



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.657/LKW/2019
(Assessment Year: 2015-16)

Income Tax Officer (Exemptions) T.C 46V, 5 th Floor, U.P.S.I.D.C Ltd, Vibhuti Khand, Gomti Nagar, Lucknow-226010.	v.	Al Hind Educational and Welfare Society 108/177, Talab Gagni Shukla, New Modle House, Lucknow-226001.
PAN:AABAA3808L		
(Appellant)		(Respondent)

ITA No.684/LKW/2019
(Assessment Year: 2015-16)

Al Hind Educational and Welfare Society 108/177, Talab Gagni Shukla, New Modle House, Lucknow- 226001.	v.	Income Tax Officer (Exemptions) T.C 46V, 5 th Floor, U.P.S.I.D.C Ltd, Vibhuti Khand, Gomti Nagar, Lucknow-226010.
PAN:AABAA3808L		
(Appellant)		(Respondent)

Appellant by:	Shri A. P. Sinha, Adv
Respondent by:	Smt Preeti Singh, JCIT (DR)

ORDER

PER BENCH.:

These appeals filed by the Revenue as well as assessee are directed against the common order of the Learned Commissioner of Income-tax (Appeals)-IV, Lucknow dated 16.09.2019, pertaining to the assessment year 2015-16. The assessee has raised the following grounds of appeal: -

"1. In the facts and circumstances of the case and in law because of the Ld. CIT(A)-IV, Lucknow has erred while not allowing carry forward of

excess of application of earlier years to be set off from the income of the impugned year.

1(a) In the facts and circumstances of the case and in law because of the Ld. CIT(Appeals) –IV, Lucknow has erred while not allowing excess of application of earlier years solely on the basis that it was neither claimed in the return of income nor before the Assessing Officer during the assessment proceedings.”

2. In this case, the assessment order under section 143(3) of the Income Tax Act, 1961 (hereinafter “the Act”) was passed by the Assessing Officer (“AO”) whereby the assessee’s total income was determined at Rs.5,59,370/-. In the aforesaid assessment order, however, the Assessing Officer did not set off the income of the current year with the brought forward losse(s) of earlier year(s). This issue was raised by the assessee in the appeal filed against the assessment order in the office of the Ld. CIT(A). However, vide impugned appellate order dated 16.09.2019, the Ld. CIT(A) dismissed the assessee’s appeal. The present appeal has been filed by the assessee vide ITA. No.684/LKW/2019 is against the aforesaid impugned appellate order dated 16.09.2019 of the Ld. CIT(A).

2.1 At the time of hearing before us, the Ld. Counsel for the Assessee submitted that the Ld. CIT(A) as well as the Assessing Officer erred in ignoring the evidence available on record before them on the basis of which the assessee was eligible for set off of current years income with the loss of earlier years; thereby causing grave hardship to the assessee. The Ld. Departmental Representative (“DR”) for Revenue relied on the orders of the Assessing Officer as well as Ld. CIT(A). In the course of appellate proceedings in ITAT, the assessee filed a paper book containing the following particulars: -

SL. No.	Particulars
1	Dy. Commissioner of Income Tax (E), Circle-2(1), New Delhi vs Subros Educational Society, G-71, World Trade Centre, Barakhamba Lane, New Delhi-110001,

	G- Bench, Date of Pronouncement – 9.12.2017.
2	CIT vs Pruthvi Brokers and Shareholders P. Ltd., Bombay High Court, 21.6.2012, (2012) 349 ITR 336 (Bombay High Court). Appeal – Powers of appellate authorities –Appellate authorities have power to consider claim not made in return – Income Tax Act, 1961.

3. We have heard both the sides. We have perused the materials available on record. We find from available records before us that although paper book has been filed from the assessee's side, the return of income along with the computation of loss (for the years in respect of which losses of the assessee are sought by the assessee to be set off with the income of the current year) is not available on our records whether in the aforesaid paper book or in rest of the records. As a result, it is not possible for us to reach a definite conclusion on facts whether the assessee had assessed/returned loss(es) in earlier year(s), and if so, the quantum thereof. Therefore, we deem it proper, in the fitness of things to set aside this issue to the file of the Assessing Officer with the direction to consider available records of the assessee for this year as well as earlier years and to allow brought forward losses of earlier years with the income of the current years in accordance with law, after providing reasonable opportunity to the assessee. Accordingly, in the specific facts and circumstances of the present case, the impugned appellate order of the Ld. CIT(A) is set aside and the matter is restored back to the file of the Assessing Officer with the aforesaid directions.

ITA. NO. 657/LKW/2019 FOR AY. 2015-16

4. The Revenue has raised the following grounds of appeal:-

“1. Ld. CIT(A) has erred in law and on facts in disallowing the addition made by the AO on the expenditure claimed by the assessee under the head of ‘To Income Tax Deposit F.Y. 2011-12’ for Rs.1,00,000/- in its Income and Expenditure Account for the FY 2014-15 pertaining to AY 2015-16 which is not an allowable expense.

2. The Ld. CIT(A) has erred in law and on facts in not considering the fact that the case is covered under Para 10(c) of CBDT Circular No.3/2018 vide

F. No.279/Mis. 142/2007-ITJ(Pt) dated 11.07.2018 as audit objection was raised in the case by RAP in respect of the expenditure claimed by the assessee under the head of 'To Income Tax Deposit FY 2011-12' for Rs.1,00,000/- in Its Income and Expenditure Account for the FY 2014-15 pertaining to AY. 2015-16 which is not an allowable expense.

4. Appellant craves leave to add or amend any one or more of the grounds of appeal, as stated above as and when need of doing so arises with the prior permission of the Hon'ble Bench."

5. At the time of hearing before us, it was observed, on perusal of Form-36 in which the appeal has been filed, that the total tax effect is stated to be Rs.58,580/-. The aforesaid amount of Rs.58,580/- is below the minimum limit of Rs.60,00,000/-, as instructed by Central Board of Direct Taxes, for filing the appeal in Income Tax Appellate Tribunal against order of the learned CIT(A). Representatives of both sides, the learned Sr. D.R. for Revenue and the learned A.R. for the assessee were in agreement that the tax effect being below the minimum prescribed limit of Rs.60,00,000/-, this appeal is not maintainable and should be dismissed. The appeal was not pressed by Ld. Departmental Representative for Revenue. In view of foregoing and as representatives of both sides are in agreement on this, this appeal is dismissed in limine without admitting the appeal and without going into the merits of the case; this appeal not being maintainable, and not being pressed.

6. In the result, the appeal of assessee is partly allowed for statistical purposes and appeal of Revenue is dismissed.

Order pronounced in the open Court on 11/12/2024.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 11/12/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order

Assistant Registrar