

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.899/Del/2015

Assessment Year : 2010-11

ACIT (Exemption),
Room No.208, 2nd Floor,
CGO-1, Hapur Road,
Ghaziabad.

Vs. City Educational Trust,
Plot No.1, Sector-62,
Noida.
PAN: AAATC3605P

(Appellant)

(Respondent)

Assessee By : None
Department By : Ms Ashima Neb, Sr. DR

Date of Hearing : 26.02.2018
Date of Pronouncement : 27.02.2018

ORDER

PER R.S. SYAL, VP:

This appeal filed by the Revenue is directed against the order passed by the CIT(A) on 31.10.2014 in relation to the assessment year 2010-11.

2. The only ground taken in this appeal is against the deletion of Rs.98,30,447/- on account of disallowance of depreciation.

3. Briefly stated, the facts of the case are that the assessee debited Rs.98.30 lac in its Income & Expenditure Account under the head 'Depreciation.' The Assessing Officer did not allow such claim on the ground that investment in fixed assets was claimed as 'application of income' in the year of purchase of asset and hence claiming depreciation on the same amounts to double disallowance. The Id. CIT(A) overturned the assessment order on this issue, against which the Revenue has come up in appeal before the Tribunal.

4. We have heard the Id. DR and perused the relevant material on record. There is no appearance from the side of the assessee despite notice. We are, therefore, proceeding to dispose of the appeal *ex parte qua* the assessee. It is observed that the only dispute in this appeal is against non-allowing of depreciation on the ground that the assessee-trust claimed application of income and hence the allowing of depreciation would amount to double deduction. We find that this issue

is no more *res integra* in view of the fact that section 11(6) has been inserted by the Finance (No.2) Act, 2014 w.e.f. 01.04.2015 providing that : `where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.' Since this provision for not allowing depreciation in respect of assets which was claimed as application of income at the time of the acquisition/purchase of assets has been inserted w.e.f. 01.04.2015, the same does not apply to the assessment year 2010-11. The Hon'ble Karnataka High Court in *CIT vs. Karnataka Reddy Jansangha (2016) 389 ITR 22 (Kar)*, has held such insertion of section 11(6) as prospective. Under these circumstances, we uphold the impugned order in deleting the disallowance of depreciation.

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

The order pronounced in the open court on 27.02.2018.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 27th February, 2018.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.