

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B" : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.27/PUN./2022  
Assessment Year 2016-2017

|  |     |  |
|--|-----|--|
| The DCIT, Central Circle-1,<br>2 <sup>nd</sup> Floor, Sai Shoban<br>Building, Near Kendriya<br>Rajaswa Bhavan, Gadkari<br>Chowk, Nashik.<br>Maharashtra.<br>PIN – 422 002. | vs. | Shri Vile Parle Kelvani<br>Mandal, 2 <sup>nd</sup> Floor, Bhai<br>Das Hall, Bhaktivedanta<br>Swami Marg, Ville Parle<br>(W) – 400 056.<br>Maharashtra. PAN<br>AABTS8228H |
| (Appellant)  |     | (Respondent)   |

|                |                         |
|----------------|-------------------------|
| For Revenue :  | Shri Sardar Singh Meena |
| For Assessee : | Shri Akash Gogari       |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 02.05.2023 |
| Date of Pronouncement : | 02.05.2023 |

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This Revenue's appeal for assessment year 2016-2017, arises against the CIT(A), Pune-12, Pune's Din and Order No. ITBA/APL/S/250/2021-22/1036544593(1), dated 22.10.2021, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. *In the facts & circumstances of the case whether the Ld. CIT(A) was justified in allowing the assessee to carry forward the deficit of for set-off in subsequent years.*
2. *In the facts & circumstances of the case whether the Ld. CIT(A) was justified in allowing the assessee to carry forward the deficit for set-off in subsequent years when in fact the assessee has claimed excess expenditure over the income which cannot be termed as deficit and therefore not allowable to carry forward to subsequent years.*
3. *In the facts & circumstances of the case whether the Ld. CIT(A) was justified in allowing the assessee to carry forward the deficit for set-off in subsequent years without appreciating the facts that this would have the effect of granting double benefit to the assessee, first as “accumulation” of income u/s 11(l)(a) or as corpus donation u/s 11(l)(d) in earlier years and then as “application” of income u/s 11(l)(a) of the I. T. Act, 1961 in the subsequent years which is legally not permissible ?*
4. *Whether in the facts & circumstances of the case and in law the Ld. CIT(A) relying on the decision of the Bombay High Court in the case of Institute of Banking personnel 264 ITR 110 (BOM) and directing the AO to follow the decision and allowed the assessee to carry forward the deficit and adjust against income of subsequent years,*

*ignoring the facts that there was no express provision in the I. T.Act, 1961 permitting allowance of such claims ?*

5. *Regarding the AO's action for the year at Rs. Nil not allowing the carry forward the deficit of expenditure over income and allowing set-off against the income, the Ld. CIT(A) found that this issue has been decided in favour of assessee in A.Y. 2010-11 by the CIT(A) on the basis of decision of Hon'ble Bombay High Court in the case Institute of Banking personnel 264 ITR 110 (BOM), but the Revenue has not accepted the said decision of Hon'ble 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, the department has filed appeal to High Court for A.Y. 2010-11 and decision is pending. As such the decision of Ld. CIT(A) is not accepted on this issue of allowance of carry forward of deficit and set-off against income of subsequent years."*

3. Suffice to say, it emerges during the course of hearing with the able assistance coming from both the parties that the Revenue's sole substantive grievance challenges correctness of the CIT(A)'s action allowing the taxpayer to carry forward the deficit for setting-off in subsequent assessment years.

4. Learned CIT-DR could hardly dispute the Revenue's pleadings in its ground No.5 that its appeal regarding assessment year 2010-11 is stated to be pending before hon'ble jurisdictional high court.

5. Learned counsel representing assessee at this stage filed before us their lordships' order/judgment in Revenue's said Income Tax Appeal No.157/2018 decided on 12.04.2022 as under :

“1. *Mr. Suresh Kumar in fairness states that the first substantial question of law proposed is covered by the order of this Court in **The Director of Income Tax (Exemptions), Mumbai V/s. M/s. Shri Vile Parle Kelavani Mandal** and the remaining four questions of law are covered by an order passed by the Hon'ble Supreme Court of India in **Commissioner of Income Tax (Exemption) New Delhi V/s. Subros Educational Society** and judgment passed by this Court in **Commissioner of Income Tax V/s. Institute of Banking Personnel Selection (IBPS)** and, therefore, the appeal could be disposed.*

2. *Appeal accordingly disposed.”*

6. We thus adopt judicial consistency in light of the foregoing intervening legal developments having attained finality in assessee's case. The Revenue fails in its instant sole substantive ground therefore. Ordered accordingly.

7. This Revenue's appeal is dismissed in the above terms.

Order pronounced in the open Court on 02.05.2023.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 02<sup>nd</sup> May, 2023

VBP/-

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|    |                                 |
|----|---------------------------------|
| 1. | The appellant                   |
| 2. | The respondent                  |
| 3. | The CIT(A), Pune-12, Pune.      |
| 4. | The Pr. CIT (Central), Nagpur.  |
| 5. | D.R. ITAT, Pune "B" Bench, Pune |
| 6. | Guard File.                     |

//By Order//

Assistant Registrar, ITAT, Pune Benches,  
Pune.