

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

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.451/JP/2017  
निर्धारण वर्ष / Assessment Year : 2004-05

Income Tax Officer(Exemption), Kota	बनाम Vs.	M/s Krishi Upaj Mandi Samiti, Bhamashah Mandi, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAALK0392B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt Roshanta Meena (JCIT)  
निर्धारिती की ओर से / Assessee by : Shri Deepak Parik (Adv.)

सुनवाई की तारीख / Date of Hearing : 12/10/2017  
उदघोषणा की तारीख / Date of Pronouncement: 17/10/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the revenue against the order of Ld. CIT(A), Kota dated 15.03.2017 for Assessment Year 2004-05 wherein the revenue has taken following grounds of appeal:-

"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 the case of income from other sources."*

2. Firstly, it is noted that this is the second round of appellate proceedings wherein the matter has come up before this Tribunal. In the first round, the Id. CIT(A) has held that the assessee was not entitled to the benefit of exemption u/s 11 & 12 of the Act in the absence of the audit report even though the assessee was registered u/s 12A of the Act. On appeal, the Co-ordinate Bench, vide its order dated 27.2.2015 admitted the additional evidence in the form of the audit report and the matter was set aside to the file of Id. CIT(A) to examine the claim of exemption u/s 11 & 12 as per law.

3. In the set aside proceedings, the Id. CIT(A) has held that as the assessee has applied 100% of receipt for charitable purposes, it is eligible for exemption u/s 11 & 12 of the Act. Further in respect of rental income from the shops which were held as income from house property by the Assessing Officer, it was held that the assessee is entitled for exemption u/s 11 & 12 of the Act since the income from assets are earned in the normal course of the activities of the Mandi. In respect of disallowance of depreciation amounting to Rs. 5,74,58,572/- made by the Assessing Officer, the Id. CIT(A) held that since the entire income is allowed as being applied for the purpose of trust, the expenditure on depreciation deduction will be also deemed to be allowed within the overall claim. The Revenue has not challenged the eligibility of the assessee for exemption u/s 11 & 12 of the Act. However, as far as allowance of depreciation on the fixed assets is concerned, the same is being challenged before us by way of present appeal.

4. At the outset, the Id AR submitted that the issue is covered in favour of the assessee by the decision of the Hon'ble Rajasthan High Court in case of CIT vs. Krishi Upaj Mandi Samiti reported in 388 ITR 605 (Raj) and the same may kindly be followed.

5. Per contra, the Id DR relied on the order of the AO and submitted that 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. It was further submitted that the Revenue has not accepted the above said decision of the Hon'ble Rajasthan High Court.

6. In case of ACIT(Exemption), Jaipur v. Mahima Shiksha Samiti (*ITA No. 30,31,105 &106/JP/2016*) dated March 3, 2017 (where one of us was a party), following the decision of the Hon'ble Rajasthan High Court in the case of Krishi Upaj Mandi Samiti (*supra*), we have already taken a view that 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 claimed and allowed under section 11 of the Act. The relevant findings are reproduced as under:

*"99. The subject issue is no more res integra. As per Hon'ble Karnataka High Court, 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 effective 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.*

*100. Further, recently, 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."*

101. *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.*

*102. 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 society 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 ground taken by the assessee society is thus allowed."*

7. In the instant case, the year under consideration being AY 2004-05, the provisions of section 11 (6) are not applicable following the decision of the Hon'ble Karnataka High Court in the case of DIT v. Al- Ameen Charitable Fund Trust reported in 383 ITR 517 where the said provisions have been held applicable prospective with effect from 01-04-2015. Further, following the decision of the Hon'ble Rajasthan High Court in the case of Krishi Upaj Mandi Samiti (supra), the assessee is held eligible for depreciation allowance under the provisions of section 32 of the Act in respect of assets on which exemption has been claimed and allowed under section 11 of the Act. The grounds of appeal taken by the Revenue are thus dismissed.

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

Order pronounced in the open court on 17/10/2017.

Sd/-  
(विजय पॉल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 17/10/2017

\*Ganesh Kr

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

1. अपीलार्थी / The Appellant- Income Tax Officer (Exemption), Kota
2. प्रत्यर्थी / The Respondent- M/s Krishi Upaj Mandi Samiti, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 451/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.