

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-115-2021

Date of decision: 06.02.2023

The Commissioner of Income Tax Exemptions ChandigarhAppellant

V/s.

Mukand Lal College Society

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Varun Issar, Junior Standing Counsel
for the appellant.

Ritu Bahri, J.

The revenue has come up in appeal against the judgment dated 22.01.2020 passed by the Income Tax Appellate Tribunal, Chandigarh for the assessment year 2010-11.

The respondent-assessee is a registered society under Section 12AA of the Act and was seeking exemption under Section 12-A of the Income Tax Act, 1961 for the assessment year 2010-11.

The main dispute was whether the losses carried out in the previous year could be set off in the income of the next assessment year. The appeal of the assessee was allowed by referring to the judgment passed in *ITA-6-2012 titled as Commissioner of Income Tax, Panchkula vs. M/s. The Ved Parkash Mukand Lal Education Society, Radaur, decided on 02.05.2012*. In the said judgment, reference was made to the judgment of the Bombay High Court in *Commissioner of Income Tax vs. Institute of Banking, (2003) 264 ITR 110* and to the judgment of the Gujarat High Court in *Commissioner of Income Tax vs. Shri Plot Swetamber Murti Pujak Jain Mandal, (1995) 211 ITR 293* in which it was recorded as

under:-

“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 the 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 utilisation 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 the 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.”

No SLP has been filed against the judgment of *The Ved Parkash Mukand Lal Education Society's case (supra)*. Since the issue that the excess expenditure of the Trust in early years can be adjusted against the income of the subsequent years, has attained finality, this appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

06.02.2023

Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No