

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1345/Mum/2024
Assessment Year: 2017-18

Deputy Commissioner of Income Tax (Exemptions) - 1(1), Mumbai	Vs	Dawat E Hadiyah, Mumbai 5 th Floor, Badri Mahal Dr. D.N. Road Fort Mumbai - 400001 [PAN: AAATD1489N]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Foroz B. Adhyarujina (Adv.) & Mr. Jayesh Chugh, A/Rs
Revenue by :	Smt. Sanyogita Nagpal, CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 12/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 14/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the revenue is preferred against the order dated 25/01/2024, by NFAC, Delhi, pertaining to Assessment Year 2017-18.

2. The grievance of the revenue reads as under:-

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the exemption u/s 11(1A) of the Act when such application has not been made during the year and the said amount has been just credited to Corpus Account pending the approval to be received from the Charity Commissioner?"

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CTT(A) erred in allowing the claim of deficit created artificially to gain benefit from settled case laws of the issue of deficit when the intention of the courts in interpreting the law did not intend so?"

3. Briefly stated the facts of the case are that the assessee trust is an institution registered as a charitable organization with

DIT(Exemptions), Mumbai, u/s 12A of the Act. The assessee filed its return of income electronically declaring total income at Nil, claiming exemption u/s 11 of the Act. The return was selected for scrutiny under CASS and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the AO noticed capital gains on sale of immovable properties. The AO found that the assessee has sold properties and was accordingly asked to explain as to how the provisions of Section 11(1A) of the Act have been complied with. In its reply, the assessee explained that the assessee had sold four flats in a building known as Ahmed Manzil, after taking prior permission of the Charity Commissioner u/s 36(1) of the Maharashtra Public Trusts Act, 1950 for a total consideration of Rs. 7,04,24,000/- and the surplus arising out of the above transaction amounts to Rs. 5,37,06,050/- and the said amount has been credited to the Corpus Account of the Trust. The assessee has advanced money for purchase of Immovable property after taking Prior permission of Charity Commissioner and has advanced a sum of Rs.203 Crores. Since the entire sale consideration is utilized for purchase of another capital asset, provision of Section 11(1A) of the Act have been complied with.

5. The reply of the assessee did not find any favour with the AO who was of the firm belief that the investment in the immovable properties, is not treated by the Trust as expenditure incurred on capital assets. Therefore, investment made in purchase of immovable properties is not sufficient to claim exemption u/s 11A of the Act and accordingly added

the entire sale consideration of Rs.7,04,24,000/- to the income of the assessee trust.

5.1. Proceeding further, the AO found that the assessee had huge deficit of earlier years brought forward. The assessee was asked to furnish details of deficit claimed with the relevant working. The assessee filed the detailed reply explaining the deficit being excess of expenditure over income for AY 1995-96 to AY 2017-18. It was explained that in all the earlier AYs, the deficit is already allowed to be carried forward to subsequent years. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Rajasthan and Gujarati Charitable Foundation, Poona* in Civil Appeal No. 7186 of 2014. Reply of the assessee was dismissed by the AO. The AO was of the opinion that the assessee had created artificial deficit and came to the conclusion that the deficit claimed in AY 2013-14 to AY 2017-18, is not the actual deficit but an artificially calculated deficit which cannot be allowed to be carried forward and accordingly rejected the claim of deficit of Rs.3,66,11,44,839/-.

