



**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI**

BEFORE SHRI R.C.SHARMA, AM

ITA No.4039/Mum/2017
(Assessment Year :2012-13)

ITO (E) 1(4) R.No.507, 5 th Floor Piramal Chambers Lalbag, Mumbai – 400 012	Vs.	Kherwadi Social Welfare Association Parishramalaya, Kherwadi, Bandra (W) Mumbai – 400 051
PAN/GIR No.		AAATM5552F
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Ms. M. Hemalatha
Date of Hearing	05/10/2017
Date of Pronouncement	29/12/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the Revenue against the order of CIT(A)-1, Mumbai dated 24/03/2017 for A.Y.2012-13, in the matter of order passed u/s.143(3) of the IT Act.

2. Grievance of revenue relates to disallowance of depreciation and allowing carry forward of losses.

3. Nobody appeared on behalf of assessee inspite of giving opportunity, the Bench, therefore, decided to dispose the appeal after hearing learned DR and considering the material placed on record.

4. Briefly the facts of the case are that the assessee is a trust registered with DIT (E), Mumbai u/s. 12A and 80G of the Income Tax Act, 1951 and also registered with the Charity Commissioner, Mumbai. Assessee is a society registered under the Societies Registration Act, 1860. The appellant filed its return of income on 20.09.2012 along with the Income & Expenditure Account, Balance Sheet and Audit Report in Form 10B declaring total income at Rs. (-)24,52,169/-. However, the AO completed the assessment vide order dated 16.03.2015 u/s. 143(3) of the I.T. Act, 1961 at income of Rs. Nil. "

5. During the course of scrutiny assessment, AO disallowed assessee's claim of depreciation and carry forward of losses.

6. By the impugned order, CIT(A) deleted the disallowance of depreciation and also allowed carry forward losses after having the following observation:-

2. I have considered the facts and circumstances of the case, gone through the assessment order of the A.O and the submissions of the appellant and also discussed the case with the AR of the appellant. The contentions ' and submissions of the appellant are being discussed and decided here in under:

*i. The Assessing Officer has not treated the depreciation as application of income on the ground that it amounts to double deduction. Appellant has submitted that in a number of judgments, depreciation had been allowed as application of income u/s. 11. Case laws relied upon by the assessing officer have also been distinguished. In this regard I find that the issue is directly covered in appellant's favour by the judgment of Hon'ble Bombay High Court in the case of **CIT Vs. Institute of***

Banking Personnel 264 ITR 110 wherein the Hon'ble Court has observed as under:

" 4. Question No. 2 herein is identical to the question which was raised before, the Bombay High Court in the case of Director of Income Tax (Exemption) v. Framjee Cawasjee Institute-(1993) 109 CTR 463 (Bom). In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The Income Tax Officer held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The appeal was rejected. The Tribunal, however, took the view that when the Income Tax Officer stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by, the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above judgment. Consequently, Question No, 2 is answered in the affirmative i.e., in favour of the assessee and against, the department.

ii. In a recent judgement in case of **Director of Income-tax (Exemptions), Mumbai v. Shri Vile Parle Kelavani Mandal [2015] 58 taxmann.com 288** Hon'ble Bombay High Court held:

"As far as question No.4 is concerned, this Court has repeatedly held that there is nothing like double deduction. When the assessee has* acquired an asset from the income of the trust and thereafter the amount that is claimed is the depreciation on the use of the assets, such depreciation claim does not mean double deduction. T-he deduction earlier claimed is towards towards application of funds of the trust for acquiring assets. The latter is depreciation and it is permissible deduction considering the use of the assets. This has been clarified repeatedly by this Court. If any reference is required then the case of CIT v. Institution of Banking Personnel Selection (IBPS) [2003] 264 ITR 110/131 Taxman 386 (Bom.) is enough."

iii. Respectfully following the above observations of Hon'bie jurisdictional High Court, the Assessing Officer is directed to allow the claim of depreciation as application of income u/s. 11 of the I.T. Act.

iv. Grounds of appeal No. 1 to 3 are therefore allowed.

7. CIT(A) allowed the carryforward losses after observing as under:-

6.2 I have considered the facts and circumstances of the case, gone through the assessment order of the A.O and the submissions of the appellant and also discussed the case with the AR of the appellant. The contentions arid submissions of the appellant are being discussed and decided here in under:

i. Relying upon several case laws the appellant stated that deficit of the current year is required to be carried forward to the subsequent years. On perusal of the facts I find that the case of appellant is squarely covered by the judgement of Hon'ble Bombay High Court in the case of **Institute of Banking Personnel 264 ITR 110** wherein the Hon. Jurisdictional High Court has observed as under -

....."5. Now coming to question No. 3, the point which arises for consideration is: whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of • such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the assessing officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a Charitable Trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income Tax Act and that the income of the Charitable Trust was not assessable under the head "profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the department. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the Trust for charitable and religious purposes in the earlier years against the income earned- by the Trust in the subsequent year will have to be regarded as application of income of the Trust for charitable and religious purposes in the subsequent year in which adjustment has been made paving regard to the benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the Trust under section 11(l)(a) of the Act, Cfur view is also supported by the judgment of the Gujarat High Court in the case of **CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal (1995) 211 ITR 293 (Guj)**. • Accordingly, we

answer question No. 3 in the affirmative i.e., in favour of the assessee and against the department."

Respectfully following the ratio laid down by the Hon. High Court as above, the AO is directed to allow the carry forward of deficit in the succeeding years after due verification of facts.

8. It is clear from the finding recorded by CIT(A) that issue under consideration is covered by the decision of jurisdictional High Court in case of Institute of Banking Personnel 264 ITR 110. It is also pertinent to note that this decision of the Bombay High Court has been affirmed by the Hon'ble Supreme Court vide order dated 13/12/2017. Accordingly, I do not find any reason to interfere in the order of CIT(A).

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

Order pronounced in the open court on this 29/12/2017

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 29/12/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai