

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”, NEW DELHI
BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER**

**I.T.A. No. 2285/Del/2017
(Assessment Year 2013-2014)**

DCIT(Exemption) Exemption Circle Ghaziabad	Vs.	Kanpur Education Society 110/62, Jawahar Nagar Kanpur, UP.
		GIR/PAN: AAATK7598P
(Appellant)		(Respondent)

Appellant by : Sh. Kaushlendra Tiwari, Sr. DR
Respondent by : None.

Date of hearing : 30.10.2017
Date of Pronouncement : 30.10.2017

ORDER

PER BHAVNESH SAINI JM:

1. This appeal by the revenue has been directed against the order of Ld. CIT(A)-II, Kanpur, dated 09.12.2016 for assessment year 2013-14 on the following grounds.

1. The Ld. Commissioner of Income Tax(A) has erred in law and on allowing the appeal of the assessee after allowing claimed depreciation of Rs. 45,40,842/- on account of disallowance of depreciation which allowable as the capital expenditure on acquiring assets has already allowed in respective years.

2. The Ld. Commissioner of Income Tax (A) has erred in law and on first allowing the appeal of the assessee after deleting the addition of Rs. 45,40,842/-

3. Appellant craves leave to modify/ amend or add any one or more grounds of appeal.

4. The order of Ld. CIT(A) be cancelled and the order of the A.O. Restored.

2. Brief facts of the case are that in the assessment order, the AO has stated that the assessee is a society registered under the Societies Act with the Registrar of Society (UP) and has been granted registration u/s 12A by Ld. CIT, Kanpur. The assessee society is running educational institution. As per the income and expenditure account, the total receipt during the year has been shown at Rs. 5.22 cr., against which excess of income over expenditure have been shown at Rs. 1.09 cr. During the year under consideration, the assessee has shown total capital expenditure Rs. 69,27,349/-. The assessee has claimed depreciations of Rs. 45,40,842/- on account of application of income for charitable purpose which is not allowable as capital expenditure on acquiring fixed assets has already been allowed in respective years. The assessee challenged the assessment order before Ld. CIT(A).

3. During the appellate proceedings the A.R. of the assessee submitted that the income of the trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from the gross income of the trust. Thus depreciation must be understood as a necessary outgoing. While disallowing depreciation the Ld. DCIT has stated that the assessee has claimed depreciation of Rs. 45,40,842/- on account of application of income for charitable purpose which is not allowable as the capital expenditure on acquiring fixed assets has already been allowed in respective years. No other reason has

been stated in the assessment order. While doing so the Ld. DCIT has not appreciated that depreciation has been treated as a normal expenses incurred for the attainment of the objects of the Trust. In order to arrive at the income available for application, the amount of depreciation should be deducted as held by various High Courts and Tribunal. If depreciation is not allowed as a necessary deduction in computing the income of a charitable/religious trust, then there would be no way to preserve the corpus of the trust. Therefore, a charitable/religious trust is entitled to depreciation in respect of the assets owned by it. We rely on the following judgments in the matter:

a. In the case of CIT Vs Market Committee, Pipli [2011] 330 ITR 16 (P&H), it has been clearly held that deduction of depreciation in case of a charitable / religious trust does not amount to double deduction.

b. In the case of CIT Vs Tiny Tots Education Society [2011] 330 ITR 21 (P&H), it has been held that the deduction of depreciation in case of a charitable / religious trust, does not amount to double benefit. Same is the view held by the Bombay High Court in the cases : (i) CIT Vs Institute of Banking [2003] 264 ITR 110 (Bom) (ii) DIT (E) Vs Framjee Cawasjee Institute [1993] 109 CTR 463 (Bom) 9. Thus the Ld. DCIT was liable to allow depreciation and repayment of loan as an application of income.

c. In the decision of Hon'ble Madhya Pradesh high Court in CIT vs. Raipur Pallottine Society (1989) 180 ITR 579 (M.P.) wherein Hon'ble High Court held as under:

"Depreciation is the exhaustion of the effective life of a fixed asset owing to "use" or obsolescence. It may be computed as that part of the cost of the asset which will not be recovered when the asset is finally put out of use. The object of providing for depreciation is to spread the expenditure incurred in acquiring the asset over its effective lifetime and the amount of provision made in respect of accounting period is intended to represent the proportion of such expenditure which has expired during that period. If depreciation is not allowed as a necessary deduction in computing the income of a charitable trust, then there would be no way to preserve the corpus of the trust. A charitable trust is,

therefore, entitled to depreciation in respect of the assets owned by it.

Your honour, with effect from assessment year 2015-16 as per amendment in the Act (Finance (No. 1) Bill, 2014 to amend section 11 by inserting a new subsection 6), depreciation shall not be considered as an expense in the case of the Trust. This confirms that for the assessment year under consideration, in order to arrive at the income available for application, the amount of depreciation should be allowed and deducted. Thus claim of depreciation of Rs. 45,40,8427- may please be allowed in view of the above submissions and judgments.

4. Ld. CIT(A) considering the various decisions of different Hon'ble High Courts allowed the appeal of the assessee. His findings are reproduced as under:

“I have gone through the facts and circumstances of the case. Depreciation has been held to be an allowable deduction in the hands of trust and cannot be added as income of the appellant, in various judgments. In order to compute income available for application to charitable & religious purposes depreciation debited to assets of the trust must be deducted - CIT v. Society of Sisters of St. Anne (1984) 146 ITR 28 (Karn.) (1984) 39 CTR 9 (1984) 16 Taxman 400, CIT v. Sheth Manilal Ran Chhoddas Vishram Bhavan Trust (1992) 198 ITR 598 (Guj.) (1993) 70 Taxman 228 (Guj.),

Accordingly this ground is allowed.”

5. I have heard Ld. DR, who has relied upon the order of the AO. However, none has appeared on behalf of the assessee despite notifying the date of hearing through registered post. After considering the submission of the Ld. DR, I do not find any merit in the departmental appeal. The assessee has relied upon several decisions on the proposition that Charitable/Religious Trust is entitled to depreciation in respect of the assets owned by it, which are reproduced in the submission of the assessee. The law u/s 11(6) is inserted later on w.e.f 01.04.2015 to deny depreciation therefore, for assessment year under appeal i.e. 2013-14 assessee would be entitled for depreciations. Ld. CIT(A) on proper appreciation of facts and various decisions correctly allowed depreciation to the assessee. Ld. DR did not point out any infirmity in the order of Ld. CIT(A). In the case of DIT vs M/s Indraprasth Cancer Society, in ITA no. 240/2014, dated 18.11.2014, Hon’ble Delhi High Court had taken the same view as is taken by Ld. CIT(A), in which departmental appeals have been dismissed. Departmental appeal fails and dismissed.

In the result departmental appeal is dismissed.

Order pronounced in the open court on 30.10.2017.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Date: 30.10.2017

@mit.

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak
6. Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi)

S.No.	Details	Date
1	Draft dictated on	30.10.2017
2	Draft placed before author	30.10.2017
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	