

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1709/Mds/2015

निर्धारण वर्ष / Assessment Year : 2009-10

M/s Educational Trust of Seventh
Day Adventists,
AA 148, III Avenue,
Anna Nagar, Chennai - 600 040.

v. The Assistant Director of Income
Tax (Exemptions) – III,
Chennai - 600 034.

PAN : AAATE 0547 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R.M. Narayanan, CA

प्रत्यर्थी की ओर से/Respondent by : Shri N. Madhavan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 01.01.2018

घोषणा की तारीख/Date of Pronouncement : 05.01.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-17, Chennai, dated 17.02.2015 and pertains to assessment year 2009-10.

2. The only issue arises for consideration is with regard to disallowance of depreciation claimed by the assessee to the extent of ₹29,78,460/-.

3. Shri R.M. Narayanan, the Ld. representative for the assessee, submitted that the assessee claimed depreciation to the extent of ₹29,73,460/-. According to the Ld. representative, the assessee-trust is registered under Section 12AA of the Income-tax Act, 1961 (in short 'the Act'). The Assessing Officer disallowed the claim of the assessee on the ground that the depreciation claimed by the assessee cannot be allowed since the cost of the asset was already claimed as application of income. Placing reliance on the judgment of Apex Court in CIT v. Rajasthan And Gujarati Charitable Foundation Poona in Civil Appeal No.7186 of 2014 dated 13.12.2017, the Ld. representative submitted that while computing the income of the trust under Section 11 of the Act, the same has to be computed commercially and depreciation has to be allowed. In fact, the Apex Court confirmed the judgment of Bombay High Court in DIT (Exemption) v. Framjee Cawasjee Institute (1993) 109 CTR 463. In view of this judgment of Apex Court, according to the Ld. representative, the assessee is eligible for depreciation even though the cost of asset was claimed as application of income in the year of acquisition.

4. On the contrary, Shri N. Madhavan, the Ld. Departmental Representative, submitted that admittedly the assessee claimed the cost of acquisition as application of income, therefore, the cost of asset becomes 'nil'. According to the Ld. D.R., there is no mechanism for computing the depreciation. Moreover, the assessee is a charitable institution. According to the Ld. D.R., Section 32 of the Act is applicable only for the asset which is used for business. In this case, according to the Ld. D.R., the asset was not used for business, therefore, there is no question of granting depreciation under Section 32 of the Act. The Ld. D.R. further submitted that he is placing his reliance on the observation made by the CIT(Appeals).

5. We have considered the rival submissions on either side and perused the relevant material available on record. The Apex Court in Rajasthan And Gujarati Charitable Foundation Poonna (supra) found that even though the cost of asset was allowed as application of income in the year of acquisition of asset, the charitable institution is still entitled for depreciation. In view of this judgment of Apex Court, this Tribunal is unable to uphold the contention of the Ld. D.R. By respectfully following the judgment of Apex Court in

Rajasthan And Gujarati Charitable Foundation Poona (supra) and for the reasoning stated therein, the orders of both the authorities below are set aside and the Assessing Officer is directed to allow the depreciation as claimed by the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 5th January, 2018 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 5th January, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-17, Chennai-34
4. DIT (Exemptions), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.