



ITA No.69/Mum/2017
Rustom Irani Foundation
Assessment Year-2012-13

आयकर अपीलिय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.69/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

Income Tax Officer (Exemptions)-2(2) Room No.502, 5 th Floor Piramal Chambers, Lalbaug Lower Parel, Mumbai-400 077	बनाम/ Vs.	Rustom Irani Foundation Ideal Farm, West of Railway Line Dahisar(W) Mumbai-400 068
स्थायी लेखा सं./ PAN : AAATR-2735-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Satish R. Mody, Ld. AR
Revenue by	:	Ram Tiwari, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	19/07/2018
घोषणा की तारीख / Date of Pronouncement	:	25/07/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-1 [CIT(A)], Mumbai, *Appeal No.CIT(A)-I/IT/E-II(106)/2015-16* dated 14/10/2016 by raising the following effective grounds of appeal: -



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1. *"Whether on the facts of the case and in law the Ld. CIT(A) erred in allowing the appeal of the assessee on account of disallowing depreciation on fixed assets of Rs.95,97,199/- in contravention of the decision of Escorts Ltd. V. UOI 199 ITR 43 wherein it was held that since section 11 of the Income Tax Act provides for deduction capital expenditure incurred on assets acquired for the objects of the trust as application and does not specifically & expressly provide for double deduction on account of depreciation on the same very assets acquired from such capital expenditure, no deduction shall be allowed u/s. 32 for the same or any other previous year in respect of that asset as it amounts to claiming a double deduction."*
2. *"Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in allowing the appeal, when the Delhi High Court in the case of Chiranjiv Charitable Trust and kerala High Court in the case of Lissie Medical Institutions vs CIT 6 DTR (Ker) 372 has decided the issue in the favour of the department after considering the decision of Hon'ble Supreme Court in the case of Escorts Ltd (199 ITR 43)."*
3. *"Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in relying upon the judgment of Hon'ble High Court in the case of CIT vs Institute of Banking personnel selection without appreciating the fact that Department has not accepted the decision on merit, but due to smallness of tax effect appeal was not filed before Hon'ble Supreme Court. Also the Ld. CIT(A) erred in relying upon the judgment of Hon'ble High court in the case of CIT vs. Shri Vile-Parle Kelvani Mandal, without appreciating the fact that Department has not accepted the decision on merit and filed SLP, but subsequently withdrawn the same as there was no claim of depreciation on exempted assets."*
4. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of depreciation without appreciating the fact that Revenue has filed SLPs in other cases inclusive the case of G.D. Birls Medical Research & Educational Foundation (S.L.P.(C) No. 24904 of 2016 (CA.No. 8294 of 2016) in which leave has been granted and the issue is pending for adjudication in all the cases before the Hon'ble Apex Court."*
5. *"Whether on the facts of the case and in law the Ld.CIT(A) erred in allowing the carry forward of deficit of Rs.27,72,434/- and allowing set off against the income of the subsequent years."*
6. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of the assessee for carry forward for the said deficit, ignoring the fact that there was no express provision in the IT Act, 1961 permitting allowance of such claim."*
7. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of the assessee for carry forward of the said deficit by relying upon the judgment of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection, ignoring the fact that eh Department has not accepted the said decision of the jurisdictional High Court on merit of the case, but due to smallness of tax effect appeal was not filed before Hon'ble Supreme Court. However, on this issue the department has filed SLPs before the Apex Court in other cases inclusive of the case of MIDC(SPL (Civil) 9891 of 2014) in which leave has been granted and the issue is pending for adjudication in all cases before the Hon'ble Supreme Court."*
8. *The appellant prays that the order of the Commissioner of Income Tax (Appeals)-I, Mumbai be set aside and that of the Assessing Officer be restored.*
9. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*



The assessment for impugned AY was framed by *Ld. Income Tax Officer [Exemptions]-2(2), Mumbai [AO] u/s. 143(3) of the Income Tax Act, 1961* on 18/03/2015 wherein the income of the assessee trust has been assessed at Rs.68.21 Lacs as against 'Nil' return filed by the assessee on 26/09/2012 along with *Income and expenditure account, Balance Sheet and Audit Report in Form No.10B*. The assessee trust was registered u/s 12A under Income tax as well as with charity commissioner Mumbai and state to be engaged in the field of education.

2.1 During assessment proceedings, it was noted that the assessee claimed depreciation of Rs.95.97 Lacs on certain fixed assets, the purchase of which was also claimed as application of Trust income and therefore, the same, in the opinion of Ld. AO, amounted to double deduction. The assessee defended the same on the strength of certain judicial pronouncements, however, not convinced, Ld. AO disallowed the aforesaid depreciation of Rs.95.97 Lacs.

2.2 The second issue is related with set-off of brought forward losses of Rs.27.72 Lacs pertaining to earlier years which have been denied by Ld. AO in terms of statutory provisions as contained in Section 11, 72 & 74A.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 14/10/2016 wherein both the claim of the assessee were allowed in terms of judgment of Hon'ble Bombay High Court rendered in *Institute of Banking Personnel 264 ITR 110*. Aggrieved, the revenue is in further appeal before us.

4. The Ld. Authorized Representative for Assessee [AR], *Shri Satish R.Mody* submitted that the case was squarely covered by the decision of



higher judicial authorities whereas Ld. Departmental Representative [DR], *Shri Ram Tiwari*, supported the reasoning of Ld. AO.

5. We have heard the rival contentions and perused relevant material on record. So far as the depreciation claim is concerned, we find that the issue squarely stands covered in assessee's favor by the recent decision of Hon'ble Supreme Court titled as *CIT Vs. Rajasthan & Gujarati Charitable Foundation, Poona [89 Taxmann.com 127]* which has been rendered after considering the decisions of *CIT v. Institute of Banking Personnel Selection (IBPS) [2003] 131 Taxman 386 (Bom.)* & *Lissie Medical Institutions v. CIT [2012] [348 ITR 344 (Ker.)]*. The Hon'ble court has concluded the matter in the following manner:-

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. CIT [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.

5. It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

6. For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters.

Respectfully following the same, we dismiss the grounds raised by the revenue in this regard.

6. So far as the set-off of brought forward business losses are concerned, we find that this issue also stand squarely covered by the decision of Hon'ble Bombay High Court rendered in *CIT v. Institute of*



Banking Personnel Selection (IBPS) [2003] 131 Taxman 386 (Bom.)

wherein the Hon'ble court has held as under:-

5. Now coming to question No. 3, the point which arises for consideration is: whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a Charitable Trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income-tax Act and that the income of the Charitable Trust was not assessable under the head "profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the Department. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the Trust for charitable and religious purposes in the earlier years against the income earned by the Trust in the subsequent year will have to be regarded as application of income of the Trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the Trust under section 11(1)(a) of the Act. Our view is also supported by the Judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293. Accordingly, we answer question No. 3 in the affirmative i.e., in favour of the assessee and against the Department.

The revenue is unable to bring on record any contrary decision or controvert the fact that the above decision has not been stayed / reversed by any higher judicial authority. Accordingly, these grounds stand dismissed.

7. Resultantly, the revenue's appeal stand dismissed.

Order pronounced in the open court on 25th July, 2018



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Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25.07.2018
Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai