

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.Nos.1882 & 1883/CHNY/2016
(निर्धारणवर्ष / Assessment Years: 2007-08 & 2010-11)

M/s. The Agri Horticultural Society, 31, Cathedral Garden Road, Chennai – 600 086.	Vs	The Deputy Commissioner of Income Tax (Exemption)-1, Chennai – 34.
PAN: AAAAT0258N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri AS. Sriraman, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri K. Ravi, JCIT

सुनवाई की तारीख/Date of hearing	:	05.03.2018
घोषणा की तारीख /Date of Pronouncement	:	06.03.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

These appeals by the assessee are directed against the common order passed by the learned Commissioner of Income Tax (Appeals)-17, Chennai dated 15.12.2015 in ITA Nos.94/09-10 & 924/13-14/CIT(A)-17 for the assessment years 2007-08 & 2010-11 respectively passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The appeals were filed by the assessee with a delay of 30 days. The Ld. AR submitted that the assessee is a non-profit, charitable institution functioning with limited staff and the matter could not be attended to by the committee in time. Therefore the Ld. AR pleaded that the delay may be condoned. The Ld. DR strongly objected to the submission of the Ld. AR. After hearing both sides, we are of the considered view that the delay of 30 days in filing the appeals requires to be condoned because of the genuine constraint faced by the assessee. Therefore we hereby condone the delay and proceed to hear the appeals on merits.
3. The assessee has raised several identical grounds in its appeals however the crux of the issue is that the Ld.CIT(A) has erred in confirming the order of the Ld.AO who had disallowed the assessee's claim of depreciation because the assessee is a charitable institution and the entire cost of the asset paid has been allowed as application of fund.
4. The brief facts of the case are that the assessee is a trust registered U/s.12A(a) of the Act, filed its return of income for the assessment years 2007-08 & 2010-11 on 31.10.2007 & 20.09.2010 declaring gross receipts of Rs.75,52,093/- and

Rs.71,69,585/- respectively admitting total income as Rs.Nil for both the assessment years after claiming exemption U/s.11 of the Act. The case was selected for scrutiny and notice U/s. 143(2) of the Act was issued on 13.06.2008 & 20.09.2011 and finally the assessment order was passed U/s.143(3) of the Act on 11.12.2009 & 25.03.2013 wherein the Ld.AO withdrew the benefit of deduction U/s.11 of the Act. However on appeal the Ld.CIT(A) granted the benefit of deduction U/s.11 of the Act by holding the assessee to be charitable institution. However he disallowed the claim of depreciation amounting to Rs.7,03,715/- & Rs.3,61,571/- for the assessment years 2007-08 & 2010-11 respectively because the entire cost of the asset paid was allowed as application of fund. The assessee aggrieved by the order of the Ld.CIT(A) for having denied the benefit of depreciation is now on appeal before us for both the assessment years.

5. At the outset as pointed out by the Ld.AR we find that the issue is decided in favour of the assessee by the Hon'ble Apex Court in the case CIT vs. Rajasthan & Gujarati Charitable Foundation, Pune reported in 89 taxmann.com 127 wherein it was held that the charitable institution eligible for the benefit of Section 11 of the Act and where the cost of the asset paid and allowed as

application of fund would be entitled to avail the claim of depreciation for arriving at its net income. The Ld.DR though vehemently argued in support of the orders of the Ld.Revenue Authorities could not deny the fact that the issue is covered by the decision of the Hon'ble Apex Court in the decision cited supra. After hearing both sides, respectfully following the decision of the Hon'ble Apex Court cited herein above by the Ld.AR, we hereby direct the Ld.AO to grant the benefit of depreciation to the assessee while arriving at its net income.

6. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on the 06th March, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 06th March,2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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