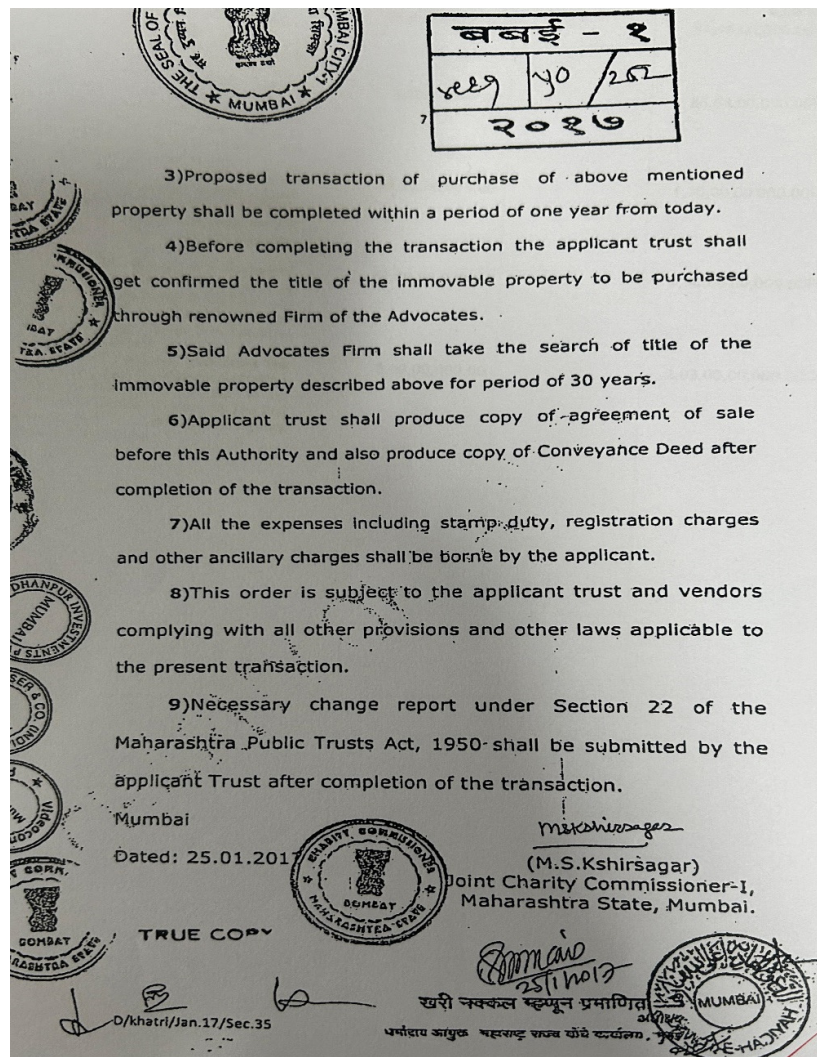
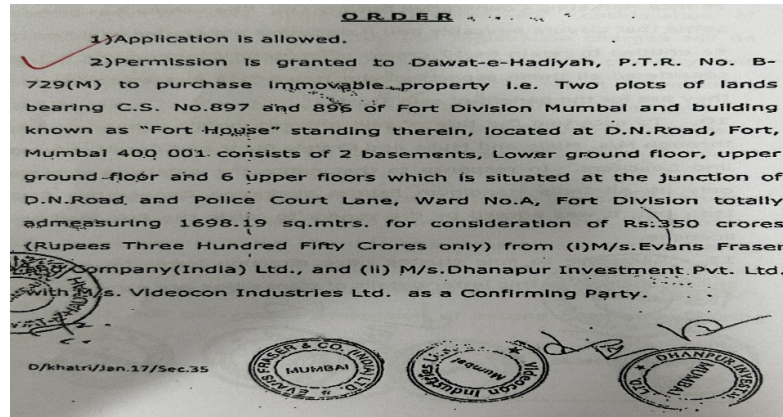
6. The assessee challenged the assessment before the Id. CIT(A) and reiterated its claim of exemption u/s 11(1A) of the Act. After considering the facts and submissions, the Id. CIT(A) found that since the entire consideration received on sale of immovable property was invested towards purchase of new property, the amount invested is in line with the provisions of Section 11(1A) of the Act and accordingly, allowed the entire capital gain as exempt in terms of provision of Section 11(1A) of the Act.

7. Insofar as the disallowance of Rs.3,66,11,44,839/- is concerned, the Id. CIT(A) found that the Hon'ble Bombay High Court, in the assessee's own case in *ITA Nos, 741 & 755 of 2016 for AYs 2010-11 and 2011-12, vide judgment dated 03/12/2018*, has decided the appeal in favour of the assessee and against the revenue in respect of such arbitrary disallowance of carried forward loss. The Id. CIT(A) also found that addition on this account has been made in various other orders by the AO which have subsequently been deleted by the appellate authorities at different levels. Since the impugned additions/disallowances have been allowed in earlier AYs, taking a leaf out of them, the Id. CIT(A) deleted the disallowance of carried forward loss of Rs.3,66,11,44,389/-.

8. Before us, the Id. D/R strongly supported the findings of the AO and vehemently contended that nothing is coming out of the records to show that the investment in properties in earlier years was considered as capital expenditure. It is the say of the Id. D/R that all the case-laws considered by the Id. CIT(A) are not relevant as in those cases, the claim u/s 11(1A) was not considered and insofar as the carry forward of losses are concerned, strong reliance was placed on the findings of the AO.

9. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that, whenever the properties are purchased, they are shown as application of funds and claimed as capital expenditure in the computation of income. Similar treatment was given in the computation of income for AY 2005-06 and 2006-07. Insofar as, the investment of capital gain is concerned, there is no dispute that the entire sale consideration has been invested in the purchase of immovable properties. The said immovable properties were purchased

after taking permission from the Charity Commissioner – Maharashtra State, Mumbai, vide his order dt. 25/01/2017. The relevant findings in the order, read as under:-



10. Since the entire sale consideration has been invested in the purchase of property, with the prior permission of the Charity Commissioner, we do not find any reason to interfere with the findings of the Id. CIT(A). This Ground, is accordingly dismissed.

11. Insofar as, the liability of the carried forward loss is concerned, there is no dispute that in the earlier AYs, the losses/ disallowances have been allowed by the appellate authorities in favour of the assessee and against the revenue and it cannot be said that the assessee has artificially created the deficit when the same is emanating from the records of the assessee. Considering the facts of the in totality, in light of the history of the assessee, we decline to interfere. Accordingly, this Ground is also dismissed.

12. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 14th August, 2024 at Mumbai.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 14/08/2024

**Sd/-*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai