

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI "D" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1371/Mum./2021**  
**(Assessment Year : 2015-16)**

Dy. Commissioner of Income Tax  
Central Circle-7(1), Mumbai

..... Appellant

v/s

Dr. D.Y. Patil Educational Enterprises  
Charitable Trust, Dr. D.Y. Patil Knowledge  
City, Charholi B.K., Via Lohegaon  
Pune 412 105 PAN – AABTD3063B

..... Respondent

Assessee by : None  
Revenue by : Shri Salil Mishra, CIT-DR

Date of Hearing – 23.02.2022

Date of Order – 28.02.2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been preferred by the assessee challenging the order dated 26<sup>th</sup> April 2021, passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "*the Act*") by the Commissioner of Income Tax (Appeals)-49, Mumbai, [hereinafter referred to as "*the CIT(A)*"] for the assessment year 2015-16.

2. In this appeal, the Revenue has raised the following grounds:-

*"Whether On the facts and in the circumstances of the case and*

*in law, the Ld.CIT(A) is justified in allowing the assessee to carry forward the deficit, being excess of expenditure over receipts, to subsequent years and the same is eligible to be set-off with the income of subsequent years by relying upon the judgment of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection (IBPS), ignoring the fact that a Review Petition has been filed before the Hon'ble Supreme Court with Diary No. 20745/2020 by the Department against the decision Subros Educational Society which upheld the validity of IBPS decision."*

3. The present appeal by the Revenue was listed today for hearing. However, there was no representation from the side of the assessee. As the only issue involved in the present case has been decided in favour of the tax payer by the Hon'ble Supreme Court in CIT v/s Subros Educational Society, (2018) 303 CTR 001, we have taken up this appeal for hearing without adjourning the same due to non-appearance of the assessee.

4. We noticed that the Registry had raised a defect memo that the present appeal is time barred by 30 days. Shri Salil Mishra, learned Departmental Representative (hereinafter referred to as "*learned D.R.*"), appearing for the Revenue, submitted that the office of the Principal Commission of Income Tax, Central-4, Mumbai, received the copy of the order passed by the CIT(A) on 5<sup>th</sup> May 2021, however, the appeal before the Tribunal was filed on 3<sup>rd</sup> August 2021. The learned DR further submitted that the last date for filing of appeal before Tribunal was 3<sup>rd</sup> July 2021, which in view of order dated 27<sup>th</sup> April 2021 passed by the Hon'ble Supreme Court in Miscellaneous Application no.665/2021 in Suo-Motu Writ (Civil) no.3/2020, was extended and thus there is no delay in filing the present appeal.

5. As the limitation period for all judicial / quasi-judicial proceedings was extended by the Hon'ble Supreme Court vide order dated 27<sup>th</sup> April 2021, in *Suo-Motu Writ (Civil) no.3/2020 (supra)*, there is no delay in filing the present appeal and we hear the same on merits.

6. The only issue arising in the present appeal is regarding carry forward of deficit, being excess of expenditure over receipts, to subsequent years.

7. The brief facts of the case pertaining to this issue as emanating from the record are: The assessee is a public charitable trust carrying educational activities and is registered under Bombay Public Trust Act, 1950 and is also registered under the Society Registration Act, 1960. The assessee trust is also registered under section 12A of the Act since 8<sup>th</sup> November 2010 and also registered under section 80G of the Act since 5<sup>th</sup> April 2011. During the year under consideration, the assessee filed its return of income disclosing the total income of Rs. Nil.

8. During the assessment proceedings, it was noticed that the assessee had claimed exemption under section 11(1)(a) of the Act of Rs. 5,71,06,667, @ 15% of the gross receipt of Rs. 38,07,11,114. The Assessing Officer vide order dated 27<sup>th</sup> December 2017, rejected the allowability of exemption under section 11(1)(a) of the Act, as claimed by the assessee on the basis that the assessee had incurred the expenditure for objects of the trust in excess of gross receipt and no amount had remained unspent for accumulation or set-apart thereon. The Assessing Officer further held that

the assessee is not entitled to any accumulation under section 11(1)(a) of the Act as there is no surplus receipts left to the assessee after considering application of the current year. Accordingly, the Assessing Officer held that no deficit is allowed to be carried forward to subsequent years.

9. In appeal, the CIT(A) following various judicial precedences allowed the appeal filed by the assessee observing as under:–

*"6.3. I have carefully considered the facts of the case, position of law and submission of the Ld, AR. The issue involve in this ground of appeal is whether the appellant is eligible to claim the exemption u/s 11(1)(a), though it had incurred the expenditure for objects of trust in excess of gross receipts earned during the year. The appellant had disclosed the gross receipts of Rs.38,07,11,114/- and had incurred an expenditure for objects of the trust of Rs.44,62,48,150/-, The appellant had claimed the exemption u/s 11(1)(a) of Rs.5,71,06,667/- (@15% of Rs. 38,07,11,114/- and had claimed the balance deficit, being excess of expenditure over receipts, to be carry forward to subsequent years. It is observed that Sec 11(1)(a) does not lay any specific condition for allowability of such exemption. The Section 11(1)(a) does not state that the exemption would be allowed only where the amount spent for the objects of trust is less than the gross receipts.. The exemption u/s 11(1)(a) is unfettered and is an absolute exemption and therefore, AO is not correct in making the disallowance of exempt u/s.11(1)(a) under the reason that the amount spent by the appellant during the year for object of trust is in excess of gross receipts."*

10. The CIT(A) also noted that the Assessing Officer in subsequent assessment order dated 27<sup>th</sup> December 2018, passed under section 143(3) r/w section 153C of the Act has allowed the exemption of Rs. 5,71,06,667, under section 11(1)(a) of the Act for the assessment year 2015–16.

11. Being aggrieved by the order passed by the CIT(A), the Revenue is in appeal before us.

12. During the course of hearing, the learned D.R. submitted that though the issue involved in the present appeal is covered in favour of the assessee by the decision of the Hon'ble Supreme Court in Subros Educational Society (supra), however, the Review Petition against the same has been filed by the Revenue vide Diary no.20745/2020, which is still pending.

13. We have considered the submissions of the learned D.R. and perused the material available on record. We find that on similar issue, the Hon'ble Supreme Court in Subros Educational Society (supra) held that any excess expenditure incurred by the trust / charitable institution in earlier assessment year would be allowed to be set-off against income of the subsequent years by invoking the provisions of section 11 of the Act. We further find that Hon'ble Supreme Court vide order dated 11<sup>th</sup> January 2022 passed in CIT (Exemption) v. Subros Educational Society, Review Petition (Civil) Diary No. 20745 of 2020 in Civil Appeal No. 5171 of 2016, has dismissed the Review Petition filed by the Revenue against the aforesaid decision of the Hon'ble Supreme Court. Thus, respectfully following the aforesaid decision of the Hon'ble Supreme Court, we find no reason to interfere with the findings of the CIT(A) allowing carry forward of deficit, being excess of expenditure over receipts, to subsequent years. Accordingly, the sole ground raised by the Revenue is dismissed.

14. In the result, appeal by the Revenue is dismissed in terms of our aforesaid findings.

Order pronounced in the open court on 28/02/2022

**Sd/-  
AMARJIT SINGH  
ACCOUNTANT MEMBER**

**SD/-  
SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 28/02/2022**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai