

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं./ I.T.A. No. 06/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2011-12)
2. आयकर अपील सं./ I.T.A. No. 07/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2012-13)
3. आयकर अपील सं./ I.T.A. No. 08/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2013-14)
4. आयकर अपील सं./ I.T.A. No. 09/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2015-16)
5. आयकर अपील सं./ I.T.A. No. 10/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2016-17)

DCIT Cen Cir. 7(1) R. No. 676B, 6 th floor Aaykar Bhavan, M. K. Road Mumbai-400 020	बनाम/ Vs.	Dr. D. Y. Patil International Academy Dr. D. Y. Patil Knowledge City Charholi BK, Via Lohegaon Pune-412 105.
स्थायी लेखासं. / जीआइआरसं. / PAN/GIR No. AAATD-9542-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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6. आयकर अपील सं./ I.T.A. No. 05/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT Cen Cir. 7(1) R. No. 676B, 6 th floor Aaykar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	Dr. D. Y. Patil Educational Enterprises Charitable Trust B-502, Blue Hills Society Pune Nagar Road, Yerawada, Pune-411 006
स्थायी लेखासं. / जीआइआरसं. / PAN/GIR No. AABTD-3063-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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7. आयकर अपील सं./ I.T.A. No. 1966/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2011-12)
8. आयकर अपील सं./ I.T.A. No. 1967/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2012-13)
9. आयकर अपील सं./ I.T.A. No. 1968/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2013-14)

10. आयकरअपील सं./ I.T.A. No. 1980/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2016-17)

Dr. D. Y. Patil International Academy Dr. D. Y. Patil Knowledge City Charholi BK, Via Lohegaon Pune-412 105	बनाम / Vs.	DCIT Cen Cir. 7(1) R. No. 676B, 6 th floor, Aaykar Bhavan M. K. Road, Mumbai-20
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAATD-9542-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Rajat Mittal – Ld. Sr. DR
Assessee by	:	Shri Prakash Jhunjunwala – Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	27/10/2021
घोषणा की तारीख / Date of Pronouncement	:	01/11/2021

आदेश / ORDER

Per Bench

1. Aforesaid appeals by revenue in case of two different assessee for Assessment Years (AY) 2011-12 to 2016-17 assail separate orders of first appellate authority. However, the facts as well as issues are common in all the years and it is admitted position that adjudication in any one year shall equally apply to other years also. For the purpose of adjudication, the appeal for AY 2011-12 is taken up first which arises out of common appellate order dated 16/10/2020 passed by Ld. Commissioner of Income-Tax (Appeals)-49, Mumbai [CIT(A)] in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 153A on 28/12/2018. The grounds read as under:

1. Whether On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the assessee to carry forward the deficit, being excess of expenditure over receipts, to subsequent years and the same is eligible to be set-off with the income of subsequent years by relying upon the judgment of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection (IBPS), ignoring the fact that there was no express provision in the I T Act, 1961 permitting allowance of such claim.

2. The judgment by the Hon'ble Supreme Court in the case of M/s. Subros Educational Society in M.P.No.941/2018 in CA No.5171/2016 on the issue of carry forward of deficit has not been accepted by the department and a Review Petition has been filed before the Hon'ble apex Court with Diary No. 20745/2020."

2. The learned counsel for assessee (AR), at the outset, submitted that the appellate order merely follows the order of jurisdictional High Court in the case of **CIT V/s Institute of Banking Personnel Selection (264 ITR 110)** against which Special Leave Petition (SLP) has already been dismissed by Hon'ble Apex Court. The Ld. CIT-DR submitted that the issue has not yet attained finality. In the above background, our adjudication would be as given in succeeding paragraphs.

3. The material facts are that the assessee being resident Trust was subjected to search action on 27/07/2016 and accordingly, an assessment was framed u/s 143(3) r.w.s. 153A on 28/12/2018. In the assessment, Ld. AO determined deficit of Rs.1404.02 Lacs and denied the carry forward of the same for set-off in subsequent years.

4. The Ld. CIT(A), inter-alia, relying upon the cited decision of Hon'ble High Court of Bombay in **CIT V/s Institute of Banking Personnel Selection (264 ITR 110)**, the decision of Hon'ble Apex Court in **CIT V/s Subros Educational Society (166 DTR 257)** as well as various other decisions held that the assessee would be eligible to carry forward the deficit for set-off in subsequent years. Aggrieved, the revenue is in further appeal before us.

5. As rightly pointed out by Ld. AR, we find that the issue is squarely covered in assessee's favor by cited decisions of Hon'ble High Court of Bombay in **CIT V/s Institute of Banking Personnel Selection (supra)** as well as the decision of Hon'ble Apex Court in **CIT V/s Subros Educational Society (supra)**. No contrary decision has been placed

before us. Therefore, we do not find any reason to interfere in the impugned order, in any manner. Resultantly, the appeal stands dismissed.

6. Facts as well as issues in other appeals of the revenue are quite identical and the appellate order is on similar lines. Therefore, our adjudication as for AY 2011-12 shall *mutatis-mutandis* apply to all the other appeals of the revenue. All these appeals stands dismissed.

7. So far as the assessee's appeals are concerned, Ld. AR has submitted that the assessee is not pressing these appeals and therefore, the same may be dismissed. Keeping in view the same, the captioned appeal of the assessee stand dismissed as being *not pressed*.

8. Resultantly, all the captioned appeals stands dismissed.

Order pronounced on 01st November 2021.

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/11/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.