

**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. 5279/MUM/2016 : A.Y : 2011-12**

ITO (Exemption)-2(2),  
Mumbai (Appellant)

Vs. Punjab Kesari Charitable Trust  
242, Bhandar Galli  
L.J.Road,Mahim  
Mumbai – 400 016  
**PAN : AAATP0040R** (Respondent)

**Appellant by : Shri Rajeshkumar Yadav**  
**Respondent by : Shri Shekhar Gupta**

**Date of Hearing : 31/10/2017**

**Date of Pronouncement : 31/10/2017**

**ORDER**

**PER G.S. PANNU, AM :**

The captioned appeal by the Revenue is directed against the order of CIT(A)-1, Mumbai dated 14.06.2016 pertaining to the Assessment Year 2011-12, which in turn has arisen from the order passed by the Assessing Officer dated 15.01.2014 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In its appeal, Revenue has raised the following Grounds of appeal:-

1. "Whether on the facts of the case and in law the Id. CIT(A) erred in allowing the appeal of the assessee on **account** of disallowing depreciation on fixed assets of Rs. 21,00,193/- 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 objects 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 shall be allowed 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 Id. CIT(A) erred in allowing the appeal, when the Delhi High Court in the case of Charanjiv Charitable Trust and Kerala High Court in the case of Lissie Medical Institutions vs CIT 76 DTR (Ker) 372 has decided the issue in the 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 and in the circumstances of the case and in law the Id. CIT(A) erred in relying upon the judgment of Hon'ble High Court in the case of CIT vs. Institute of Banking Personnel Selection without appreciating the fact that Department has not accepted the decision on merit and also without appreciating the fact that the Hon'ble High Court while deciding the above said case has not taken into account the judgment of Hon'ble Supreme in the case of Escort Ltd. which is in the favour of Department."

4. "Whether on the facts of the case and in law the Id. CIT(A) erred in allowing the carry forward of deficit of Rs. 15,71,262/- and allowing set off against the income of the subsequent years."

5. "Whether, on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the claim of the assessee for carry forward of the said deficit, ignoring the fact that there was no express provision in the I T Act, 1961 permitting allowance of such claim."

6. "Whether, on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the claim of the assessee for carry forward of the said deficit by relying upon the judgment of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection, ignoring the fact that the Department has not accepted the said decision of the jurisdictional High Court on merit of the case"

7. *The appellant prays that the order of the Commissioner of Income Tax (Appeals)-I, Mumbai be set aside and that of the Assessing Officer be restored.*

8. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.*

5. Although the Revenue has raised multiple Grounds of appeal, but the dispute involved in this appeal is on two issues. Firstly, the Revenue is aggrieved by the decision of the CIT(A) in directing the Assessing Officer to allow the benefit of depreciation. Secondly, the grievance of the Revenue is against the action of the CIT(A) in allowing the assessee the benefit of carry forward of the deficit for future set-off.

6. 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 carrying on activities of charitable nature. The Assessing Officer noticed that assessee had claimed depreciation allowance of Rs.21,00,193/- 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)*.

7. Before us, the only 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 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)*.

8. 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, it is noticed that 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 notable 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 in the case of *Mumbai Education Trust (supra)*, 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 same footing as are being canvassed before us in the instant case. 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 on the first issue and the same is accordingly dismissed.

9. Similarly, the second issue raised by the Revenue is with regard to carry forward of the deficit of Rs.15,71,262/- to be set-off against the future income. On this aspect also, CIT(A) has allowed the claim following the judgment of the Hon'ble Bombay High Court in the case of *Institute of Banking Personnel Selection (supra)*; in fact, similar situation has been further affirmed by the Hon'ble Bombay High Court in the case of *M/s. Mumbai Education Trust (supra)*. Therefore, on this aspect also, we find no error on the part of the CIT(A) in allowing the claim of the assessee, which we hereby affirm.

10. Resultantly, appeal of the Revenue is dismissed, as announced in the court in the presence of both the parties on the conclusion of hearing on 31<sup>st</sup> October, 2017.

Sd/-  
**(RAM LAL NEGI)**  
**JUDICIAL MEMBER**

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

Mumbai, Date : 31<sup>st</sup> 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