

No reassessment on basis of mere change of opinion by AO to disallow carry forward of deficit of trust

Summary – The High Court of Gujarat in a recent case of Bharatmaiya Memorial Foundation., (the Assessee) held that When in original assessment, only after scrutiny, assessee-public charitable trust was allowed to carry forward deficit of earlier year, reassessment would not be permissible

Even if objections against reasons recorded for reopening of assessment were received belatedly, but prior to framing of assessment, Assessing Officer was duty bound to consider them

Facts

- The petitioner/assessee, a registered public charitable trust, filed its return in which assessee made adjustment of carry forward deficit of Rs. 90.59 lakhs pertaining to earlier years and, thus, declared *nil* income.
- The Assessing Officer after due application of its mind allowed assessee to carry forward deficit of earlier year and assessment was made.
- Later on, the Assessing Officer on basis of an audit objection, sought to reopen assessment and impugned notice was issued to the assessee for same and reasons for reopening of assessment were duly given to the assessee.
- The Assessing Officer passed impugned order under section 147 and made disallowance of adjustment of carry forward deficit of Rs. 90.59 lakhs pertaining to earlier years and thus, raised demand of Rs. 47 lakhs.
- On appeal by the assessee to the High Court:

Held

- On a perusal of the order sheet, it is apparent that during the course of the scrutiny proceedings this very issue of carry forward of deficit of the earlier year to the extent of Rs. 90.59 lakhs had been gone into by the Assessing Officer and the same had been allowed. Thus, the Assessing Officer having applied his mind to the issue and thereafter, having allowed the assessee to carry forward the deficit of earlier year, it is evident that the reopening on the very same issue is based upon a mere change of opinion, which renders the impugned notice unsustainable.