

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 6281/Mum/2016

(निर्धारण वर्ष / Assessment Year 2006-07)

आयकर अपील सं./ ITA No. 6282/Mum/2016

(निर्धारण वर्ष / Assessment Year 2012-13)

Rajendra Shikshan Sanstha 2/1, Everest Co-op Housing Society, Pandit Deendayal Road, Dombivili (West)- 421202	Vs.	Asst. Director of income Tax (Exemption) I (1), room No.504, 5 th Floor, Piramal Chambers, Parel, Mumbai- 400 012
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AABTR1399C		

Assessee by : Shri Devendra Jain, AR

Revenue by : Shri Ram Tiwari, DR

Date of hearing: 24-05-2018 **Date of pronouncement :** 13-06-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

These appeal by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-1, Mumbai [in short CIT(A)], in appeal No. CIT(A)-I/IT/E-I(34) & E-II(67)/2011-12 & 2015-16 even dated



19.08.2016. The Assessments were framed by the Asst. Director of Income Tax (Exmp.) & Income Tax Officer, Circle-I(1) & 2(2), Mumbai (in short 'ADIT') for the A.Yrs. 2006-07 & 2012-13 vide order dated 30.11.2011 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first common issue in these appeals of assessee is as regards to the order of CIT(A) confirming the action of the AO in denying the assessee Trust's claim of exemption under section 11 of the Act that no amendment was filed before the AO as the object in the memorandum of association of the assessee's trust was prior to the registration under section 12 A of the Act, which was granted much prior to the amendment. For this assessee has raised the identical worded grounds in both the years and the grounds raised in AY 2006-07 reads as under: -

"1.1 On the facts and in the circumstances of the case, and also in law, the IA. CIT(A) erred in confirming the Ld. Assessing Officer's action of denying the appellant-trust's claim for exemption under section 11 of the Act.

1.2 On the (acts and in the circumstances of the case, and also in law, the Id. CIT(A) failed to appreciate, and ought to have held, that there was no violation of section 13 by the appellant.

1.3 The Id. CIT(A) further erred in not following the order of his Id. predecessor for A.Y. 2008-09 allowing the appellant's claim for exemption u/s. 11 under similar facts and circumstances, which order was also confirmed by the Hon'ble Tribunal by dismissing the Revenue's appeal.



1.4 On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) failed to appreciate the evidence placed on record substantiating the fact that no amendment was made to the objects in the Memorandum of Association by the appellant-trust alter registration u/s.12A of the Act was granted to it. The Id. CIT(A) further erred in not appreciating that even if any such amendment was assumed to be made, it was not fatal to the appellant-trust's claim for exemption under section 11 unless the registration u/s.12A was cancelled.

In view of above, the appellant prays that the exemption u/s. 11 of the Act claimed by it be allowed."

3. At the outset, the learned Counsel for the assessee filed copy of Tribunal's order in AY 2008-09 in ITA No. 6764/Mum/2011 dated 26.04.2013, whereby, the Tribunal allowed the claim of exemption under section 11 of the Act and similarly, the Tribunal in ITA No. 5307/Mum/2015 for AY 2011-12 vide order dated 27.12.2017 considering the same issue, allowed the claim of the assessee vide Para 7 and 8 as under: -

"7. We have carefully considered the rival contentions and perused the orders of authorities below. We find that the identical issue has been decided by the co-ordinate Bench of the Tribunal in assessee's own case vide order dated 26.4.2013 (supra) which is reproduced below:



“7. We have heard both the parties and perused the orders of the revenue authorities as well as the material placed before us. There are a couple of issues raised by the revenue in the appeal and they are : (i) denial of assessee’s claim of exemption u/s 11 of the Act in view of the grant of interest bearing car loan of Rs.4 lakhs lakhs to Atul Pundit, son of a trustee and an employee of the trust; and (ii) applicability of the provisions of section 40(a)(ia) of the Act only to the professional/business income.

7.1 Regarding the first issue of denial of exemption u/s 11 of the Act, CIT(A) disapproved the AO's finding in this regard considering the Patna High Court's Judgment in the case of CIT vs. Tata Steel Charitable Trust (203 ITR 764), which is relevant for the ratio that the provisions of section 13(3) would not apply to an employee of the Trust. Sri Atul Pundit is undisputedly an employee. We find that the trust has taken enough care by charging interest at the rate of 6% on the car loan. It is also a fact that the trust has granted such loans to many other employees and they are in fact interest free. Being a son of the trustee, Sri Atul Pundit has to incur expenditure by way of interest at the rate of 6%. Thus, the AO has not made out a case that the Trust has benefited directly or indirectly the relative of the Trustee of the



trust/trustee. AD has not discounted the fact that Atul Pundit is not only an employee of the trust but also taken the interest borne car loan. Whereas other employees have taken the car loan, which are interest free. Of course, with the kind of details furnished by the assessee to the AO, the onus now shifted to the AO and the same is not discharged. Therefore the finding of the CIT(A) does not call for any interference on this issue.

7.2 Regarding other issue of relating to the invoking of the provisions of section 40(a)(ia) of the Act, CIT(A) granted relief on the legal proposition that the said section is not applicable to the non-business/professional income. Before us, nothing contrary decisions are placed before us by the Ld DR for the revenue. Therefore, we approve the finding of the CIT(A) on this issue too. Thus, we are of the opinion that there is no infirmity in the order of the CIT (A) and it does not call for any interference. Accordingly, the grounds raised by the revenue are dismissed.

8. Moreover the allegation of amendment in the trust deed not being approved by the Charity Commissioner is against the facts on records as we find from the trust deed that there was no amendment made in the main objection clause 3A to 3C which was originally struck down by the Charity Commissioner in the year 1985 and thereafter issued registration certificate vide order



dated 8.7.1985 which was then filed before the Commissioner of Income tax who issued the registration certificate on 17.9.1985. Having regards to the facts in entirety and in view of the order of tribunal in assessee own case, the ground no 1 of the appeal of the assessee is allowed. "

4. On query from the Bench, the learned Sr. Departmental Representative could not differentiate the facts and issue as in Tribunal's earlier years order as the issue is squarely covered and respectfully following the Tribunal's order. Hence, taking a consistent view, we allow the claim of exemption to the assessee trust under section 11 of the Act and direct the AO accordingly. This issue of assessee's appeal is allowed.

5. The next issue in AY 2006-07 is as regards to the order of disallowance of depreciation. For this assessee has raised the following ground: -

"2.1 On the facts and in the circumstances of the case, and also in law, the Id. CIT(A) erred in not considering the ground of appeal regarding the disallowance of depreciation made by the Id. Assessing Officer.

2.2 The Id. CIT(A) failed to appreciate that the law is now well settled that depreciation on assets could not be disallowed merely on the ground that the cost thereof was considered as application of income for the purpose of section 11, and that there would be no double deduction if depreciation is allowed to the appellant-trust.



In view of above, the appellant-trust prays that the depreciation of Rs.3,97,372/- claimed by it be allowed.”

6. At the outset, the learned Counsel for the assessee stated that the Tribunal in AY 2011-12 in ITA No. 5307/Mum/2015 order dated 27-12-2017 allowed the claim of depreciation on identical facts and circumstances of the case vide Para 10 as under: -

“10. We have carefully considered the rival contentions and perused the facts and materials on records. We find that the issue is covered by the various decisions of the Tribunal in favour of the assessee. In the case of Director of Income Tax-Exemption –III, Chennai V/s Medical Trust of the Seventh Day Adventists reported in (2017) 84 taxman.com 202) Madras, wherein it has been held that the amendment was inserted with effect from assessment year 2015-16 and has been made with a view to debar the claim of the assessee by way of depreciation. The said amendment has not been clarified in the memorandum whether it is applicable with effect from assessment year 2015-16 or not and the application of the amendment with retrospective effect would certainly lead to great deal of hardship to the assessee. The Hon’ble High Court has held that the assessee is entitled to depreciation of the fixed assets which has been claimed as application of income as it would not be amount to double taxation. Considering the ratio laid by in the above decisions we are inclined to hold that the order of CIT (A) on this issue is wrong and



hence reversed. The AO is directed to allow the depreciation claim of the assessee on fixed assets. "

7. Taking a consistent view and respectfully following the Tribunal's order in earlier year, we direct the AO to allow the depreciation. This issue of assessee's appeal is allowed.

8. **In the result, the appeals of assessee are allowed.**

Order pronounced in the open court on 13-06-2018.

आदेश की घोषणा खुले में दिनांक 13-06-2018 को की गई ।

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 13-06-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai



ITA Nos. 6281 & 6282/Mum/2016

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
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BY ORDER,

Assistant Registrar
ITAT, MUMBAI