

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 1087/JP/2016
निर्धारण वर्ष / Assessment Year : 2012-13

The ACIT(E), Circle, Jaipur.	बनाम Vs.	M/s Scholars Education Trust of India, A-3-G. Sunder Path, Bani Park, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADTS1374A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Varindera Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 16/10/2017
उदघोषणा की तारीख / Date of Pronouncement: 15/11/2017

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order dated 28.09.2016 of CIT (A) for the A.Y. 2012-13.

2. The assessee is society registered under Delhi Societies Registration Act XXI, 1860 on 24.02.1994. As per the objects of the assessee society it was formed to impart education under the name and style of Central Academic & Parents Pride. The assessee is running

various schools to various locations in Rajasthan and Uttar Pradesh. The assessee society is registered u/s 12AA of the Income Tax Act vide order dated 09.06.2003 and also notified u/s 10 (23C)(vi) of the Income Tax Act vide notification dated 27.12.2010 for the assessment year 2011-12 onwards. The assessee filed its return of income declaring nil income after claiming the exemption u/s 11 of the Act. The Assessing Officer on examination of the record and particular of the balance sheet noticed that the assessee has shown development fund of Rs. 47,90,56,305/- as on 31.03.2011 and Rs. 59,23,06,694/- on 31.03.2012 showing an increase of Rs. 11,32,50,389/- in the year under consideration. The AO asked to the assessee to explain as to why the development fund has not been routed through the income and expenditure account and also to explain the nature of receipt with documentary evidence. In response the assessee submitted that the amount in question were not credited in the profit and loss account but directly credited to the balance sheet and was claimed as capital receipt exempt u/s 12 of the Income Tax Act. The assessee further explained the contribution as development fund made by the students were in consideration of services to be rendered by the school to student and therefore, these contributions were in the nature of capital

receipt and was used in creating fixed assets, like purchase of school land, construction of school building etc. Thus the assessee contended before the AO that the contribution received by the assessee from the parents/students was not current income but capital receipt exempt u/s 12 of the Act. Then the assessee tried to explain the difference between the tuition fee and development fund and claimed that the receipt on account of development fund is capital in nature and exempt u/s 12 of the Act. The AO did not accept the contention and explanation of the assessee and was of the view that the development fund received as part of the other fees and as such there is no contribution and difference in the nature of development fund and other fees. The AO also taken note of the fact that the assessee itself has claimed that the development fund made by the students were in consideration of services to be rendered by the school to student and as such it is fee against the services and not voluntary offered from any person but a compulsion of students to pay development fund. Accordingly, the AO treated the development receipt of Rs. 11,32,50,389/- as revenue receipt and after considering excess of receipt over the application of income and 15% of the receipt allowed as set apart u/s 11 assessed the balance of Rs. 1,44,06,790/- treated as income chargeable to tax. The

assessee challenged the action of the AO before the Id. CIT(A). The Id. CIT(A) allowed the claim of the assessee and deleted the addition made by the AO. Aggrieved by the impugned order of the Id. CIT(A) the Revenue has filed the present appeal and raised the following grounds as under:-

"1) On the facts and in the circumstances of the case and in law the CIT(A) has erred in deleting the addition on account of receipts portion of fees, treating as capital receipts/corpus donation, earmarked as development fund by the assessee himself whereas the students or persons depositing the fee paid it as fee only, and nowhere has indicated it to be a voluntary contribution.

2) 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 facts that the same was allowed as application of income u/s 11 at the time of purchase.

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 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.

4) 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 activities 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.'

5) Any other question of law as deemed fit in the facts and circumstances of the case may also be framed before the Hon'ble Tribunal in the interest of justice."

3. Before us, the Id. DR has submitted that the development fund is received from the students as a part of other fees on account of tuition fees and term fees, therefore, there is no difference in the nature of development fund and other fees received by the assessee from the students. It is an admitted fact that the development fund is received from the students against the services to be rendered as such it is a fees against service and no voluntary contribution by the students or parents but it is compulsion of student to pay development fund if he or she wants to study in the school. The Id. DR has thus contended that when there is no option with the students or parents to pay or not to pay the development fund but it is mandatory to pay this fee along with other fees then this receipt cannot be treated as the voluntary contribution. Further when this fee received against the student services then it cannot be treated as capital in nature but it is the current receipt of the assessee. The Id. DR has thus contended that the received in question cannot be classified as donation or contribution for specific projects and therefore, will part of revenue receipt from the students. Since the surplus is increased beyond the 15% limit of

allowable amount as per provision of section 11(1)(a) of the Act, therefore, the said surplus over and above the 15% cap is liable to tax. He has relied upon the order of the Assessing Officer.

4. On the other hand, Id. AR of the assessee has submitted that the assessee is also notified u/s 10 (23C)(vi) and therefore this amount is otherwise exempt under the provisions of section 10(23C)(vi). He has reiterated the contention has raised before the authorities below and submitted that though the voluntary contribution is included in the term income as per section 11(1)(a) in respect of charitable or religious trust however, the said amount shall not be included in the total income of the trust or institutions being the corpus fund of the trust as per provisions of section 11(1)(a) r.w.s. 12 of the Income Tax Act which excludes the contribution made with a specific direction will not form part of the income but shall form corpus of the trust or institution. The Id. AR has relied upon the decision of Hon'ble Karnataka High Court in case of Director of IT (Exemption) vs. Sri Ramakrishna Seva Ashrama 357 ITR 731 and submitted that the Hon'ble High Court while considering the meaning of word corpus held that the donation for specific purpose must be capital in nature and cannot be applied for charitable or religious purpose and therefore cannot be deemed to be

income derived from the property for the purpose of section 11 of the Income Tax Act. He has also relied upon the decision of Rajasthan High Court in case of Sukhdeo Charity Estate Vs. ITO 192 ITR 615 and submitted that when the amount was contributed to the corpus of the institution and are kept as capital then it cannot be treated as income or revenue receipt for the purpose of section 11 of the Income Tax Act. The Id. AO has relied upon the decision of Hon'ble Delhi High Court in case of DIT(E) Vs. National Association of Software & Services 345 ITR 362 and submitted that the Hon'ble High Court has held that one time admission fee paid by members who are aware that it could be spent by assessee only for acquiring capital asset is corpus donation not taxable income. The Id. DR thus contended that the assessee has been received development funds from the student apart from the tuition fees with the clear understanding that it is to be used for creation of capital asset necessary for achieving the object of the assessee society. Therefore, the development fees of Rs. 11,32,50,389/- received during the year is directly credited to the development fund account and not routed through the income & expenditure account. The Id. AR has further contended that the development fund fees received by the assessee is utilized only for acquiring the fixed asset and thus the fund

utilized in creation of capital asset cannot be treated as revenue receipt. He has also relied upon the various decision of this Tribunal including the decision dated 01.11.2016 of Coordinate Bench of this Tribunal in case of ACIT (Exemptions) Vs. Shyam Lal panwar Anandi Devi Memorial Charitable Trust.

5. We have considered the rival submissions as well as relevant material on record, there is not dispute so far as the assessee is granted registration u/s 12AA of the Act as well as notified u/s 10(23C)(vi) of the Act. However the mere registration granted u/s 12A and notification u/s 10(23C) would not ipso facto exempt all the receipts from tax. For the purpose of availing the benefit u/s 11 of the Act. The conditions as stipulated under the said provision along with the condition as provided u/s 12 and 13 of the Act are to be satisfied. The dispute before us is on the limited point whether the receipt on account of development fund/development fee from the students of the assessee is in the category of capital receipts/ corpus fund to be used by the assessee for specific purpose or not. So far as a voluntary donation or contribution for specific purpose is received by the trust or institution the same would be classified as capital receipt for being part of the corpus fund for specific purpose for which such donation is given

by the donor. However the question arises in the case of the assessee is whether the receipt on account of development fee collected from the students is a voluntary contribution/donation or it is a compulsory payment by the students for continuing the studying in the educational institutions of the assessee. We find that the said payment is received by the assessee along with the tuition fee, term fee and other charges in a single receipt of fees which the students are making periodical payments. It is imperative to ascertain whether such payment received from the students along with the tuition fee, term fee and other charges is a voluntary payment/ contribution/donation for specific purpose of development or it is a compulsory payment by the students. The term voluntary refers to an act of one's own free will and discretion and not a compulsion or an obligatory. In the case of the assessee the development fee is part of the total fee charged by the assessee from the students and it is apparent that the quantum of amount and specific purpose on account of which this fee is received from the students is determined and decided by the assessee and not by the students or their parents. Therefore, the development fee is not optional for the students but it is compulsory for the students without any discretion or fee will to decide whether to pay or not to pay the development fund fees. Hence,

