

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 4448/MUM/2016 : A.Y : 2009-10

ITO (Exemptions)-2(3),
Mumbai (Appellant) Vs. Shree Manav Seva Sangh
255/257, Sion Main Road West,
Mumbai 400 022 (Respondent)
PAN : AAATS1440G

CO NO. 258/MUM/2017 : A.Y : 2009-10
(in ITA No. 4448/Mum/2016)

Shree Manav Seva Sangh Vs. ITO (Exemptions)-2(3),
255/257, Sion Main Road West, Mumbai (Respondent)
Mumbai 400 022
(Cross Objector)
PAN : AAATS1440G

Assessee by : Shri Rajesh Kumar Yadav

Revenue by : Shri Dinesh R. Shah

Date of Hearing : 25/10/2017

Date of Pronouncement : 31/10/2017

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the Revenue and Cross-objection by the assessee are directed against the order of CIT(A)-1, Mumbai dated 26.04.2016, pertaining to Assessment Year 2009-10, which in turn has

arisen from the order dated 14.11.2011 passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Although the Revenue has raised multiple Grounds of appeal, but the solitary dispute involved in this appeal is against the action of the CIT(A) in directing the Assessing Officer to allow the benefit of depreciation.

3. In this background, now we may refer to the relevant facts. The respondent-assessee is a charitable organisation registered u/s 12A of the Act and is engaged in the activities of charitable nature. The Assessing Officer noticed that assessee had claimed depreciation allowance of Rs.78,35,371/- on the cost of fixed assets, whereas such cost of fixed assets has also been taken as an application of income while computing the total income. According to the Assessing Officer, this amounted to a double deduction and he, therefore, disallowed the assessee's claim for depreciation. The CIT(A) has since allowed the claim of the assessee following the judgment of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection*, 264 ITR 110 (Bom).

4. Before us, the plea of the Department is that the decision of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection (supra)* has not been accepted by the Department on merits and on a similar issue, SLP (Civil) no. 9891 of 2014 has been filed before the Hon'ble Supreme Court in the case of *Maharashtra Industrial Development Corporation (MIDC)*. Further, it is contested that allowing

of depreciation would amount to a double deduction, which was impermissible having regard to the judgment of the Hon'ble Supreme Court in the case of *Escorts Ltd., 199 ITR 43 (SC)*.

5. We find that the decision in the case of *Escorts Ltd. (supra)* being relied upon by the Revenue before us has been considered by the Hon'ble Delhi High Court in the case of *Indraprastha Cancer Society, (2014) 112 DTR 345* dated 18.11.2014, wherein it has been opined that the allowance of depreciation in similar situation would not amount to a double deduction. Further, the Hon'ble Delhi High Court in the case of *Vishwa Jagriti Mission, ITA No. 140/2012 dated 29.3.2012* also allowed a similar claim after analysing the judgment of the Hon'ble Supreme Court in the case of *Escorts Ltd. (supra)*, which is being relied upon by the Revenue. It is also noticed that the Hon'ble Supreme Court has also dismissed the SLP filed by the Department against the said decision of the Hon'ble Delhi High Court vide SLP No. 19321 of 2013. We find that the Hon'ble Bombay High Court subsequent to the decision in the case of *Institute of Banking Personnel Selection (supra)* considered a similar argument of the Revenue in the case of *M/s. Mumbai Education Trust, ITA No. 11/2014 dated 3.5.2016* and allowed the claim of the assessee. In fact, the Grounds of appeal urged by the Revenue before the Hon'ble High Court, which read as under :-

“(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in confirming the order of the CIT(A) to allow the claim of depreciation relying on the decision of this Court in the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 (Bom) ignoring the ratio of Hon'ble Supreme Court

judgment in the case of Escorts Ltd. V/s. Union of India (199 ITR 43) wherein Hon'ble Supreme Court has held that double deduction cannot be presumed if the same is not specifically provided by law, in addition to normal deduction?

(b) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in confirming the order of the CIT(A) to allow to carry forward of deficit of earlier years relying on the decision of this Court in the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 (Bom) while the revenue did not file SLP against the case of CIT v/s. Institute of Banking Personnel Services reported in 264 ITR110 (Bom) due to low tax effect?''.

stand on the same footing as are being canvassed before us in the instant case, including the reliance placed by the Revenue on the judgment of the Hon'ble Supreme Court in the case of Escorts Ltd., (supra). Thus, there is no error on the part of the CIT(A) in following the decision of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection (supra)* and allowing the stand of the assessee. The other argument taken by the Revenue that its SLP filed before the Hon'ble Supreme Court is pending on a similar issue is of no consequence inasmuch as the binding judgments of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection (supra)* as well as in the case of *M/s. Mumbai Education Trust (supra)* continue to subsist. Therefore, in this background, we find no merit in the Ground raised by the Revenue and the same is accordingly dismissed.

6. In the result, appeal filed by the Revenue is dismissed.

7. So far as the Cross-objection filed by the assessee is concerned, the same is only in support of the order of CIT(A) and no independent issue has been raised. Since the order of CIT(A) has been upheld and Revenue's appeal dismissed, the Cross-objection becomes infructuous and is dismissed as such.

8. Resultantly, appeal of the Revenue as well as Cross-objection of the assessee is dismissed.

Order pronounced in the open court on 31st October, 2017

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 31st October, 2017

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai