

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.5575/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2010-11)

ITO (E)-1(4), Room No. 507, Piramal Chambers Lalbaug, Parel, Mumbai-400012	बनाम/ v.	M/s. Kaivalya Education Foundation, 10 th Floor, Piramal Tower, Ganpatrao Kadam Marg, Lower Parel (W), Mumbai-400013
स्थायी लेखा सं./PAN:AADCK5957A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri. Manoj Kumar Singh	
Assessee by:	Ms. Manshi Padhiar	

सुनवाई की तारीख /**Date of Hearing** : 12.12.2018

घोषणा की तारीख /**Date of Pronouncement** :08.02.2019

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by Revenue, being ITA No. 5575/Mum/2017, is directed against appellate order dated 14.06.2017 in appeal no. CIT(A)-I/E-2(6)/2013-14 passed by learned Commissioner of Income Tax (Appeals)-1, Mumbai (hereinafter called "the CIT(A)"), for assessment year (AY) 2010-11, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 30.01.2013 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2010-11.

2. The grounds of appeal raised by Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

" 1. Whether on the facts of the case and in law the Ld. CIT(A) erred in allowing the carry forward of deficit of Rs. 2,30,44,449/- and allowing set off against the income of the subsequent years."

2. Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in allowing the claim of the assessee for carry forward of the said deficit, ignoring the fact that there was no express provision in the I T Act, 1961 permitting allowance of such claim."

3. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in allowing the claim of the assessee for carry forward of the said deficit by relying upon the judgment of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection, ignoring the fact that the Department has not accepted the said decision of the jurisdictional High Court on merit of the case, but due to smallness of tax effect appeal was not filed before Hon'ble Supreme Court. However, on this issue the department has filed SLPs in other cases before the Hon'ble Apex Court inclusive the case of MIDC (SLP (Civil) 9891 of 2014), in which leave has been granted and the issue is pending for adjudication before the Hon'ble Supreme Court and the case has not reached finality."

4. The appellant prays that the order of the Commissioner of Income Tax (Appeals)-1, Mumbai be set aside and that of the Assessing Officer be restored.

5. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. The assessee trust is registered with the Director of Income Tax (Exemption), Mumbai u/s. 12A of the Act and u/s. 80G of the Act. The assessee had claimed an amount of Rs. 2,33,03,449/- as excess expenditure over income to be carried forward for setting it off in future years. The AO denied the claim of deficit to be carried forward vide assessment order dated 30.01.2013 passed by the AO u/s 143(3) of the 1961 Act, on the following grounds as under:-

" There is no provision which allows determination of loss while computing taxable income u/s.11 This is so because Section 11 prescribes certain conditions for claiming exemption. The first 15% of income is exempt u/s.11(1) of the Act, the next 85% of the income requires to be spent during the year so that the entire income may be assessed as exempt. The assessee has a choice to spent a portion of the current income in the succeeding year which it could not spent for certain reasons and that portion of income can be deemed to be applied for the charitable purpose and debited from income.

Further, the assessee has also an option to accumulate its income for certain specified purposes upto 5 years and utilize the same within a span of 5 years and in that case the amount opted to be accumulated is deemed to be applied for charitable or religious purpose and accordingly debited against income.

It is further noted that capital expenditure on construction / acquisition of asset is also treated as application of income and hence the amount of capital expenditure to the extent of available income is deductible from the current income.

Any excess expenditure over income is either out of accumulated income or out of corpus fund received by the trust or out of loss. Accumulated income cannot be further subjected to deduction from the income since deduction in - respect of accumulation has been claimed and allowed in the previous years and any further allowance of the same will amount to double deduction for the same outgoing. If excess expenditure is out of corpus then any corpus received is separately exempt u/s. 11(1)(d) of the Act and hence any further deduction of the same outgoing will

amount to double deduction. If source of expenditure is a loan then repayment is allowable as a deduction in the year of repayment. Clearly, scheme of computation of business income has no application in determination of income u/ s. 11.

