

आयकर अपीलीय अधिकरण, “जे” खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI - ‘J’ BENCH
सर्वश्री राजेन्द्र, लेखा सदस्य एवं पवन सिंह, न्यायिक सदस्य
Before S/Sh. Rajendra, Accountant Member & Pawan Singh, Judicial Member
आयकर अपील सं./ITA No.2661/Mum/2015, निर्धारण वर्ष/Assessment Year-2010-11

ITO (E)- 2(2), Room No. 4502, 5 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400012.	बनाम Vs.	Parmeshwaridevi Gordhandas Garodia Charitable Trust, 153, Garodia Nagar, Ghatkopar (E), Mumbai-400077 PAN: AAATP0083C
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व ओर से / Revenue by : Shri Anu Krishna Aggarwal (DR)

निर्धारिती की ओर से/ Assessee by : Shri Rahul K. Hakani (AR)

सुनवाई की तारीख/ Date of Hearing : 02-01-2017

घोषणा की तारीख / Date of Pronouncement : 13-01-2017

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

Per Pawan Singh, J.M. न्यायिक सदस्य पवन सिंह के अनुसार:

1. The present appeal by Revenue u/s 253 of the Income-tax Act, 1961 (for short ‘the Act’) is directed against the order of Id. Commissioner of Income-tax (Appeals)-1, Mumbai (for short the CIT(A) dated 05.02.2015 for Assessment Year (AY) 2010-11. The Revenue has raised the following grounds of appeal:

1. Whether on the facts of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee on account of disallowing depreciation on fixed assets of Rs. 70,55,379/- in contravention of the decision of Escorts Ltd., Vs. UOI 199 ITR 43 wherein it was held

that since section 11 of the Income-tax Act provides for deduction capital expenditure incurred on assets acquired for the object of the trust as application, and does not specifically & expressly provide for double deduction on account of depreciation on the same very assets acquired from such capital expenditure, no deduction u/s. 32 for the same or any other previous year in respect of that asset as it amounts to claiming a double deduction

2. Whether on the facts and in the circumstances of the case and in law the Ld. OIT(A) erred in allowing the capital, when the Delhi High Court in the case of Charanjiv Charitable Trust and Kerla High Court in the case of Lissie Medical Institutions u/ s. CIT 76 DTR(Kar)372 has decided the issue in favour of the department after considering the decision of Hon'ble Supreme Court in the case of Escorts Ltd. (199 ITR 43)

3. Whether on the facts of the case and in law the Ld. CIT(A) erred in allowing the set off of carry forward of deficit will tantamount to double deduction on account of expenditure out of exempt income

4. The Appellant prays that the order of the Commissioner of Income- Tax (Appeals) 1, Mumbai be set aside and that of the Assessing Officer be restored.

2. Brief facts are that the assessee is a Charitable trust registered with the Charity Commissioner, Mumbai. The assessee is also having Registration u/s 12A of the Act. The

assessee filed return of income for relevant AY on 27.09.2010. In the return of income, the assessee claimed the depreciation of Rs. 70,55,379/-. The assessment was completed u/s 143(3) on 28.02.2013. The Assessing Officer (AO) disallowed the depreciation. On appeal before the Id. CIT(A), the depreciation was allowed. Being aggrieved by the order of Id. CIT(A), the Revenue filed the present appeal before us.

3. We have heard Id. Departmental Representative (DR) for the Revenue and Id. Authorized Representative (AR) of the assessee. The Id. DR for the Revenue relied upon the order of AO. On the other hand, Id. AR of the assessee submits that the grounds of appeal raised by Revenue are covered in favour of assessee by the decision of Co-ordinate Bench in assessee's own case for AY 2009-10 in ITA No. 5987/Mum/2012 . It was further argued that the against the decision of Tribunal for AY 2009-10, the Revenue filed appeal before the Hon'ble High Court and the same was dismissed on 20.10.2016. The Id. AR of the assessee placed on record the copy of decision of Tribunal in assessee's own case for AY 2009-10 and the order of Hon'ble Bombay High Court dated 20.10.2016.
4. We have considered the contentions of the both the parties and seen that the order of Co-ordinate Bench in assessee's own case for AY 2009-10, wherein the Tribunal while relying upon the decision of earlier in assessee's own case for AY 2007-08 and passed the following order:

