

आयकर अपील अाधकरण, आयायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदय एवं श्री धुवु आर.एल रेडी, आयक सदय के सम
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.1783/Mds/2016

अाधरण वषAssessment Year:2011-12

M/s. Kovai Medical Center
Research & Charitable Trust,
No. 940/1A & B, Kovai Estate,
Kalapatti Road, Coimbatore . 48.

The Income Tax Officer,
Vs. Company Ward 1,
Coimbatore.

[PAN: AAATK2825P]

(अपीलाथ /Appellant)

(अयथ /Respondent)

अपीलाथ क ओर से / Appellant by : None
अयथ क ओर से/Respondent by : Shri Sanat Kumar Raha, JCIT
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) 2, Coimbatore dated 28.03.2016 relevant to the assessment year 2012-13. The 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 2011-12 on 29.09.2011 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.6,65,87,210/-. 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. Against the notice served on the assessee through DR, by filing copy of 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 through its written submission dated 27.12.2017, the Id. AR of 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 and moreover as has been held by the Hon^{ble} Supreme Court in the above case, the amendment to section 11(6) of the Act is prospective in nature, the said amendment is not applicable to the assessment 2011-12.

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 ~~nil~~ 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 the Id. DR and considered the written submissions filed by the AR of the assessee and, perused other materials available on record and gone through the orders of authorities below. The Hon^{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'ble Supreme Court, we are unable to uphold the contention of the Id. DR. By respectfully following the judgment of the Hon'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. We, further make it clear that the amendment to section 11(6) of the Act, which is effective from the assessment year 2015-16, is prospective in nature and accordingly, the said amendment is not applicable to the assessment year under consideration.

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 का प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थ/ Appellant, 2. प्रत्यर्थ/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रतिलिपि/DR & 6. गार्डफाइल/GF.