it is a charge by the assessee on the students without having any element of any discretion on the part of the students or parents either to the quantum of fee or the specific purpose as well as the option of making payment or not. Therefore, when this payment is not optional or voluntary on the part of the students but it is compulsory charge in the nature of fee for studying and continuing the study in the institutions of the assessee, then this payment in the name of development fee cannot be regarded as voluntary contribution or donation. The quantum, the time of payments are decided and determined by the assessee and the students are having no say or role in the quantum of fee or any discretion of paying or not paying the same. Thus in the facts and circumstances of the case when the development fee received by the assessee is not voluntary but it is a compulsory charge on the students then the same cannot be classified as capital in nature for specific purpose or part of the corpus fund of the assessee trust. The decision relied by the Id. AR are on the point that when a particular contribution or donation is given by the donor as per his free will and for specific purpose then the same cannot be treated as revenue receipt. Having regard to the peculiar facts and circumstances we are of the considered opinion that the fee in the

name of development charge received by the assessee from the students is part of the current receipt and will part take a character of the other fee charged by the assessee on account of tuition fee, term fee etc. Hence, we set aside the order of the Id. CIT(A) qua this issue.

6. As regards the benefit of section 10(23C), we find that this issue was not decided by the AO and further the Id. CIT(A) has not adjudicated this issue as the relief was granted u/s 11 and 12 of the Act. The relevant part of the Id. CIT(A) finding on this issue in para 6.3 is as under:-

" 6.3 I have carefully considered the facts of the case, findings of the AO and submission of the appellant. Since I have already allowed ground No. 1 and 2 supra, there does not remain any grievance of assessee. This ground therefore requires no adjudication."

Therefore, the issue of benefit u/s 10(23C) has not been adjudicated by the Id. CIT(A) or by the AO and hence the same is required to be considered and adjudicated at the level of the AO. It is pertinent to note that the benefit of section 10(23C)(vi) is also not automatic but certain conditions provided under the said provision are to be satisfied for availing the benefit. There are also certain limits of receipt under the said provision and breaching those limits will disentitle the assessee for

the exemption u/s 10(23C) of the Act. Accordingly, this issue of benefit u/s 10(23C) is set aside to the record of the Assessing Officer for consideration and adjudication. Needless to say the assessee be given opportunity of hearing.

7. The Revenue has raised another issue in ground no. 2 and 3 regarding disallowance of depreciation by the AO which was allowed by the Id. CIT(A).

8. We have heard the Id. DR as well as Id. AR and considered the relevant material on record. At the outset we note that this issue of allowing depreciation on fixed asset is covered by a series of decisions of Hon'ble High Courts as well as Tribunal. The AO disallowed the claim of the assessee on the ground that once the assessee has claimed the cost of acquisition of fixed asset as applicability of income then the depreciation on the same asset would amount to double deduction. The Id. CIT(A) allowed the claim of the assessee by following the decision of Hon'ble jurisdiction High Court. We note that the Hon'ble Rajasthan High Court in case of CIT vs. Krishi Upaj Mandi Samiti, Jaisalmer 388 ITR 605 has considered and decided an identical issue in paras 4 & 5 as under:-

“4. We have considered the arguments advanced.

The assessee is a charitable institution registered under Section 12-A of the Act of 1961 and 100% capital expenditure was availed by it against the asset concerned i.e. a building. Section 32(1) of the Act of 1961 provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. Income of a charitable trust like the present assessee derived 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 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 commercial principles, hence, the amount of depreciation has to be deducted to arrive at the income available.

5. In view of the discussions made above, we find ourselves in agreement with the view taken by Bombay High Court in *Framjee Cawasjee Institute (supra)* and in *Institute of Banking Personnel (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 on capital assets for which capital expenditure was already given in the year under consideration.”

Thus in view of the decision of Hon'ble jurisdiction High Court we do not find any error or illegality in the order of the Id. CIT(A) qua this issue.

In the result, the appeal of the revenue is partly allowed.

Order pronounced in the open court on 15/11/2017

Sd/-
(भागचंद)
(Bhagchand)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur
दिनांक / Dated:- 15/11/2017.

*Santosh.

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

1. अपीलार्थी / The Appellant- The ACIT(E), Circle, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Scholars Education Trust of India, A-3-G. Sunder Path, Bani Park, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1087/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar