

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH, NEW  
DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 4579/DEL/2017 [A.Y 2014-15]

The A.C.I.T.[E]  
Circle - 2(1)  
New Delhi

Vs.

The British School Society  
San Martin Marg, Chanakyapuri  
New Delhi

[Appellant]

PAN: AAATT 0271 C

[Respondent]

Assessee by : Shri Himanshu Agarwal, Adv  
Shri Gaurav Jain, Adv  
Shri Deepesh Jain, Adv

Revenue by : Shri H.K. Choudhary , CIT-DR

Date of Hearing : 21.06.2021

Date of Pronouncement : 21.06.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the  
CIT[A] - 40, Delhi dated 29.05.2017 pertaining to A.Y 2014-15.

2. The grievances of the Revenue read as under:

1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law in allowing the claim of carry forward of losses disregarding the fact that set off and carry forward of losses are dealt with by the provisions of section 70 to 74 of the Income Tax Act, 1961.
2. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law in allowing the assessee's claim of carry forward of current year loss and set-off of excess deficit pertaining to earlier years without appreciating the fact that u/s 11, 12 and 13 of the Act there is no provision for computing loss from property held under trust/institution on account of excess application of income/funds of the trust.
3. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in allowing the assessee's claim of carry forward of current year loss and set off of excess deficit pertaining to earlier years without appreciating the fact that the normal computation of income under respective heads as envisaged u/s 15 to 59 are not applicable to the computation of income in respect of charitable trust/institution for the purpose of claiming exemption under section 11,12 and 13 and therefore the provisions relating to set off of loss from one source against the income from another source, set off of loss from one head against another income derived from another head and carry forward and set off of loss against the income of subsequent years as envisaged u/s 70 to 79 of the Act are also not applicable to the charitable trusts/institutions.
4. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."

3. Briefly stated, the facts of the case are that the assessee society is registered u/s 12A of the Income tax Act, 1961 [hereinafter referred to as 'the Act' for short] and is also notified u/s 80G(5)(vi) of the Act. The assessee society is also notified u/s 10(23C)(vi) of the Act. The objects of the assessee society are as under:

1. To provide instruction according to British standards and practice for British children in India and at the discretion of the Board of Governors for the children of other Commonwealth and foreign countries in India.
2. To receive and accept donations, endowments and gifts of money, land, buildings, stocks funds, shares, securities and any other property whatsoever whether subject to any special trusts or conditions or not.
3. To invest money of the Society not immediately required, in such manner and upon such securities as may be determined by the Board of Governors from time to time.

The activities of the assessee society/are apparently charitable in nature and within the meaning of section 2(15) of the Income Tax Act, 1961."

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed an amount of Rs. 9.92 crores as deficit on account of expenditure over income. The assessee was asked to furnish details of deficit and the source from which it has been financed. The assessee explained as under:

*"Please find below a note on deficit in computation of income and source of meeting the deficit.*

*The deficit reflected in the tax computation for the Assessment Year 2014-15 is on account of excess of expenditure over income by Rs. 9.92 Crores.*

*The major expenditure, leading to the deficit, is the amount spent on construction of new school building reflected in books of accounts as addition in capital work in progress of Rs. 26.47 Crores during the financial year 2013-14. The school is in the process of construction of new school building which will be completed in the F.Y. 2016-17.*

The deficit is being funded through reserves accumulated over the past many years since founding of the School. The reserves had been invested in fixed deposits and are now being liquidated, as required as reflected in the financial statements".

5. The Assessing Officer dismissed the claim of the assessee observing that if the trust spends more than the income, it should be either from corpus or from loan obtained. The application should always be from income derived or income set apart or accumulated income. Therefore, the question of carry forward of excess expenditure/deficit does not arise at all in the case of trusts. Accordingly, Assessing Officer denied the claim of carry forward of the excess of expenditure/deficit of Rs. 9.92 crores.

6. The assessee carried the matter before the Id. CIT(A) and assailed the assessment claiming that income derived from the trust should be computed from sound commercial principles and therefore, carry forward and set off of deficit should be allowed. Reliance was placed on several judicial decisions.

7. After considering the facts and circumstances of the case and relying on various decisions of the Hon'ble High Courts, the Id. CIT(A) directed the Assessing Officer to allow carry forward of net deficit of the current year.

8. Before us, the Id. DR vehemently stated that the Id. CIT(A) ought to have gone into the facts of the case and should have analysed the source of income from which the assessee has met the expenditure. Referring to

Explanation 2 to section 11, the ld. DR stated that the findings of the ld. CIT(A) are against the relevant provisions of the Act.

9. Pre contra, the ld. counsel for the assessee reiterated what has been stated before the ld. CIT(A) and once again relied upon several judicial decisions.

10. We have carefully considered the orders of the authorities below. The bone of contention is carry forward of deficit of Rs. 9,91,758/-. The deficit has been computed as under:

Total income as per income & Expenditure account		53,42,10,185/-
Expenditure as per income & Expenditure Account	37,69,26,957/-	
Less : Depreciation	15591524/-	
Provision for leave encashment	1,62,841/-	
Provision for gratuity	<u>7185475/-</u>	
		<u>2,29,39,840/-</u>
		35,39,87,117/-
Add : Fixed assets additions	1,23,18,625/-	
Addition in capital work in progress	26,46,65,182/-	
Leave encashment paid	14,483/-	
Gratuity Paid	24,16,536/-	
		27,94,14,826/-
		<u>63,34,01,943/-</u>
		(9,91,91,758)

11. The Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection 264 ITR 110 has held that income derived from trust property should be computed on sound commercial principles and this included carry forward and set off of deficit in the earlier year. The relevant findings of the Hon'ble High Court read as under:

*" 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 section 11 and such adjustment will have to be excluded from the income of the trust under section 11(1)(a). Accordingly, on the facts and in the circumstances of the instant case, the Tribunal was justified in law in allowing carrying forward of the deficit of earlier year and set it off against the surplus of subsequent years."*

12. The Hon'ble High Court of Gujarat in the case of Shri Plot Swetamber Murti Pujak Jain Mandal 119 CTR 144 [Guj] had the occasion to consider the CBDT No. 100 dated 24.01.1973 which allowed repayment of loan taken in earlier years for fulfilment of charitable objects as application.

13. The Hon'ble High Court was of the view that the same principle should apply if instead of taking the loan the organization spent more out of its corpus and it is reimbursed in subsequent years. The relevant findings of the Hon'ble High Court read as under:

*"According to the circular No. 100, if a trust wants to spend more money for charitable and religious purposes in a particular year, it can take a loan and the said loan can be repaid out of the income of the subsequent year and the repayment of the said loan out of the income of the subsequent year would amount to application of income for charitable and religious purposes under section 11(1)(a). If the trust takes a loan for the purposes of incurring expenses for charitable and religious purposes in a particular year and the said loan is repaid out of the income of the subsequent year, the said repayment would be entitled to exemption from tax under section 11(1)(a) in view of the circular above referred to. But, if the trust instead of taking a loan incurs expenses for charitable and religious purposes out of the corpus of the trust and seeks to reimburse the*

*said amount out of the income of the subsequent year, the trust would not be entitled to claim exemption in respect of such reimbursement under section 11(1)(a) if the contention advanced by the revenue was accepted. The construction which leads to such an anomaly has got to be avoided. There is nothing in the language of section 11(1)(a) to indicate that the expenditure incurred in the earlier year cannot be met out of the income of the subsequent year or that utilization of such income for meeting the expenditure of the earlier year, would not amount to such income being applied for charitable or religious purposes."*

14. The issues raised by the ld. DR have been answered by the Hon'ble High Court of Gujarat [supra]. Similarly, the Hon'ble High Court of Delhi in the case of Raghuvanshi Charitable Trust 197 Taxman 170 has held that the assessee trust can be allowed to carry forward deficit of current year and to set off the same against the income of subsequent years.

15. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the findings of the ld. CIT(A).

16. In the result the appeal of the Revenue in ITA No. 4579/DEL/2017 is dismissed.

The order is pronounced in the open court in the presence of both the representatives on 21.06.2021.

Sd/-

[KULDIP SINGH]  
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 21<sup>st</sup> JUNE, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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Date of dispatch of the Order	