

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"D" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**  
**AND**  
**Ms.MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ **ITA.No.595/Ahd/2015**  
निर्धारण वर्ष/ **Asstt. Year: 2005-06**

DCIT (Exemptions), Cir.1 Ahmedabad.	Vs.	The Stock Exchange Ahmedabad. Kamdhenu Comlex Opp: Sahjanand Colelge Ahemdabad 380 015.  PAN : AAAAT 4934 B
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(Applicant)	(Responent)
Revenue by :	Shri S.K. Dev, Sr.DR
Assessee by :	Smt. Arti N. Shah, AR

सुनवाई की तारीख/Date of Hearing : 03/05/2018  
घोषणा की तारीख /Date of Pronouncement: 09 /05/2018

**आदेश/O R D E R**

**PER PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Revenue against order of the CIT(A)-9, Ahmedabad dated 29.12.2014 arising in the assessment order dated 15.2.2013 passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act concerning assessment year 2005-06.

2. In the present appeal Revenue is impugning order of the CIT(A) granting relief to the assessee towards disallowance of depreciation of Rs.82,57,084/- made by the AO.

3. It is the case of the AO that the Id.CIT(A) committed error in allowing depreciation on assets, the cost of which has already been allowed as a deduction on account of application of income as it amounted to double deduction.

4. When the matter was called for hearing, the Id.AO for the assessee at the outset submitted that the issue is covered in favour of the assessee and against the Revenue by recent decision of the Hon'ble Supreme Court in the case of CIT Vs. Rajasthan and Gujarati Charitable Foundation Poona in civil appeal no.7186 of 2014 order dated 13.12.2017. The Id.DR simply placed reliance on the order of the AO.

5. We have carefully considered rival submissions. Core controversy in the case in hand is whether depreciation is allowable on expenditure incurred for capital purpose where the expenditure is treated as application of income for the objects of the assessee-trust in terms of section 11(1)(a) of the Act. It is noticed that the assessee is a charitable institution registered under section 12A of the Income Tax Act and assessed accordingly. It is the case of the Revenue that once the capital expenditure has been incurred as deduction under section 11(1)(a) as application of income for the objects of the trust, depreciation claimed on the same assets amounts to double deduction which is not permissible in law having regard to the provisions of section 11(6) of the Act which prohibits such deduction.

6. The assessee, on the other hand, contends that there is no bar in making claim of depreciation allowance as per commercial principles for the assessment year 2005-06 in question, since section 11(6) of the Act has been inserted prospectively and operates from the assessment year 2015-16 onwards. It is the case of the assessee that cost incurred towards capital assets

is eligible for depreciation allowance notwithstanding parallel exemption provided in section 11(1)(a) of the Act. We find that the issue is set to rest and is no longer *res integra*. Hon'ble Supreme Court in the case of Rajasthan and Gujarati Charitable foundation Poona (supra) has held that even if the entire expenditure incurred for acquisition of capital assets is treated as application of income for charitable purpose under section 11(1)(a) of the Act, the assessee continuous to be entitled to depreciation under section 32 of the Act. Hon'ble Supreme Court observed that the argument that the grant of depreciation amounts to giving double benefit to the assessee is not acceptable. Hon'ble Supreme Court further held that specific provisions of section 11(6) which bars claim of depreciation of expenditure incurred for charitable purposes is prospective and applies only from the assessment year 2015-16. In view of the decision of Hon'ble Supreme Court, the assessee is entitled to depreciation allowance notwithstanding fact that entire expenditure incurred for acquisition of capital assets were admitted as application of income for charitable purpose under section 11(1)(a) of the Act.

7. In the result, the appeal of the Revenue fails, and accordingly gets dismissed.

**Order pronounced in the Court on 9<sup>th</sup> May, 2018 at Ahmedabad.**

Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Sd/-  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 09/05/2018