

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "H", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA NO. 347/Del/2023		
A.YR. : 2017-18		
VIDYA VIHAR NYAS SAMITI, F-23, SECTOR-39, NOIDA, UTTAR PRADESH – 201 301 (PAN: AAATV5469L)	VS.	ITO, WARD EXEMPTION, GHAZIABAD UTTAR PRADESH – 201 301
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by : Sh. Somil Agarwal, Adv. & Sh. Deepesh Garg, Adv.  
Respondent by : Shri Amit Katoch, Sr. DR.  
Date of hearing : 18.11.2024  
Date of pronouncement : 20.11.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Assessee has filed the instant Appeal against the Order of the Ld. Commissioner of Income Tax(A)/NFAC, New Delhi dated 20.01.2023, relating to assessment year 2017-18 on the following grounds:-

- 1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not allowing the setoff of accumulated deficit of Rs.5,66,68,630/- against the current year surplus and that too without any basis and*

*without appreciating/considering the facts and circumstances of the case and in violation of principles of natural justice.*

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in not allowing the setoff of accumulated deficit of Rs.5,66,68,630/- against the current year surplus, is illegal, bad in law and against the facts and circumstances of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not allowing the depreciation as claimed by the assessee and that too without any basis and without appreciating/considering the facts and circumstances of the case and in violation of principles of natural justice.*

4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned assessment order passed by Ld. AO as the same was passed without assuming jurisdiction in accordance with law and without issuing/serving the mandatory notice u/s 143(2) as per law.*

5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234D of Income Tax Act, 1961.*

2. The brief facts of the case are that the assessee had filed its return of income on 19.12.2017 declaring NIL income. Later on, the case of the assessee was selected under scrutiny and statutory notices were issued and served before the assessee. Thereafter, the assessment u/s. 143(3) of the Act was completed on 20.10.2019 at an assessed income of Rs. 1,03,44,990/-. Against the action of the AO, assessee appealed before the Ld. CIT(A), who vide his impugned

order 20.01.2023 partly allowed the appeal of the assessee. Aggrieved with the aforesaid action of the Ld. CIT(A), assessee is in appeal before us.

3. At the time of hearing, Ld. counsel for the assessee has submitted that Ld. CIT(A) has erred in law in confirming the action of the AO in not allowing the set off of accumulated deficit of Rs. 5,66,68,630/- against the current year surplus and that too without any basis and without appreciating / considering the facts and circumstances of the case and in violation of principles of natural justice. To support his contention, he filed the following submissions:-

*“The only effective issue in the present appeal is not allowing the set off of accumulated deficit against the current year surplus.*

*Ld. AO has computed income at Rs. 1,03,44,990/- but has not allowed the set off of accumulated deficit of Rs. 5,66,68,630/- as on 01.04.2015 which is allowable in view of the Hon’ble Supreme Court decisions referred the cases of CIT vs. Subros Educational Society, (2018) 96 taxmann.com 652 (SC), CIT vs. Subros Educational Society, (2022) 136 taxmann.com 236 (SC) and following decisions wherein it has been held that excess of expenditure in earlier year can be set off against income of subsequent years and would amount to application of income for subsequent years:*

- *DIT vs. Raghuvanshi Charitable Trust, (2011) 197 Taxman 170 (Del) CLC.*
- *CIT vs. Shri Plot Swetamber Murti PujakJain Mandal,(1995) 211ITR 293(Guj) .*

- *CIT vs. Maharana of Mewar Charitable Foundation, (1987) 164 ITR 0439 (Raj).*
- *CIT vs Institute of Banking Personnel Selection, (2003) 264 ITR 0110 (Bom)*
- *CIT vs. Matriseva Trust, (2000) 242 ITR 0020 (Madras)*
- *Shri Ram Sharnam Sabha vs. ITO, ITA No. 8899/2019 dated 12.04.2022 (Del) .*

*Though amendment has been made in Section 11 denying the set off of such deficit by the Finance Act, 2021 w.e.f. 01.04.2022 by inserting explanation 5 to section 11(1) but this is applicable prospectively.*

*PB 1-31 is the computation of income etc. .*

*PB 32-35 are submissions before Ld. CIT(A) together with the details of total deficit.*

*PB 39 is the copy of chart showing deficit of Rs. 5,66,68,630/-.*

*Thus in view of the above, it is respectfully submitted that accumulated deficit arising out of expenditure over income for the previous year may please be allowed to be set off against the surplus of the impugned year.”*

5. Per contra, Ld. DR submitted relied upon the order of the Ld. CIT(A).
6. We have carefully considered the submissions and perused the records. We find considerable cogency in the submissions of the Assessee's AR that in view of the Hon'ble Supreme Court of India in the case of CIT vs. Subros

Educational Society, (2018) 96 taxmann.com 652 (SC) the set off of accumulated deficit is allowable. We further find force in the contention of the Ld. AR that in various aforesaid case laws, it has been expounded by the Hon'ble Courts that excess of expenditure in earlier year can be set off against income of subsequent years and would amount to application of income for subsequent years. Though amendment has been made in Section 11 denying the set off of such deficit by the Finance Act, 2021 w.e.f. 01.04.2022 by inserting explanation 5 to section 11(1) but this is applicable prospectively.

6.1 In the background of the aforesaid discussions and respectfully following the binding precedents, the accumulated deficit arising out of expenditure over income for the previous year is allowed to be set off against the surplus of the impugned year. Resultantly, the ground raised by the Assessee is allowed.

7. In the result, the Appeal filed by the Assessee stands allowed in the aforesaid manner.

Order pronounced on 20/11/2024.

Sd/-  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**SRBHATNAGAR**

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar