IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH LUCKNOW

BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

AND

SHRI SUBHASH MALGURIA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.221/LKW/2020

निर्धारण वर्ष / Assessment Year : 2014-15

Asstt. Commissioner of Income Tax
Exemption, Lucknow ..... अपीलार्थी / ***Appellant***

बनाम / V/s.

Gangotri Humban Resources & Development Society,
31, Gangotri Nagar, Rewa Road,
Dandi Naini, Allahabad ..... प्रत्यर्थी / ***Respondent***

द्वारा / Appearances

Assessee by : None for the Assessee
Revenue by : Smt. Namita Pandey ['Ld. DR']
सुनवाई की तारीख / Date of conclusive Hearing : 26/06/2024
घोषणा की तारीख / Date of Pronouncement : 26/06/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

Aggrieved by first appellate Order dt. 05/03/2020 passed u/s 250 of the Income Tax Act ['the Act' in short] by the Ld. Commissioner of Income Tax Appeals, Allahabad ['CIT(A)' in short] the Revenue filed this instant appeal u/s 253(2) of the Act.

2. The case was called twice, none appeared at the bequest of the assessee. Adverting to letter dt. 26/06/2024 the Ld. DR Smt. Pandey submitted that, due to pre-occupied official assignments & duties the case could not be prepared for representation/hearing and therefore needing some more time for preparation, hence department's requests for adjournment in this case. Having considered

order-sheet entries, case records, and solitary dispute in the light of settled position of law, the reasons seeking adjournment did fail to inspire any confidence to us, in the event we deem it fit to reject the request and proceed to adjudicate the matter on merits in the absence of respondent *ex-parte* u/r 25 of ITAT-Rules, 1963 with the able assistance from the Revenue.

3. Tersely stated the facts emanating from the case records are that;

3.1 The respondent assessee is a society registered under the provisions of Society Registration Act, 1860 and holding also a certificate of registration u/s 12AA of the Act. After claiming a set-off against brought forward ['b/f' in short] excess of expenditure over income relating to AY 2003-04 to 2012-13, the assessee filed its return of income declaring total income ₹NIL for the year.

3.2 By service of notice dt. 04/09/2015 issued u/s 143(2) of the Act the case of the assessee was selected for regular scrutiny, wherein the Ld. AO denied the benefit of set-off b/f excess of expenditure over income relating to AY 2003-04 to 2012-13 against the present year surplus and accordingly determined the total income after allowing 15% accumulation in terms of section 11(1)(1) of the Act by an order dt. 12/08/2016 framed u/s 143(3) of the Act.

3.3 Aggrieved by the aforestated denial the assessee preferred an appeal before first appellate authority u/s 246(1) of the Act. In view of the binding judicial precedents Ld. CIT(A) allowed the appeal of the assessee. Aggrieved by the adjudication, the Revenue filed the present appeal on the following grounds;

'1. Ld. Commissioner of Income Tax (A) has erred in law and facts by allow claim of carry forward of excess application of funds made in earlier years (A. Y. 20 05 to 2011-12) disallowing of/for excess of expenditure over Income of Rs. 11,51,49,072/- as there is no specific provisions u/s 11, 12, 12A, 12AA & 13 allow the carry forward or adjustment of deficit or loss.
2. Ld. Commissioner of Income Tax (A) has erred in law and facts by allow claim of carry forward of excess application of funds made in earlier years keeping view of the decisions of the various Hon'ble High Courts.

3. Ld. Commissioner of Income Tax (A) has erred in law and differs on facts and circumstances and no provisions of the Act supp deficit of a society, the legal question arises that whether on circumstances of the case the assessee is entitled to carry forward the considering as application of the society in the subsequent years.

4. Appellant craves leave to modify/amend or add any one or more grounds of appeal.

4. We have heard the Ld. Smt Pandey on the sole & substantive ground of entitlement to carry forward ['c/f' in short] and set-off the excess of expenditure over income of earlier years against the income/surplus of year under consideration and subject to rule 18 of the ITAT-Rules, 1963 perused the material placed on records and considered the facts in the light of settled legal position.

5. Ostensibly, for the year under consideration there is no dispute over nature of income/surplus generated from property held under trust by the assessee and also no disagreement over nature & amount of b/f of excess of expenditure over income from AY 2003-04 to 2012-13. The solitary issue of dispute in the instant appeal sheerly revolves around entitlement of assessee to carry forward and set-off excess of expenditure over surplus. The Revenue's stand that there was no

provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of the subsequent years, hence the assessee was not entitled to c/f and set-off the against surplus of current year. In the absence of statutory provision, the impugned adjudication by the Ld. CIT(A) is bad in law therefore deserves to be set-aside and original assessment needs to be restored.

6. We do find no merit in this argument of the Department. As the 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/society for charitable and religious purposes in the earlier years against the income earned by it 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 the adjustment has been made with 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(1)(a) of the Act.

7. This our view finds supports in catena of judicial precedents including *'CIT Vs Maharana of Mewar Charitable Foundation*' [1987, 164 ITR 439 (Raj)] which subsequently followed in *'CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal'* [1995] 211 ITR 293 (Guj), *'CIT v. Matri Seva Trust'* [2000, 242 ITR 20 (Mad)], *'CIT Vs Institute of Banking Personnel Selection'* [2003, 131 Taxman 386 (Bom)], *'DIT v. Raghuvanshi Charitable Trust'* [2011, 197 Taxman 170 (Del)], *'CIT Vs Gujrati Samaj'* [2012, 349 ITR 559 (MP)], *'CIT Vs Punjab Mandi Board'* [2014,

98 DTR 267 (Punj. & Har.)], *'CIT Vs Krishi Upaj Mandi Samiti, Raisinghnagar'* [2016, 69 taxmann.com 425 (Raj)], *'DIT (Exemption) Vs Mumbai Education Trust'* [2017, 244 Taxman 163 (Bom)]. This dispute/issue is finally finds settled by the Hon'ble Apex Court in *'CIT(E) Vs Subros Educational Society'* [2018, 96 taxmann.com 652 (SC)] wherein it was categorically held that excess expenditure by a trust is allowed to be set off against income of subsequent years.

8. Following aforestated judicial precedents & law laid down by Hon'ble Apex Court (supra) before we conclude the adjudication is favour of respondent assessee, it is also worthy to note here that, to overrule aforestated settled position of law the Finance Act 2021 by inserting an explanation (2) to 12th proviso to section 10(23C) and explanation 5 in section 11(1) of the Act provided that, ***while calculating income of the charitable trust, the effect of carried forward of excess application of expenses over income from previous year shall not be allowed.*** The effect of this inserting is that, the c/f of excess application of expenses over income of any previous year against the income of the succeeding year is tried to be not allowed to be set off. There is furthers relevant amendment in section 11 and 10(23C) by inserting Explanation 2 to 2nd proviso to section 10(23C) and explanation 4 inserted into the Sec 11(1) of the Income Tax Act; which provides that where the source for fund for excessive application of expenses over income is from corpus or loan and advances etc., then it will not be treated as application of income in that year but it will be treated as application of income in the year in which the fund so withdrawn from corpus is invested or deposited back, into one

or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit. In upshot, if the fund is taken out of loan or borrowing or advance from creditors or balance standing in any payable account for excessive application of expense over income, then it will not be treated as application in that year but in the year, in which it is the loan or borrowing, or part thereof, is repaid from the income of that year and to the extent of such repayment.

9. If we read the above amendments together, then we shall find change in position of law based upon source of funds applied. It is now necessary to understand what could be possible source of fund other than voluntary donation that could cause excessive expenditure over income. These possible funds can either be corpus fund or fresh loan/borrowed fund or accumulated fund in terms of section 11(1) of the Act or balance representing creditors/payable etc. In pre amended position of law, the if the excess expenditure is incurred in a particular year out of fund derived from corpus fund; then it was allowed to be set off against the income in future year irrespective of the fact that whether the amount withdrawn from corpus fund in earlier year is invested back into it or not. But the post amendment position is that if the excess expenditure is incurred in a particular year out of fund derived from corpus fund; then it is allowed to be set off against the income in future year in which the amount withdrawn from corpus fund in earlier year is invested back.

10. Since in the instant case, there was no dispute over nature of income/surplus generated from property held under trust by the assessee and also no disagreement over nature & amount of b/f of excess of expenditure over income from AY 2003-04 to 2012-13, the amended provision has no application. The prayer to remand the matter for verification as to the nature of b/f excess of expenditure at this stage would in our considered view tantamount to improving the case, hence rejected.

11. It shall be imperious to note further here that, the review petition filed by the Revenue in *'CIT(E) Vs Subros Educational Society' (supra)* challenging the ratio laid therein is dismissed in the year 2022 (post amendment) by the Hon'ble Supreme Court [2022, 286 Taxman 97 (SC)]

12. In view of our findings & observation noted and discussion paraphrased herein before and in view of dismissal of review petition, we do not see any infirmity in the impugned order under challenge, therefore the need to interfere therewith. The grounds raised by the Revenue stands accordingly adjudicated.

13. The appeal of the Revenue in result stands DISMISSED.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday, 26th day of June, 2024

-S/d-
SUBHASH MALGURIA
JUDICIAL MEMBER

-S/d-
G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 26th day of June, 2024
आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-NFAC, Delhi (India)
4. The Concerned CIT
5. DR, ITAT, Bench 'A', Pune
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Lucknow