

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No.67/JP/17
निर्धारण वर्ष / Assessment Year : 2010-11

The Income Tax Officer (E), Ward -1, Jaipur	बनाम Vs.	Shree Mitra Gyan Shiksha Samiti, Sector-9, Mandir Marg, Patel Marg, Mansarover, Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN No. AAEAS 4610 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. K.L.Moolchandani, CA
राजस्व की ओर से / Revenue by : Shri Prithviraj Meena(Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 03.03.2017
घोषणा की तारीख / Date of Pronouncement : 03/03/2017.

आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Ld. CIT(A) dated 14.10.2016 for assessment year 2010-11. The grounds taken by the Revenue are as under:

- (1) *On the facts and in the circumstances of the case and in law the CIT(A) has erred in allowing claim of depreciation on fixed assets in spite of the fact that the same was allowed as application of income u/s 11 at the time of purchase.*
- (2) *On the facts and in the circumstances of the case and in law the CIT(A) has erred in allowing depreciation without appreciating the fact that the application of 100% expenditure of the capital asset is already allowed*

as capital expenditure hence further allowance of the depreciation on the same capital asset would amount to double allowance.

(3) *On the facts and in the circumstances of the case and in law the CIT(A) has erred in allowing depreciation without appreciating the fact that the assessee has not carried out the business activities but the receipts utilized for charity. As there was no business activity the claim of depreciation was not allowable, the depreciation is allowable only in the case of business or profession or in e case of income from other sources.*

2. Both the parties are heard.

3. The subject issue is no more *res integra*. As per Hon'ble Karnataka High Court decision in case of DIT Vs. Al-Ameen Charitable Fund Trust (ITA No. 62 and 414 of 2010) dated 22.02.2016, the plain language of the amendment by way of insertion of subsection 6 to section 11 establishes the intent of the legislature in denying the depreciation deduction in computing the income of Charitable Trust prospectively with effect from 1.4.2015. This view is further supported by the Notes on Clauses in Finance [No.2] Bill, 2014, memo explaining provisions and circulars issued by the Central Board of Direct Taxes in this regard.

4. Further, the Hon'ble Rajasthan High Court in the case of **CIT vs. Krishi Upaj Mandi Samiti** reported in 388 ITR 605 (Raj) has held as under:

(5) *The assessee is a charitable institution registered u/s 12A of the Act, 1961 and 100 per cent capital expenditure was availed by it against the asset concerned, i.e. a building. Section 32(1) of the Act, 1961 provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. Income of the charitable trust like the present assessee derives from the depreciable heads is also liable to be computed on commercial basis, however, while doing so it is to be kept in mind that*

ultimately the assessee is a charitable institution and its income for tax purposes is required to be determined by taking into consideration provisions of section 11 of the Act of 1961 after extending normal depreciation and deductions from its gross income. In computing the income of a charitable institution/trust depreciation of assets owned by such institution is a necessary deduction on commercials, hence, the amount of depreciation has to be deducted to arrive at the income available.

(6) In view of the discussions made above, we find ourselves in agreement with the view taken by the Bombay High Court in DIT (Exemptions) vs. Framjee Cawasjee Institute (supra) and the Cit vs. Institute of Banking (supra). The substantial question framed in the instant matter, thus is answered in the terms that the Income Tax appellate Tribunal rightly allowed depreciation claimed by the assessee society on capital assets for which capital expenditure was already given in the year under consideration.”

5. The Id DR submitted that the Revenue has not accepted the said above decision of the Hon’ble Rajasthan High Court and a prayer for special leave petition against the said order has since been admitted by the Hon’ble Supreme Court. In his rejoinder, the Id AR submitted that the admitting of an SLP against the order of Hon’ble Rajasthan High Court is no bar for the Tribunal and any of the lower authorities to follow such binding decision of the jurisdictional High Court unless the operation of such order has been stayed by the Hon’ble Supreme Court.

6. Respectfully following the decision of Hon’ble Karnataka High Court wherein the amendment to section 11 (6) has been held prospective in nature with effect from 01-04-2015 and the Hon’ble Rajasthan High Court decision

(supra), the depreciation is held admissible to the assessee under the provisions of section 32 of the Act in respect of assets on which exemption has been allowed under section 11 of the Act. The grounds taken by the Revenue are thus dismissed.

In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 03/03/2017.

Sd/-
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Jaipur
Dated:- 03/03/2017

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

1. अपीलार्थी / The Appellant- The ITO (E), Wad-1, Jaipur
2. प्रत्यर्थी / The Respondent- M/s Shree Mitra Gyan Shiksha Samiti, Jaipur
3. आयकर आयुक्त / CIT (E), Jaipur
4. आयकर आयुक्त(अपील) / The CIT(A) Aligarh
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 67/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.