“2. At the time of hearing before us, the AR pointed out that grounds no. 1, 2 & 3 are covered by the order of the Coordinate Benches Mumbai in ITA No. 4108/Mum/2010 in the assessee's own case in assessment year 2007-08 and also by the order of Hon'ble Bombay High Court in the case of DIT(Exmp) vs GKR Charities in ITA No. 2060 of 2012 dated 08.03.2013. The AR pointed out that the Coordinate Bench held,

We have carefully considered the facts and the rival contentions. [In CIT vs. Institute of Banking](#) (supra), the Bombay High Court held that while computing the income of a trust, both the capital expenditure on acquisition of assets and the depreciation on the said assets were allowable, the capital expenditure being allowed as application of income of the trust and depreciation being allowable as a legitimate deduction in computing the real income of the assessee on general principles. In coming to this conclusion the High Court followed its earlier decision in [CIT vs Munisuvarat Jain](#) (1994) Tax Law Reporter 1084 (Bom). The Supreme Court in the judgment cited supra held that it is a fundamental and unwritten axiom that no Legislature could have intended a double deduction in regard to the same business outgoing and if it is so intended, it will be clearly expressed. On this basis the Supreme Court refused to allow a deduction of depreciation on assets used for scientific research, since the acquisition of the assets themselves were allowable as deduction, even though the expenditure represented capital expenditure. Both these judgments have been considered by the Punjab & Haryana High Court in a recent decision in [CIT vs Market Committee, Pipli](#) (2011) 330 ITR 16 (P & H). In this case the assessee was a trust registered under the [Income Tax Act](#) as a charitable trust. The Assessing Officer

disallowed depreciation on the assets on the ground that since the income was exempt, allowing depreciation to ascertain whether the required percentage of funds were applied for the purposes of the trust would amount to conferring double benefit. His view was affirmed by the CIT(A) but the Tribunal allowed the assessee's appeal. On further appeal by the revenue to the High Court, it was held that the income of the assessee being exempt, the assessee was only claiming that depreciation should be reduced from the income for determining the percentage of funds which had to be applied for the purposes of the trust. There was thus no double deduction claimed by the assessee. In coming to this conclusion the Punjab & Haryana High Court, inter alia, followed the judgment of the Hon'ble Bombay High Court cited above and distinguished the judgment of the Supreme Court cited supra. In this view of the matter, and respectfully following the judgment of the Punjab & Haryana High Court and the Bombay High Court cited above, we affirm the decision of the 3 Parmeshwaridevi Gordhandas Garodia Charitable Trust ITA 5987/Mum/2012 CIT(A) and dismiss the appeal filed by the revenue with no order as to costs".

3. The DR accepted the factual position, however, he placed reliance on the order of the AO.

4. After going through the orders as cited by the AR, we are of the opinion that the issue raised in the grounds are fully covered. We, therefore, respectfully following the decision of the coordinate Bench in the assessee's own case and the decision of the Hon'ble Bombay High Court in the case of GKR Charities, do not find any reason to disturb the findings and order of the CIT(A)."

5. Thus, respectfully following the decision of Co-ordinate Bench, which was confirmed by Hon'ble Bombay High Court, we do not find any reason to disturb the order of Id. CIT(A).

As a result appeal filed by the revenue stands dismissed.

फलतः राजस्व द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 13th January, 2017.

□ देश की घोषणा खुले न्यायालय में दिनांक 13 जनवरी, 2017 को की गई ।

Sd/-

(राजेन्द्र / RAJENDRA

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(पवन सिंह / PAWAN SINGH))

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Date: 13.01.2017

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

1. Assessee /अपीलार्थी

2. Respondent /प्रत्यर्थी

3. The concerned CIT(A)/संबद्ध अपीलीय □ यकर □ युक्त, 4. The concerned CIT /संबद्ध □ यकर □ युक्त

5. DR "J" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि जे खंडपीठ, □ .अ.न्याया.मुंबई

6. Guard File/गार्ड फाईल

□ देशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

□ यकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai