

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.337/JP/2018
निर्धारण वर्ष / Assessment Year : 2014-15

M/s Zeen-Zar Charitable Foundation Trust Noon Hospital & Research Centre, Jhalawar Road, Bhawani Mandi-326502 District-Jhalawar, Rajasthan, India	बनाम Vs.	ITO (Exemption) Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATZ0347B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Pankaj Soni (Advocate)
राजस्व की ओर से / Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 06/07/2018
उदघोषणा की तारीख / Date of Pronouncement: 10/07/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-Kota dated 20.12.2017 for Assessment Year 2014-15 wherein the assessee has effectively raised the ground relating to disallowance of depreciation of Rs. 71,61,334/- on fixed asset acquired by the assessee.

2. Briefly, the facts of the case are that the assessee trust is running a hospital in the name of Noon Hospital, Bhawani Mandi and is registered u/s 12AA of the Act. During the course of assessment proceedings, the Assessing officer observed that the assessee trust has claimed depreciation of Rs. 71,61,334/- and the same was held not allowable as the entire cost of the

asset has been claimed as application of income in the earlier years u/s 11 of the Act.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and submitted that the matter is covered by the decisions of various High Courts. The Id CIT(A) has stated that the Supreme Court has admitted an SLP against the decision of various High Courts including the Rajasthan High Court in case of CIT(E) vs. Vijaya Shanti Educational Trust 75 Taxmann.com 124 and therefore, he has confirmed the disallowance of depreciation in the hands of the assessee trust.

4. During the course of hearing, the Id. AR submitted that the matter is squarely covered by the decision of Hon'ble Supreme Court in case of Commissioner of Income Tax-III, Pune vs. Rajasthan & Gujarati Charitable Foundation Poona [2018] 300 CTR 1 (SC) and decision of the Hon'ble Rajasthan High Court in case of Commissioner of Income Tax-II vs. Krishi Upaj Mandi Samiti [2016] 388 ITR 605 (Raj). Per contra, the Id. DR submitted that the department has not accepted the decision of Hon'ble Rajasthan High Court in case of Vijaya Shanti Educational Trust and Krishi Upaj Mandi Samiti and has preferred an SLP before the Hon'ble Supreme Court. She further relied on the finding of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. We find that the issue is no *res integra* in light of the decision of Hon'ble Supreme Court in case of Commissioner of Income Tax-III, Pune vs. Rajasthan & Gujarati Charitable Foundation Poona wherein the Hon'ble Supreme Court has held as under:-

"1. These are the petitions and appeals filed by the Income Tax Department against the orders passed by various High Courts granting benefit

of depreciation on the assets acquired by the respondents-assessees. It is a matter of record that all the assessees are charitable institutions registered under [Section 12A](#) of the Income Tax Act (hereinafter referred to as 'Act'). For this reason, in the previous year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under [Section 11\(1\)\(a\)](#) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under [Section 32](#) of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assessees had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the assessee. Though it appears that in most of these cases, the CIT(Appeals) had affirmed the view, but the ITAT reversed the same and the High Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department. From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'CIT v. Institute of Banking Personnel Selection (IBPS) '(2003) 131 Taxman 386 (Bombay). In the said judgment, the contention of the Department predicated on double benefit was turned down in the following manner:

"3. As stated above, the first question which requires consideration by this Court is : whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under s. 11 in the past years? In the case of CIT vs. Munisuvrat Jain (1994) Tax LR 1084 (Bom) the facts were as follows. The assessee was a charitable trust. It was registered as a public charitable trust. It was also registered with the CIT, Pune. The assessee derived income from the temple property which was a trust property. During the course of assessment proceedings for asst. yrs. 1977-78, 1978-79 and 1979-80,

the assessee claimed depreciation on the value of the building @ 2-1/2 per cent and they also claimed depreciation on furniture @ 5 per cent. The question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that s. 11 of the IT Act makes provision in respect of computation of income of the trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, s. 28 of the IT Act deals with chargeability of income from profits and gains of business and s. 29 provides that income from profits and gains of business shall be computed in accordance with s. 30 to s. 43C. That, s. 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for the business purposes. It further provides for deduction subject to s. 34. In that matter also, a similar argument, as in the present case, was advanced on behalf of the Revenue, namely, that depreciation can be allowed as deduction only under s. 32 of the IT Act and not under general principles. The Court rejected this argument. It was held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under s. 11(1)(a) of the IT Act. The Court rejected the argument on behalf of the Revenue that s. 32 of the IT Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a charitable trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, s. 32 of the IT Act providing for depreciation for computation of income derived from business or

profession is not applicable. However, the income of the trust is required to be computed under s. 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the trust. In view of the aforesaid judgment of the Bombay High Court, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department.

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) vs. Framjee Cawasjee Institute (1993) 109 CTR 463 (Bom). In that case, the facts were as follows : The assessee was the trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the AAC. The appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, question No. 2 is covered by the decision of the Bombay High Court in the above judgment. Consequently, question No. 2 is answered in the affirmative i.e., in favour of the assessee and against the Department."

2. *After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.*

3. *It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions v. Commissioner of Income Tax'. [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344 (Ker.)*

4. *It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income Tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature."*

6. In the instant case, the provisions of section 11(6) are not applicable as the same will be applicable from AY 2015-16. For the impugned assessment year, respectively following the decision of the Hon'ble Supreme Court referred supra, the assessee trust is held eligible to claim depreciation.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 10/07/2018.

Sd/-
(विजय पॉल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur
Dated:- 10/07/2018
*Ganesh Kr

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

1. अपीलार्थी / The Appellant- M/s Zeen-Zar Charitable Foundation Trust, Jhalawar
2. प्रत्यर्थी / The Respondent- ITO, Exemption, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 337/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.