Thus, in view of the above stated facts deficit of Rs.2,33,03,449/- is not allowed to be carried forward for future set off. Moreover, Department has filed SLP in the case of Gems & Jewellery Export Promotion Council for Assessment Year 2004-05 on the deficit issue.”

4. The assessee being aggrieved by assessment framed by the AO vide orders dated 30.01.2013 passed u/s 143(3), filed first appeal with learned CIT(A) which was allowed by Ld. CIT(A) in favour of the assessee vide appellate order dated 14.06.2017, by holding as under:-

“ 6.2 I have considered the facts and circumstances of the case, gone through the assessment order of the A.O and the submissions of the appellant and also discussed the case with the AR of the appellant. The contentions and submissions of the appellant are being discussed and decided here in under:

i. Relying upon several case laws the appellant stated that deficit of the is required to be carried forward and set off in the subsequent years. On perusal of the facts I find that the case of appellant is squarely covered by the judgement of Hon'ble Bombay High Court in the case of Institute of Banking Personnel 264 ITR 110 wherein the Hon, Jurisdictional High Court has observed as under –

....."5. Now coming to question No. 3, the point which arises for consideration is: whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes.

In the present case, the assessing officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a Charitable Trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income Tax Act and that the income of the Charitable Trust was not assessable under the head "profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the department. 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 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. Our view is also supported by the judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal (1995) 211 1TR 293 (Guj).Accordingly, we answer question No. 3 in the affirmative i.e., in favour of the assessee and against the department."

ii. Respectfully following the ratio laid down by the Hon. High Court as above, the AO is directed to allow the carry forward of deficit in the succeeding years after due verification of facts.

iii. Ground of appeal No. II is therefore allowed."

The Ld. CIT(A) while adjudicating aforesaid appeal in favour of the assessee mainly relied upon the decision of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection (2003) 264 ITR 110(Bom. HC).

5. Aggrieved by the appellate order dated 14.06.2017 passed by learned CIT(A), the Revenue has now filed an appeal before us. The Ld. DR relied upon the order of the AO and contended that excess of expenditure over income in the case of Charitable Trust being deficit cannot be allowed to be carried forward to subsequent years as Charitable Trust are governed by Provisions of Section 11 to 13 of the 1961 Act which is a complete code in itself and there is no such provision for carry forward of losses in the case of Charitable Trust vis-a-vis in the case of other taxpayers engaged in the business activities who are governed by provision of Section 28 to 44DB of the 1961 Act. The Ld. Counsel for the assessee on the other hand submitted that now the law is settled wherein even in the case of Charitable Trust excess expenditure over income is to be allowed to be carried forward and set off against income of subsequent years. The learned counsel for the assessee relied upon the following case laws, as under:-

1. SLP No. 13512 of 2011 dismissed in the case of DIT(E) v. M/s. Gem & Jewellery Exports Promotion Council (SC)

2. CIT Vs. Rajasthan and Gujarati Charitable Foundation (SC) (Civil Appeal No. 7186 of 2014)

2a. Status of SLP in case of MIDC [SLP(Civil) 9891 of 2014] alongwith a copy of order admitting SLP in case of MIDC

3. CIT v. Institute of Banking Personnel (264 ITR 110) (Hon.)

4. DIT (Exemptions) v. Aditya Birla Vikram Memorial trust (ITA No. 1087 of 2014) (Bom.)

5. DIT(E) v. M/s. Aditya Birla Foundation (ITA No. 1497 of 2014) (Bom.)

6. *DIT(E) v. Mumbai Education Trust (ITA No. 11 of 2014) (Bom.)*

7. *ITO (E) v. Vaibhav Medical & Education Foundation (ITA No. 6998/M/2016) (Mum.)*

