

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
A N D  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
(Through Video Conferencing)

आ.अ.सं./I.T.A No.4171/Del/2017  
निर्धारणवर्ष/Assessment Year: 2012-13

ACIT (Exemptions) Circle : 2 (1), New Delhi.	<u>बनाम</u> Vs.	Tibetan Adminstrative Welfare Society, Bureau of his Holiness The Dalai Lama, 10 - B, Ring Road, Lajpat Nagar - IV, New Delhi - 110 024.
		PAN No. AAATT0712A
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by :	Shri George Koshi, C. A.;
राजस्वकीओरसे /Revenue by :	Shri Umesh Takyar, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	22/12/2021
उद्घोषणाकीतारीख/Pronouncement on :	17/03/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the Revenue against the order of the ld. Commissioner of Income Tax (Appeals)-40, New Delhi [hereinafter referred to CIT (Appeals)] dated 18.04.2017 for assessment year 2012-13.

2. The only grievance of the Revenue in this appeal is with respect to carry forward and set off of excess deficit pertaining to earlier years against the income of the current year. The Assessing Officer while completing the assessment denied the claim of the assessee for set off of deficit of earlier year against the income of the current year, by placing reliance on the decisions of the Rajasthan High Court in the case of Akhey Ram Ishwari Prasad Trust Vs. CIT 130 Taxman 827 (Raj.) and the decision of the Mumbai Bench of the Tribunal in the case of ITO Vs. Lakshmi and Usha Mittal in ITA. No. 5383/Mum/2011. Assessee in the course of assessment proceedings relied upon the decision of the Hon'ble Delhi High Court in the case of DIT Vs. Raghuvanshi Charitable Trust (2011) 197 Taxman 170 (Del).

3. On appeal the ld. CIT (Appeals) following the decision of the jurisdictional High Court in the case of DIT Vs. Raghuvanshi Charitable Trust (supra) directed the Assessing Officer to set off carry forward deficit of earlier year's against income of the current year.

4. Before us, the ld. DR vehemently supported the orders of the Assessing Officer and the ld. Counsel for the assessee strongly relied on the decision of the jurisdictional High Court in the case of DIT Vs. Raghuvanshi Charitable Trust (supra). Further referring to para 4.6 of the order of the ld. CIT (Appeals), the ld. Counsel for the assessee submits that various High Courts have held that deficit of earlier assessment years can be carried forward and set off against current year's income.

5. We have heard the rival submissions and perused the orders of the authorities below and the decisions relied upon. The sole

issue to be decided is as to whether the deficit of earlier years can be set off against income of the current assessment year or not. This issue has been decided in favour of the assessee by various High Courts including the jurisdictional High Court in the case of DIT Vs. Raghuvanshi Charitable Trust (supra). While allowing the claim of the assessee, the Id. CIT (Appeals) observed as under:-

“4.7 For assessment year 2011-12, my Id. predecessor in appeal No. 541/2013-14 has also allowed carry forward and set off of deficit of a lesser amount. Since as per the decision of the Hon'ble Supreme Court in the case of Commissioner of Income-tax vs. Programme for Community Organization (supra), the assessee is entitled to claim 15% of the income derived from property held under trust even if the expenditure is more than 85%, I see no reason why deficit of earlier years even if it includes 15% accumulation.

4.8 In the case of DIT vs. Raghuvanshi Charitable Trust (supra), the Hon'ble Delhi High court have held as under:

8. *It would be fruitful to refer to the discussions contained in Institute of Banking Personnel Selection (IBPS)'s case (supra), Per Hon'ble Mr. Justice S.H. Kapadia, which is advanced before us by the learned counsel for the revenue to repel the same in the following words :*

*" Now coming to question No. 3, the point which arises for consideration is : whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in the subsequent year for charitable purposes? it was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a charitable trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income-tax Act and that the income of the charitable trust was not assessable under the head "Profits and gains of business" under section 28 in which the provision for*

carry forward of losses was relevant. That, in the case of a charitable trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of the subsequent years. We do not find any merit in this argument of the Department. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years against the income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in the section 11 of the Act and that such adjustment will have to be excluded from the income of the trust under section 11(l)(a) of the Act. Our view is also supported by the judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 . Accordingly, we answer question No. 3 in the affirmative, i.e., in favour of the assessee and against the Department."

*9. It is clear from the above that as many as five High Courts have interpreted the provision in an identical and similar manner. Learned counsel for the revenue could not show any judgment where any other High Court has taken contrary view. Since we are in agreement with the view taken by the aforesaid High Court, we answer these questions in favour of the assessee and against the revenue.*

*10. Before we part with, we may point out that learned counsel for the assessee in 1TA No. 589/2008 and IT A No. 25/2009 submitted that the questions involves in these two appeals are purely academic. In these cases even in the current year, more than 75 per cent/85 per cent (as the case may be) of the income was applied for charitable purpose and therefore, no set off was required to be claimed. Further, it is not necessary to go into this issue once we have decided the question of law in favour of the assessee."*

4.9 The appellant has also submitted that the Assessing Officer has failed to take cognizance of the option exercised in terms of clause (2) of the Explanation to section 11(1). It is seen from the assessment records that the assessee had filed a letter exercising the option in terms of clause (2) of the Explanation of section 11(1) along with the return of income and the said option was also mentioned in Sl. No. 6 (iii) of

Part B the return of income. The said option was subsequently revised to include the income to be applied in the next year. The Assessing Officer during the proceedings under section 143(3) has not taken any cognizance of the said claim let alone the revised claim. It is also worthwhile to mention that the Assessing Officer has himself, in the assessment proceedings for assessment year 2013-14 under section 143(3) has allowed deficiency in application of income in previous year amounting to Rs.1,65,04,995/- which is as per the revised claim.

4.10 In view of the discussion above and relying on the decision of the Hon'ble Delhi High Court in the case of DIT vs. Raghuvanshi Charitable Trust (*supra*), the Assessing Officer is directed to allow the set off of carried forward deficit. Even otherwise the appellant has filed a letter exercising option in terms of clause (2) of the Explanation to section 11(1) which the Assessing Officer has failed to take cognizance of which should have been included while computing the income. Grounds of appeal Nos. 2 to 7 of the appeal are allowed. “

6. On perusing the order of the Id. CIT (Appeals) we find that the Id. CIT (Appeals) followed the decision of the Hon'ble Delhi High Court in the case of DIT Vs. Raghuvanshi Charitable Trust (*supra*) and allowed the claim of the assessee for set off of earlier years deficit against current year's income. We see no infirmity in the order passed by the Id. CIT (Appeals). Thus, the grounds raised by the Revenue are rejected.

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

Order pronounced in the open court on : 17/03/2022.

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

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

Dated : 17/03/2022.

\*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	14.03.2022
Date on which the typed draft is placed before the dictating member	16.03.2022
Date on which the typed draft is placed before the other member	17.03.2022
Date on which the approved draft comes to the Sr. PS/ PS	17.03.2022
Date on which the fair order is placed before the dictating member for pronouncement	17.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	17.03.2022
Date on which the final order is uploaded on the website of ITAT	17.03.2022
Date on which the file goes to the Bench Clerk	17.03.2022
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	