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

INCOME TAX APPEAL NO. 1761 OF 2017

CIT (Exemptions), Mumbai. ... Appellant.

V/s.

Rustomjee Kerawalla Foundation ...Respondent.

Mr. N. C. Mohanty, Advocate for the Appellant.
Mr. Satish Mody, Advocate a/w. Ms. Aasifa Khan for the Respondent.

CORAM : UJJAL BHUYAN AND
MILIND N. JADHAV,JJ.

DATE : JANUARY 22, 2020.

PC :

1 Heard Mr. Mohanty, learned standing counsel Revenue for the Appellant; and Mr. Satish Mody, learned counsel for the Respondent.

2 This Appeal has been preferred under section 260A of the Income Tax Act, 1961 (briefly "the Act" hereinafter) by the Revenue against the order dated 01.02.2017 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Mumbai (Tribunal) in Income Tax Appeal No. 5391/Mum/2016 for the assessment year 2012-13.

3 Short point for consideration in this Appeal is whether the Tribunal was justified in allowing carry forward of deficit of Rs. 8,12,28,425/- and allowing set-off against income of the subsequent year.

4 In brief, it is stated that the Respondent/ Assessee is a Trust. It carried forward the aforesaid deficit amount from the earlier years to the present assessment year, which was initially dis-allowed by the Assessing Officer; but subsequently, allowed by the Tribunal.

5 This issue is no longer *res-integra.* In fact, in the case of the assessee itself for the assessment year 2008-2009 being Income Tax Appeal No. 1440 of 2016 decided on 22.01.2019, this court upheld the decision of the Tribunal and dismissed the appeal of the revenue.

6 The question as to whether any expenditure incurred by a Trust/ Charitable Institution in the earlier assessment year could be allowed to be set-off against the income of the subsequent year by invoking section 11 of the Act came up for consideration before the Supreme Court in **Commissioner of Income Tax**

(Exemption), New Delhi vs. **Subros Educational Society,** (2018) 7 Supreme Court Cases 548; the Apex Court held that there was no merit in the stand taken by the Revenue and dismissed the appeal of the Revenue.

7 In the light of the above, we find no merit in the present appeal as well. Consequently, the appeal is dismissed. No cost.

Shalikram P. Borey
Digitally signed by Shalikram P. Borey
Date: 2020.01.27 19:04:44 +0530

(MILIND N. JADHAV, J.) (UJJAL BHUYAN, J.)

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