

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, बी, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं

श्री राजेश कुमार, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajesh Kumar, Accountant Member**

**ITA NO.2675/Mum/2012
Assessment Year 2008-09**

ITO(E)-I(1) Room No.504, Piramal Chambers, 5 th Floor, Parel Mumbai-400012	बनाम/ Vs.	The Bombay Presidency Golf Club, Dr. Choitram Gidwani Road, Chembur, Mumbai
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. No.AAATT5024B		

राजस्व की ओर से / Revenue by	Shri Randhir Gupta-DR
निर्धारिती की ओर से / Assessee by	Shri Shekhar Gupta

सुनवाई की तारीख / Date of Hearing :	19/10/2015
आदेश की तारीख /Date of Order:	19/10/2015

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 24/02/2012 of the Id. First Appellate Authority, Mumbai. The only ground raised in this appeal is that whether the Id. Commissioner of Income Tax (Appeals) was right ignoring the ratio laid down in Escorts Ltd. vs Union Of India, wherein it was held that double deduction cannot be presumed, if it is

not specially provided by law in addition to normal deduction.

2. During hearing, the ld. DR, Shri Randhir Gupta, advanced his arguments identical to the ground raised. On the other hand, Shri Shekhar Gupta, ld. counsel for the assessee claimed that the issue is covered in favour of the assessee by the decision of the Tribunal in CIT vs Institute of Banking (264 ITR 110)(Bom.) and CIT vs Tiny Tots Education Society (2011) 330 ITR 21 (P & H).

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee is duly registered u/s 12A of the Income Tax Act, 1961 (hereinafter the Act). The assessee receives fee from its members which is deposited in the banks as property of the trust. The assessee earned interest income from such deposits and applied the same towards the objects of the trust i.e. maintenance of the golf course. The stand of the department is that the assessee is doing business activity, whereas, the stand of the assessee is that the assessee is not carrying out any business, therefore, the income is to be assessed under the head income from other sources. Without going into much deliberation, we find that the issue under hand is covered by the decision from Hon'ble jurisdictional High Court in the case of Institute of Banking 264 ITR 110 (Bom.) and CIT vs Tiny Tots Education society 330 ITR 21 (P & H), wherein, it was held that depreciation is an allowable expenditure. Even otherwise, the department

has granted registration to the assessee club u/s 12A and the benefit of section 80G of the Act. The objects of the assessee club are charitable in nature, its income was also exempt u/s 11 of the Act. The stand of the Revenue is that if depreciation is allowed to the assessee, it would result in double deduction. In view of the decision from Hon'ble jurisdictional High Court (Supra), we find no infirmity in the impugned order directing the Assessing Officer to allow depreciation on the asset, the cost of which had been fully as application of income u/s 11 in earlier years.

Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 19/10/2015.

Sd/-

(Rajesh Kumar)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 19/10/2015

Shekhar. P.S./नि.स.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.