

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 895/JP/2016
निर्धारण वर्ष / Assessment Year : 2013-14

The ACIT(E), Circle, Jaipur.	बनाम Vs.	M/s S.S. Jain Subodh Shiksha Samiti, 1 Subodh College Campus, Rambagh Circle, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATS3402L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Md. Iqbal (Adv.)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 15/12/2017
उदघोषणा की तारीख / Date of Pronouncement: 20/12/2017

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order of dated 25.07.2017 of CIT (A), Jaipur for A.Y. 2013-14. The Revenue has raised the following grounds:-

- "1. 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 fact that the same was allowed as application of income u/s 11 at the time of purchase.*
- 2. 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.

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 assessee has not carried out the business activities but the receipts utilized for charity. As there was no business activity 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'."

2. The only issue arises in this appeal of the Revenue is regarding claim of depreciation on fixed assets. The AO. disallowed the claim on the ground that when the cost of acquisition of the asset was allowed as application of income as per the provisions of section 11 of the Income Tax Act then, the claim of depreciation would be amount to double deduction. On appeal, the Id. CIT(A) allowed the claim of the assessee by following the various decisions of this Tribunal as well as decisions of the Hon'ble High Court.

3. We have heard the Id. DR as well as Id. AR and considered the relevant material on record. At the outset we note that in a recent decision dated 03.10.2017 the Hon'ble Rajasthan High Court in case of CIT(E) vs. Mahima Shiksha Samiti has decided this issue in favour of the assessee and against the Revenue by holding that the amendment in section 11(6) of the Income Tax Act is prospective and not

retrospective effect. Further the Hon'ble High Court in subsequent decision dated 14.11.2017 in case of CIT(E) vs. M/s Compucom Foundation and another as dealt with this issue has held in paras 4 and 5 as under:-

"4. Now the issue is squarely covered as stated by counsel for the respondent in case of Commissioner of Income Tax-II vs. Krishi Upaj Mindi Samiti (DBITA No. 32/2010) decided on 16th January, 2015 wherein it has been held as under:-

"5. 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 for 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.

6. In view of the discussions made above, we find ourselves in agreement with the view taken by Bombay High Court in Director of Income Tax v. Framjee Cawasjee institute and in CIT vs. Institute of Banking Personnel. 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.

4.1. He has relied upon another decision in case of Commissioner of Income Tax vs. Mahima Shiksha Samiti (DBITA No. 262/2017) decided on 3rd October, 2017 wherein it has been held as under:-

"17. On the other issue, whether the expenses which are granted or which has been considered by jthe authority, he relied upon the judgment of this court in commissioner of Income Tax, Jaipur-II vs. Consulting Engineering Group Ltd. (2014) 365 ITR 284 wherein it has held as under:-

***17.** In view of what we have discussed herein above, on all the three issues, the ITAT, after appreciation of evidence, has come to the conclusion that the disallowance out of job work charges, soil testing and surveying charges and directors' remuneration is not proper and it had been rightly deleted by the CIT(A) and we do not find any infirmity or perversity in the said order of the ITAT. It is purely a finding of fact and no question of law much less substantial question of law can be said to emerge out of the said order of the ITAT so as to call for any interference of this Court. In our view, no substantial question of law arises out of the order passed by the ITAT. Consequently, the appeal, being devoid of merit, is hereby dismissed in limine. No order as to costs.*

18. He contended that the view taken by the Tribunal is on consideration of facts and it is not a question of law.

19. he has relied upon the judgment of this court in Murari Lal Khandelwal vs. CIT (2003) 263 ITR 642 wherein it has been held as under:-

***4.** Learned counsel for the assessee Mr. Jhanwar submits that the amount of salary claimed on account of payment to the sons i.e. Anoop and Alok was reasonable, as both are looking*

after the business and assessee has got paralytic attack in the year 1983, therefore, the payment of salary to these persons at the rate of Rs. 6,000 and Rs. 5,000 per month respectively was justified.

5. *The facts on record reveals that both are graduates and Anoop, to whom assessee has paid Rs. 6,000 p.m. in the year under consideration was getting only Rs. 1,000 p.m. just in the preceding year. So far paralytic attack to the assessee is concerned, it happened in the year 1983. The assessee has carried on the business even after paralytic attack without the help of these two sons.*

6. *We also notice that in the preceding year i.e. 1991 assessee has disclosed income of Rs. 70,000. This year he has disclosed only income of Rs. 45,673. On these facts, there is no justification of paying such heavy salary to the sons of the assessee, who are employed by the assessee for the purpose of his business.*

7. *It is also pertinent to note that what should be the reasonable salary in basically a question of fact and Tribunal is a fact-finding final body in this regard. Finding of the Tribunal cannot be said to be perverse on these facts. No interference is called for in the order of Tribunal. In the result, we answer the question in affirmative i.e. in favour of the revenue and against the assessee.*

20. *On the first issue as stated above, the same is required to be answered in favour of the assessee that u/s 11 & 13, the expenses which are transferred to the private university while holding Sec. 13 definition and explanation and substantial controlled or substantial transferred are not in their name. It may be private institution which is a creation of statue having controlled by the same trustee and will not indirectly covered u/s 13 merely because the trustees of the beneficiaries of the trust or any persons controlling the trust which is part of another institution. The object is to see where even transfer for educational purpose or not that has been done. In that view of*

the matter, the contention that the university will be covered u/s 13, in our considered opinion merely because same trustees or the directors or the persons are there, Sec. 13 except with the explanation is required to be considered and the Tribunal has rightly considered that the trustees will not be covered u/s 13.

21. Regarding depreciation in view of the amendment Sec. 11(6) it will be prospective and in view of jurisdictional High Court judgment binding on us and we are following the same.

22. In that view of the matter, depreciation is rightly allowed. On the question of foreign trip after taking into consideration the student exchange programme the Tribunal has come to the conclusion that it is covered under the purpose of the trust object and are done for the educational institution and benefit of the students, in our considered opinion, the expenses of foreign trip are also rightly allowed."

5. In view of the above, the issue is required to be answered in favour of the assessee against the department."

In view of the binding precedent of Hon'ble jurisdiction High Court, we do not find any error or illegality in the impugned order of the Id. CIT(A) allowing the claim of depreciation u/s 11 of the Income Tax Act.

In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 20/12/2017

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

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

दिनांक / Dated:- 20/12/2017.

*Santosh.

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

1. अपीलार्थी / The Appellant- ACIT(E), Circle, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s S.S. Jain Subodh Shiksha Samiti, 1 Subodh College Campus, Rambagh Circle, 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. 895/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar