

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव,लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1714/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax,
(Exemptions) Circle, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Society of Saint Ursula,
Akurdi Post Office,
Akurdi, Pune-411 035.
PAN : AAAAS4291C

.....प्रत्यर्थी / Respondent

Revenue by : Dr. Vivek Aggarwal

Assessee by : Shri C.H. Naniwadekar

सुनवाई की तारीख / Date of Hearing : 18.06.2018

घोषणा की तारीख / Date of Pronouncement : 20.06.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), Pune-10 dated 03.05.2016 for the assessment year 2012-13.

2. The Revenue has assailed the order of Commissioner of Income Tax (Appeals) by raising following grounds:

“1. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the expense on treatment of persons who were the governing members of the trust, hence, attracting the provisions of sec.13(1)(c) and also in contravention of the law as no part of the income or property of a charitable trust which is claiming exemption u/s.11 of the Act should be used or applied for the benefit of any person specified u/s.13(3) of the Act ?

2. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the funds of the society are not applied or used or diverted for the benefit of the persons referred to section 13(3) in violation of condition laid down u/s. 13(1)(c) & 13(2)(c)?

3. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made on the claim of depreciation without appreciating the fact that such claim of depreciation amounts to double deduction as the assets on which the depreciation claim is made, have already been claimed as application of income by the Trust?

4. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of depreciation claim overlooking the fact that the trust has failed to apply 85% of its total income (i.e. total receipts as defined in section 2(24) and 11(1)(d) and 12 of the I.T. Act, 1961), and no declaration in requisite Form No.10 has been filed in respect of the amount of Rs.68,03,680/- by the assessee and also that this amount remain to be invested or deposited under the modes as required u/s.11(5) of the I.T. Act, 1961?”

3. Shri C. H. Naniwadekar appearing on behalf of assessee submitted at the outset that identical issues were raised by the Revenue in ITA No.1753/PN/2013, for assessment year 2010-11. The Co-ordinate Bench of Tribunal vide order dated 04.09.2014 dismissed the appeal of Revenue. The ld. AR furnished a copy of the order of Tribunal in ITA No.1753/PN/2013 (supra.)

4. Dr. Vivek Aggarwal representing the Department fairly admitted that the issues raised in the present appeal by Department are similar to the one raised in appeal by the Department in assessment year 2010-11.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. We find that the

issues raised by the Revenue in ground No. 1 to 4 of appeal are identical to the one raised in appeal by the Department in ITA No. 1753/PN/2013 for assessment year 2010-11. It is an undisputed fact that there has been no change in facts and circumstances in the assessment year under appeal.

6. The assessee had made payments towards medical expenses on sister Rekha, sister Prema, sister Sunita, sister Rita and sister Karuna. All the aforementioned persons are Trustees of Governing Body of the assessee society. The Assessing Officer held that the assessee has applied its income for the benefit of trustees, therefore, the provisions of section 13(1)(c) of the Act get attracted. The Assessing Officer treated the assessee as AOP and brought to tax the income of assessee to the extent of Rs.2,46,12,823/- at maximum marginal rate. The Commissioner of Income Tax (Appeals) granted relief to the assessee by observing that the sisters are serving the Trust without charging salary and have no monetary interest. The expenditure towards medical expenditure of sisters is insignificant. The issue raised in ground No. 1 and 2 of the present appeal relating to expenditure on medical treatment of sisters is identical to ground No. 3 raised in appeal for assessment year 2010-11. The issue of claim of depreciation raised in ground No. 3 and 4 of the present appeal is parameteria to ground No.1 raised in appeal for assessment year 2010-11. The Co-ordinate Bench of the Tribunal decided the issues by observing as under:

“8. After hearing both the sides, we find both the issues raised by the Revenue in the grounds of appeal have been decided in favour of the assessee by the Tribunal in assessee’s own case for the immediately preceding assessment year. We find the Tribunal in assessee’s own case for A.Y. 2009-10 order dated 28-01-2014 following the order for A.Y. 2008-09 has decided both the issues by observing as under :

"7. We have considered the rival arguments made by both the sides. The Ld. Counsel for the assessee at the outset filed a copy of the order of the Tribunal in assessee's own case for A.Y. 2008-09 vide ITA No.1540/PN/2012 order dated 31-12-2013 and submitted that both the grounds have been decided by the Tribunal in favour of the assessee. He accordingly submitted that this being a covered matter the grounds raised by the Revenue should be dismissed. The Ld. Departmental Representative on the other hand while supporting the order of the Assessing Officer fairly conceded that the issues have been decided in favour of the assessee by the Tribunal.

8. We find the Tribunal in assessee's own case for A.Y. 2008-09 (Supra) while deciding the issue of allowability of deduction even when there was violation of provisions of section 13(1)(c) has observed as under (Para 11 of the order) :

"11. In so far as the plea of the Assessing Officer that on account of expenditure of RS.20,000/- incurred on medical expenses of Sister Susane (trustee) there is a violation of section 13(1)(c) of the act is concerned, we find that the approach of the Assessing Officer is clearly misdirected. As noted earlier and which has also been appreciated by the CIT(A), the concerned Sister has been serving the Trust without charging any salary and she has devoted entire life in the Trust and therefore it would be natural and even imperative for the assessee Trust to take care of her medical needs. Assessee pointed out before the CIT(A) that Sister Susane was wholly dependent on the Trust with no personal bank account or wealth and therefore it was in the fitness of things that her medical needs were to be taken care by the Trust. The said expenditure under the circumstances of the case, in our view, does not amount to violation of section 13(1)(c) of the Act. Notably, even if we strictly apply section 13(1)(c) of the Act, it would be evident that the amount has been spent on a person who is rendering services to the Trust and the impugned amount of Rs.20,000/- spend in the whole year cannot be considered as unreasonable or excessive. Therefore, considering the entirety of the circumstances, we find no error on the part of the CIT(A) in holding that there is no violation of provisions of section 13(1)(c) of the Act on account of incurrence of medical expenses of Rs.20,000/- for Sister Susane."

8.1 So far as the issue relating to denial of depreciation is concerned, we find the Tribunal at para 13 of the order has observed as under :

"13. The only other issue remaining by way of Grounds of Appeal Nos. 3 and 4 relate to the denial of assessee's claim of depreciation of Rs.42,38,718/- on the assets. The CIT(A) has deleted the disallowance following the judgment of the Hon'ble Bombay High Court in the case of DIT (Exemption) vs. Framjee Cawsjee Institute, 109 CTR 463 (Bom). Nothing to the contrary

has been argued by the Revenue before us and therefore, following the judgment of the Hon'ble Bombay High Court, we find that the CIT(A) made no mistake in allowing the claim of depreciation of Rs.42,38,718/-.Thus, Grounds of Appeal Nos.3 and 4 are also dismissed”.

8.2 Since both the issues have been decided by the Tribunal in favour of the assessee by dismissing the appeal filed by the Revenue and nothing contrary was brought to our notice, therefore, respectfully following the decision of the Coordinate Bench of the Tribunal in assessee’s own case for the immediately preceding assessment year the grounds raised by the Revenue are dismissed.”

9. Following the consistent view of the Tribunal in assessee’s own case for the immediately 2 preceding assessment years and in absence of any contrary material brought to our notice against the order of the Tribunal, we uphold the order of the CIT(A) on both the issues. The grounds raised by the Revenue are accordingly dismissed.”

7. Since, both these issues have been decided in favour of assessee by the Tribunal in assessment years 2008-09, 2009-10 and 2010-11, in the absence of any contrary material, we follow the order of Tribunal in assessment year 2010-11. Accordingly, the ground Nos. 1 to 4 raised in appeal by Revenue are dismissed being devoid of any merit.

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

Order pronounced on Wednesday, the 20th day of June, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव /D. KARUNAKARA RAO)	(विकास अवस्थी /VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th June, 2018

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-10.
4. The CIT (Exemptions), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.