

आयकर अपील [अधिकरण, %यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवुरु आर.एल रेडी, न्यायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.1401/Mds/2017
प्रधान वर्ष/Assessment Year:2012-13

Paramasivam Palaniswamy
Charitable Trust,
No. 119, Bhavani Road,
Erode 638 004.

The Income Tax Officer,
Vs. Exemptions Ward,
Salem.

[PAN: AAAAP0606L]

(अपीलाथ /Appellant)

(प्रत्यथ /Respondent)

अपीलाथ क ओर से / Appellant by : Shri N.V. Balaji, Advocate
प्रत्यथ क ओर से/Respondent by : Shri D. Prabhu Mukunth Arun Kumar,
Standing Counsel
सुनवाई क तारख / Date of hearing : 03.01.2018
घोषणा क तारख /Date of Pronouncement : 18.01.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), Salem dated 31.03.2017 relevant to the assessment year 2012-13. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) erred in confirming the disallowance of depreciation claimed by the assessee.

2. Brief facts of the case are that the assessee trust filed its return of income for the assessment year 2012-13 on 04.03.2013 admitting NIL income and claiming exemption under section 12AA of the Income Tax Act, 1961 [Act in short]. Further, the assessee claimed depreciation to the extent of Rs. 3,37,14,353/-. 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 and concluded the assessment under section 143(3) of the Act.

3. On appeal, after considering the submissions of the assessee and by considering various decisions, the Id. CIT(A) confirmed the assessment.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By relying upon the judgment of Hon'ble Supreme Court in the case of CIT v. Rajasthan and Gujarati Charitable Foundation Poona in Civil Appeal No.7186 of 2014 dated 13.12.2017, the Id. Counsel for the assessee 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 Hon'ble Supreme Court confirmed the judgment of the Hon'ble Bombay High Court in the case of DIT (Exemption) v. Framjee Cawasjee Institute (1993) 109 CTR 463. In view of the above judgment of the Hon'ble Supreme Court, the Id. Counsel for the assessee has submitted

that the assessee is eligible for depreciation even though the cost of asset was claimed as application of income in the year of acquisition.

5. Per contra, the Id. DR submitted that, admittedly, the assessee claimed the cost of acquisition as application of income, therefore, the cost of asset becomes $\frac{1}{2}$ The Id. DR further submitted that there is no mechanism for computing the depreciation. Moreover, the assessee is a charitable institution. Moreover, the provision of section 32 of the Act is applicable only for the asset which is used for business and in this case, according to the Id. DR, the asset was not used for business and, therefore, there is no question of granting depreciation under section 32 of the Act. The Id. DR strongly supported the order passed by the Id. CIT(A).

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. The Hon ϕ ble Supreme Court in the case of CIT v. Rajasthan and Gujarati Charitable Foundation Poona (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 the Hon ϕ ble Supreme Court, we are unable to uphold the contention of the Id. DR. By respectfully following the judgment of the Hon ϕ ble Supreme Court in the case of CIT v. 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.

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

Order pronounced on the 18th January, 2018 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 18.01.2018

Vm/-

आदेश कॆ ढतललल अडत/Copy to: 1. अडलतल/Appellant, 2. डततल/Respondent, 3. आतकल आतुत (अडल)/CIT(A), 4. आतकल आतुत/CIT, 5. तततततत/DR & 6. गडडडडड/GF.