8. *DDIT Vs. Maharashtra Samaj Ghatkoper (ITA No. 3654/M/2013) (Mum.)*

6. We have considered rival contentions and perused the material on record including cited case laws. We have observed that the assessee is a Charitable Trust which is registered with the Director of Income Tax (Exemption), Mumbai u/s. 12A and u/s. 80G of the Act. The assessee had claimed an amount of Rs. 2,33,03,449/- as excess expenditure over income being deficit to be carried forward for setting it off in subsequent years. The AO has denied the said carry forward of the excess of expenditure of income which has been later allowed by the Ld. CIT(A) based upon the decision of Hon'ble Bombay High Court in the case of CIT v. Institute of Banking Personnel Selection (IBPS) (supra), wherein following substantial question of law was admitted by Hon'ble High Court, as under:-

“ 3. Whether, on the facts and in the circumstances of the case, the tribunal was justified in law forward the deficit of earlier year and set it off against the surplus of subsequent years when the same was not allowable in the case of assessee trust in whose case income exempted under section 11 of the Income Tax Act, 1961.”

The Hon'ble Bombay High Court decided the aforesaid substantial question of law in favour of the assessee in Institute of Banking Personnel Selection (IBPS) (supra) , by holding as under:-

“ 5. Now coming to question No. 3, the point which arises for consideration is : whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the

expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a Charitable Trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income-tax Act and that the income of the Charitable Trust was not assessable under the head "profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the Department 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 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. Our view is also supported by the Judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 . Accordingly, we answer question No. 3 in the affirmative i.e., in favour of the assessee and against the Department."

Further , we have also observed that Hon'ble Bombay High Court in ITA no.1087 of 2014 vide judgment dated 16.12.2016 in DIT (Exemptions) v. M/s. Aditya Vikram Memorial Trust has decided the issue by relying on the decision of Hon'ble Bombay High Court in the case of CIT v. Institute of Banking Personnel Selection (IBPS) (2003) 264 ITR 110(SC) that no substantial question of law arises as the issue is settled by decision of Hon'ble Bombay High Court in 264 ITR 110, by holding as under:

"This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 27th November, 2013 passed by the Income Tax Appellate Tribunal (the

Tribunal). The impugned order dated 27th November, 2013 relates to the Assessment Year 2009-10.

2 . The Revenue urges the following questions of law for our consideration:

“(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was right in allowing the claim of the assessee for carry forward of the deficit, amounting to Rs.3,71,99,050/- ignoring the fact that there was no express provision in the Income Tax Act, 1961 for permitting allowance of such claims?”.

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the decision of the CIT(A) which allowed carry forward of deficit on account of excess expenditure and directed the assessing officer to allow carry forward of deficit on account of excess expenditure without appreciating the fact that this would have the effect of granting double benefit to the assessee, first as 'accumulation' of income u/s. 11 1(a) or as corpus donation u/s. 11(1)(d) in earlier years/current year and then as 'application' of income u/s. 11(1)(a) in the subsequent years which were legally not permissible?”.

3 Mrs. Bharucha, learned Counsel appearing for the Revenue very fairly states that the issues arising herein stands concluded against the Revenue and in favour of the Respondent-Assessee by the decision of this Court in CIT v/s. Institute of Banking 264 ITR 110.

4 In view of the above, the questions as proposed do not give rise to any substantial questions of law. Thus, not entertained.

5 Accordingly, Appeal dismissed. No order as to costs.”

Further , we have also observed that Hon'ble Bombay High Court in the case of DIT (Exemptions) v. Aditya Birla Foundation in ITA no. 1497 of 2014 vide judgment dated 06.03.2017 has again decided the

issue concerning carried forward of deficit in favour of the assessee. The substantial question of law before the Hon'ble Bombay High Court was, as under:

“(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing the claim of the assessee for carry forward of the said deficit, ignoring the fact that there was no express provision in the Act permitting allowance of such claim?”

The Hon'ble Bombay High Court decided the issue by holding as under:-

“4. Regarding question no.(ii):-

(a) Mr. Kotangale, the learned counsel for the Revenue very fairly states that the issue arise herein stands concluded by the decision of this Court in CIT v/s. Institute of Banking 264 ITR 110 and the order of this Court in Director of Income Tax (Exemption) v/s. M/s. Gem & Jewellery Exports Promotion Council (Income Tax Appeal No.610 of 2011) decided on 15th February, 2011.

(b) In view of the above submission, question no.(ii) as proposed also does not give rise to any substantial question of law. Thus not entertained.”

Further , we have also observed that Hon'ble Bombay High Court in the case of DIT (Exemption) v. Mumbai Education Trust in ITA no. 11 of 2014 vide judgment dated 03.05.2016 wherein Revenue raised following substantial question of law, as under:-

“ (b) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in confirming the order of the CIT(A) to allow to carry forward of deficit of earlier years relying on the decision of this Court in the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 (Bom)while the revenue did not file SLP against the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 (Bom)due to low tax effect?”.

The Hon'ble Bombay High Court decided the issue in favour of the assessee , by holding as under:-

“ 3. We find that the impugned order of the Tribunal has dismissed the Revenue's appeal on both the issues namely – allowability of depreciation on capital assets acquired for the purposes of carrying out charitable activities and set off of deficit of earlier years against income of the current year. The impugned order in fact followed decision of this Court in CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 while holding in favour of the Respondent-Assessee.

4. Mr. Malhotra, learned Counsel appearing for the Revenue very fairly states that the issue as raised by the Revenue stands concluded against Revenue by decision of this Court in Institute of Banking Personnel Services (supra).

5. In view of the above, the questions as framed do not give rise to any substantial question of law.”

The Mumbai-tribunal in ITO(Exemptions) vs. Vaibhav Medical & Education Foundation in ITA no. 6998/Mum/2016 for AY 2008-09, vide order dated 31.08.2017 has also decided this issue in favour of the assessee , by holding as under:-

“ 6. We find that the Hon'ble Bombay High Court subsequent to the decision in the case of Institute of Banking Personnel Selection (supra) considered a similar argument of the Revenue in the case of M/s. Mumbai Education Trust, ITA No. 11/2014 dated 3.5.2016 and allowed the claim of the assessee. In fact, the Grounds of appeal urged by the Revenue before the Hon'ble High Court, which read as under :-

“(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in confirming the order of the CIT(A) to allow the claim of depreciation relying on the decision of this Court in the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 (Bom) ignoring the ratio of Hon'ble Supreme Court judgment in the case of Escorts Ltd. V/s. Union of India (199 ITR 43) wherein Hon'ble Supreme Court has held that double deduction cannot be presumed if the same is not specifically provided by law, in addition to normal deduction?

(b) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in confirming the order of the CIT(A) to allow to carry forward of deficit of earlier years relying on the decision of this Court in the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 (Bom) while the revenue did not file SLP against the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR110 (Bom) due to low tax effect?”

stand on the same footing as are being canvassed before us in the instant case. Thus, there is no error on the part of the CIT(A) in following the decision of the Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection (supra) as well as the decision of the Tribunal dated 10.09.2013 (supra) in assessee's own case and allowing the stand of the assessee. The other argument taken by the Revenue that its SLP filed before the Hon'ble Supreme Court is pending on a similar issue is of no consequence inasmuch as the binding judgments of the Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection (supra) as well as in the case of M/s. Mumbai Education Trust (supra) continue to subsist. Apart from the aforesaid, the Ld. Representative for the assessee also pointed out that the Hon'ble Bombay High Court has approved the stand of the assessee in the case of DIT (Exemption) vs. M/s. Gem & Jewellery Exports Promotion Council (ITA (LOD) No. 1133 of 2010) dated 15.02.2011 also, and the SLP of the Department has also been dismissed by the Hon'ble Supreme Court in CC 13512/2011 dated 09.09.2011. Therefore, in this background, we find no merit in the Ground raised by the Revenue and the same is accordingly dismissed.

