the department is dismissed.

Order pronounced in the open court on 06.01.2022

Sd/-
(KULDIP SINGH)

(न्यायिक सदस्य / JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 06.01.2022

Sd/-
(PRASHANT MAHARISHI)

(लेखा सदस्य / ACCOUNTANT MEMBER)



सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy व. निजी सचिव/ **Sr. Private Secretary**
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**