

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1930/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s Lamika Educational and
Charitable Trust,
C/o Shri S. Sridhar,
Sh. A.S. Sriraman, Advocates,
New No.14, Old No.82, Flat No.5,
1st Avenue, Indira Nagar, Adyar,
Chennai - 600 020.

v. The Income Tax Officer,
Company Ward -1,
Coimbatore.

PAN : AAATL 5293 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

Shri A.S. Sriraman, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 11.01.2018

घोषणा की तारीख/Date of Pronouncement : 18.01.2018

आदेश /ORDER

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 2, Coimbatore, dated 28.03.2016 and pertains to assessment year 2011-12.

2. Shri S. Sridhar, the Ld. counsel for the assessee, submitted that the only issue arises for consideration is with regard to depreciation on the asset, the investment on which was already allowed as application of income under Section 11 of the Income-tax Act, 1961 (in short "the Act"). According to the Ld. counsel, the CIT(Appeals) by placing reliance on the order of this Tribunal, disallowed the claim of the assessee. Now the Apex Court in CIT v. Rajasthan And Gujarati Charitable Foundation Poonna in Civil Appeal No.7186 of 2014, found that even though the investment on the asset was allowed as application of income under Section 11 of the Act, the assessee is eligible for depreciation under Section 32 of the Act. In view of this judgement of the Apex Court, according to the Ld. counsel, the CIT(Appeals) is not justified in disallowing the claim of the assessee.

2. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the expenditure for acquiring the asset was already allowed by the Assessing Officer under Section 11 of the Act as application of income, therefore, the same expenditure cannot be once again allowed as depreciation. The Ld. D.R. further submitted that the Apex Court has simply reproduced

the judgement of Bombay High Court and confirmed the High Court judgement. The Apex Court observed that the depreciation has to be computed commercially. Therefore, according to the Ld. D.R., it is obvious that the assessee is eligible for depreciation on the asset provided the same was put to use for the business of the assessee. In this case, according to the Ld. D.R., there is no evidence on record to suggest that the asset on which depreciation was claimed was put to use for the business of the assessee. Therefore, according to the Ld. D.R., the assessee is not eligible for depreciation.

3. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee is not doing any business. The assessee is carrying on charitable activities. The Apex Court in Rajasthan And Gujarati Charitable Foundation Pona (supra) examined a similar issue and found that when the income of the assessee was computed under Section 11 of the Act, the same has to be computed commercially by allowing depreciation as provided under Section 32 of the Act. In view of the judgement of Apex Court in Rajasthan And Gujarati Charitable Foundation Pona (supra), this Tribunal is unable to uphold the

order of the lower authority. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed to allow depreciation as per rule in view of the judgement of Apex Court in Rajasthan And Gujarati Charitable Foundation Poona (supra).

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

Order pronounced on 18th January, 2018 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 18th January, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. Principal CIT-
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.