

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, AM AND SHRI AMARJIT SINGH, JM

आयकरअपीलसं/I.T.A. No.7664/M/2016

(निर्धारणवर्ष / Assessment Year: 2009-10)

DCIT (E)1(1) Room No. 506, 5 th Floor, Piramal Chambers, Lalbaug, Mumbai - 400012	बनाम/ Vs.	DR. G.D. Pol Foundation 105, B.K.K. Tower, Parel Tank RD, Parel Mumbai. Pin:400012
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : ABQPD9420J		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Department by:	Shri V. Vidhyadhar

सुनवाईकीतारीख / Date of Hearing: 10.10.2017

घोषणाकीतारीख /Date of Pronouncement: 27.10.2017

आदेश / ORDER

PER AMARJIT SINGH, JM:

This is an appeal filed by the revenue against the order dated 20.10.2016 passed by the Commissioner of Income Tax (Appeals)-7, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2009-10.

2. The revenue has raised the following grounds:-

"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.24,77,00,938/- 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 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.

Whether on the facts of the case and in law the Ld. CIT(A) erred in Allowing the appeal, when the Delhi High Court in the case of Chiranjiv 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).

Whether on the facts of the case and in law the Ld. CIT(A) erred in Relying upon the judgment of Hon'ble High Court in the case of CIT vs. Munsuvrat Jain Temple Trust without appreciating the fact that Department has not accepted the decisions on this issue of Hon'ble ITAT's and Hon'ble High Courts and SLPs has been filed in other cases including in the case of G.D. Birla Meical Research & Educational Foundation in which leave has been granted by the Hon'ble Apex Court.. S.L.P. (C) No. 24904 of 2016 and in all cases the issue is pending for adjudication.

The appellant prays that the order of the CIT(A)-I Mumbai be set aside and that of the AO be restored.

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

3. The brief facts of the case are that the case of the appellant was selected for scrutiny by A.D.I.T.(E)-11-(1), Mumbai u/s 127 of the I.T. Act, 1961. Thereafter, the notice u/s 143(2) and 142(1) of the I.T. Act, 1961 were issued and served upon the assessee. The activity of the trust was to establish and run and conduct Educational Institutes. The total income filed by the assessee was a deficit of Rs.1,78,43,954/- This trust was registered as charitable trust u/s 12A of the Act vide DIT's order no. DIT(E)/12A-change of name/49/2010-11 dated 11.10.2010. On verification it was found that the trust has

claimed an amount of Rs.24,77,00,938/- on account of depreciation which has been claimed to be application within the meaning to Section 11(1)(a) of the Act, 1961 for the purpose of availing exemption u/s 11(1)(a) of the Act. The claim of depreciation of Rs.24,77,00,938/- as application of income u/s 11(1)(a) of the Act, 1961 against the income of current assessment year amount to claiming a double deduction as the capital expenditure incurred on capital assets, has already been allowed as application of income, therefore, the claim of the said depreciation was disallowed and added to the income of the assessee. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NOS 1 TO 3:-

4. All the issues are in connection with the deletion of the disallowance of claim of the depreciation of the appellant of Rs.24,77,00,938/-. The Ld. Representative of the revenue has argued that the Assessing Officer has rightly disallowed the claim of the depreciation upon the application of the income u/s 11(1)(a) of the Act being double deduction but CIT(A) wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is wrong against law and fact and is liable to be set aside. On the other hand, the Ld. representative of the assessee has placed reliance upon the order passed by the CIT(A) in question. The assessee is a public charitable

trust registered with DIT(E) in Mumbai u/s 12A of the Act. The AO rejected the claim of the depreciation upon the application of money. However, the CIT(A) has allowed the claim of the assessee by following the decision rendered by Hon'ble Jurisdictional High Court in the case of **CIT Vs. Institute of Banking Personnel Selection 264 ITR 110**. The facts are not distinguishable at this stage. The CIT(A) has decided the matter of controversy on the basis of the finding of the decision of the jurisdictional High Court in the case of **CIT Vs. Institute of Banking Personnel Selection 264 ITR 110** which is binding upon us. No law contrary to the said law has been produced by the revenue before us. No material of any kind came into notice to which it can be assumed by the finding of the CIT(A) is not justifiable. Since, the matter of controversy has been adjudicated by the CIT(A) on the basis of the finding of the jurisdictional High Court in the case of **CIT Vs. Institute of Banking Personnel Selection 264 ITR 110**, therefore, we are of the view that the CIT(A) has passed the order judiciously and correctly which is not liable to be interfere with at this appellate stage. We decide these issues in favour of the assessee against the revenue.

5. In result, the appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 27.10.2017

Sd/-

Sd/-

(B.R. BASKARAN)

(AMARJIT SINGH)

लेखासदस्य / ACCOUNTANT MEMBER

न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 27.10.2017

v.p singh

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai