IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1440 OF 2016

The Commissioner of Income Tax (Exemption) … Appellant

V/s.

Rustomjee Kerawalla Foundation … Respondent

Mr.Tejveer Singh for the Appellant.
Mr.Satish Mody with Ms.Aasifa Khan for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 22, 2019.

P.C.:-

1. The Revenue has filed this appeal against the judgment of Income Tax Appellate Tribunal ("Tribunal" for short) dated 5th October, 2015 raising following question for our consideration:-

> "Whether on the facts of the case and in law the Tribunal erred in allowing the carry forward of deficit of Rs.4,62,33,309/- and allowing set off against the income of the subsequent years?"

2. The Tribunal in the impugned judgment has relied on the judgment of this Court in case of **Commissioner of Income-tax**

Vs. Institute of Banking Personnel Selection (IBPS)[1]. It is undisputed that the issue at hand is squarely covered by the said judgment in which the Court had made following observations:

> "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

1 264 ITR 110 (Bombay)

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] 211ITR293(Guj). Accordingly, we answer question No.3 in the affirmative i.e., in favour of the assessee and against the department.

3. In the result, appeal is dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

....