7. In the result, appeal of the Revenue is dismissed.”

Further we have also observed that Mumbai Tribunal in DDIT v. Maharashtra Samaj Ghatkoper in ITA no. 3654/Mum2013 , vide order dated 22.06.2016 to which one of us being Judicial Member was part of the Division Bench who adjudicated the appeal in ITA no. 3654/Mum/2012 , has again decided the issue of carried forward of losses in favour of the tax-payer , by holding as under:-

“ 3. We have heard Departmental Representative (DR) for Revenue and Authorised Representative (AR) for assessee and perused the material

available on record. Ld. DR argued that Ld DIT wrongly given the relief to the assessee and prayed that order of the AO may be restored. Ld AR for assessee argued that this case is squarely covered by the decision of Bombay High Court in CIT vs. Institute of Banking Personnel Selection (IBPS)(supra). We have seen that Ld. CIT(A) while allowing the appeal of the assessee made the followed observations:

"I have carefully considered the submissions of the appellant, assessment order and facts of the case. I find that the appellant's claim of setting off the excess of income over expenditure against the deficit of earlier year is correct in view of the decision of Hon'ble Rajasthan High Court in the case of CIT v/s Maharashtra of Mewar Charitable Foundation (1987) 60 CTR (Raj) 40 : (1987) 164 ITR 439 (Raj) which was followed in CIT vs. Shri Plot Swetamber Murti Pujak Jain Mandal 211 ITR 293 (Guj.). Therefore, this ground of appeal is allowed."

4. We have gone through the decision of Hon'ble jurisdictional High Court in CIT vs. Institute of Banking Personnel Selection (IBPS), wherein on identical ground, the Hon'ble Bombay High Court held as under:

"5. Now coming to question No.3, the point which arises for consideration is: whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a Charitable Trust, their income was assessable under self-contained code mentioned in section 11 to section 13. of the Income-tax Act and that the income of the Charitable Trust was not assessable under the head "profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the Department. 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 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. Our view is also supported by the Judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293.”

Further the Hon'ble jurisdictional High Court in case of DIT vs. Mumbai Education Trust in ITA No. 11/2014 dated 3rd May 2016 given the similar relief in respect of allowability of depreciation of capital asset acquired for the purpose of carrying out charitable activities and set off of deficit of earlier years against the income of current year.

5. By respectfully following the judgment of Hon'ble jurisdictional High Court, we hold that the assessee is claimed for setting off of excess income over expenditure against the deficit of earlier years is correct. In view of the above observation, we do not find any illegality or infirmity in the order passed by DIT.”

We have also observed that Hon'ble Bombay High court has dismissed the appeal of the Revenue in DIT(E) v. Gem & Jewellery Exports Promotion Council in ITA(LOD) No. 1113 of 2010 vide judgment dated 15.02.2011 by following the decision of Hon'ble Bombay High Court in the case of CIT v. Institute of Banking Personnel Selection (IBPS) (supra) on the issue of set off of deficit of earlier years against surplus of the impugned assessment year. The Revenue filed an SLP with Hon'ble Supreme Court which was dismissed by Hon'ble Apex Court vide orders dated 09.09.2011 in SLP(Civil) CC 13512/2011. The AO has referred to in his assessment orders in the instant case before us that SLP is filed by the Revenue against Hon'ble Bombay High Court judgment but as is observed, the said SLP also stood dismissed by Hon'ble Apex Court. Thus we have observed that the Hon'ble Courts/Tribunal had taken consistent stand that in case of Charitable Trust excess expenditure over income is to be allowed to be carried forward for setting off against income of subsequent years. We do not find any reason to deviate from the consistent stand taken by the Hon'ble Courts/ Tribunal and Respectfully following aforesaid decision(s) as enumerated in preceding para's of this order, we allow the carry forward of excess expenditure over income of Rs. 2,33,03,449/- to be carried forward to subsequent years. Thus, we

confirm/affirm decision of learned CIT(A) and dismiss the appeal of the Revenue. We order accordingly.

7. In the Result, appeal of the revenue in ITA no. 5575/Mum/2017 for AY 2010-11 is dismissed.

Order pronounced in the open court on 08.02.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 08.02.2019 को की गई

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 08.02.2019

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI