

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI

Before Shri Saktijit Dey, Judicial Member &  
Shri Ramit Kochar, Accountant Member

ITA No.120/Mum/2017  
Assessment Year : 2010-11

DCIT (Exemption)1(1), Mumbai	Vs.	Aditya Birla Foundation, C-1, Aditya Birla Centre, A K Ahire Marg, Worli, Mumbai 400 030
(Appellant)		PAN AAATA0382P (Respondent)

Appellant By : Shri R Manjunatha Swamy  
Respondent BY : Shri Ronak Doshi & Ms. Ayushi Modani

Date of Hearing :09.07.2018	Date of Pronouncement : 27.07.2018
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**ORDER**

**Per Saktijit Dey, Judicial Member**

This appeal by the department is against the order, dated 05.10.2016, of learned Commissioner of Income Tax (Appeals)-1, in short CIT(A), Mumbai, for the assessment year 2010-11.

2. The common issue raised in ground nos. 1 to 4 relates to allowance of assessee's claim of depreciation on fixed assets. Briefly, facts are that the assessee is a Charitable Trust and registered under the Bombay Public Trust Act with the Charity Commissioner, Mumbai. Further, assessee has also been granted registration u/s 12A of the I.T Act 1961. For the impugned assessment year, assessee filed its return of income on 29.09.2010, claiming exemption u/s. 11 of the Act. During the assessment proceedings, the Assessing Officer noticing that the assessee has debited an amount of ₹ 3,39,12,938/- towards depreciation called for the necessary details and after verifying them found that the very same amount has

been claimed as application of income u/s. 11(1)(a) of the Act for the purpose of availing exemption u/s. 11 of the Act. He, therefore, called upon the assessee to explain why depreciation claimed should not be disallowed. In response, though, the assessee justified its claim, however, the Assessing Officer rejecting the claim of the assessee disallowed the depreciation. While doing so, he relied upon the decision of Hon'ble Kerala High Court in the case of Lissie Medical Institutions (2012) TIOL 303 Kerala-IT. Being aggrieved of such disallowance, assessee preferred appeal before the learned CIT(A). The learned CIT(A) after considering the submissions of the assessee in the context of facts and materials on record, found that in assessee's own case for A.Y. 2009-10, the first appellate authority has allowed assessee's claim of depreciation. Further, he found that the issue is directly covered in assessee's favour by the decision of Hon'ble Bombay High Court in the case of CIT vs. Institute of Banking Personnel Selection (264 ITR 110) and Director of Income Tax (Exemption) vs. Shri Vile Parle Kelvani Mandal [2015] 59 taxmann.com 288. Accordingly, he allowed assessee's claim of depreciation. Being aggrieved, the department is in appeal before us.

3. We have heard Shri R Manjunatha Swamy, learned DR appearing for the department and Shri Ronak Doshi the learned counsel appearing for the assessee. It is agreed before us by both the parties that the issue is covered by the decision of Hon'ble Bombay High Court in assessee's own case for A.Y. 2009-10 in Income Tax Appeal No.1497/2014 dated 06.03.2017. Further, the learned counsel for the assessee has brought to our notice the decision of Hon'ble Supreme Court in the case of CIT vs. Rajasthan & Gujarati Charitable Foundation, Poona (2018) 402 ITR 441, wherein Hon'ble Supreme Court approving the view expressed by Hon'ble Bombay High Court in the case of CIT vs. Institute of Banking Personnel Selection (supra), has allowed similar claim of depreciation.

4. Having considered the submissions of both the parties, we are of the considered opinion that the issue in dispute is not only covered by the decision of Hon'ble Bombay High Court in assessee's own case, as referred to above, but also the decision of Hon'ble Supreme Court in the case of CIT vs. Rajasthan & Gujarati

Charitable Foundation, Poona (supra). In view of the aforesaid, we do not find any infirmity in the order of the CIT(A) in allowing assessee's claim of depreciation. The grounds raised are dismissed.

5. In ground nos. 5 to 7, the department has challenged the decision of the first appellate authority in allowing assessee's claim of carry forward of deficit and set off against income of subsequent years. Briefly the facts are, during the assessment proceedings the Assessing Officer noticed that the assessee has claimed an amount of ₹ 1,01,16,097/- as deficit of the relevant previous year and an amount of ₹ 39,21,88,138/- on account of brought forward deficit for carry forward and setting off in subsequent years. The Assessing Officer stating that there is no provision in section 11 of the Act for carry forward and setting-off of deficit, disallowed assessee's claim. Being aggrieved, assessee preferred appeal before the CIT(A). The learned CIT(A) after considering the submissions of the assessee and following the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Institute of Banking Personnel Selection (supra), allowed assessee's claim of carry forward of deficit and setting off in subsequent assessment years.

6. We have heard the learned counsels appearing for both the parties and perused the material on record. Learned counsels appearing for the parties have agreed before us that the issue is covered by the decision of Hon'ble Bombay High Court in assessee's own case for A.Y. 2009-10 vide order dated 06.03.2017 in Income Tax Appeal No. 1497/2014. Having heard rival submissions, we find that in assessee's own case for A.Y. 2009-10, identical claim made by the assessee was allowed by the CIT(A) and thereafter by the Tribunal. Being aggrieved with the decision of the Tribunal, the department went in appeal before the Hon'ble Jurisdictional High Court and the following substantial question of law was framed for consideration of the Hon'ble High Court

"...

*(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing the claim of the assessee for carry forward of the said deficit, ignoring the fact that there was no express provision in the Act permitting allowance of such claim? "*

The Hon'ble High Court after considering the submissions of the parties decided the issue in favour of the assessee with the following observations:

"4. Regarding question no.(ii):-

*(a) Mr. Kotangale, the learned counsel for the Revenue very fairly states that the issue arise herein stands concluded by the decision of this Court in CIT vs. Institute of Banking 264 ITR 110 and the order of this Court in Director of Income Tax (Exemption) v/s. M/s. Gem & Jewellery Exports Promotion Council (Income tax Appeal No.610 of 2011) decided on 15<sup>th</sup> February 2011."*

Thus, in view of the decision of the Hon'ble Jurisdictional High Court in assessee's own case as referred to above, there is no need to interfere with the order of the CIT(A) on this issue. The grounds raised are dismissed.

7. Ground nos. 8 and 9 being general in nature do not require adjudication.
8. In the result, Revenue's appeal is dismissed.

Order pronounced in the open court on this day of 27<sup>th</sup> July, 2018.

**Sd/-**  
**(Ramit Kochar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated : 27<sup>th</sup> July, 2018.

**Sd/-**  
**(Saktijit Dey)**  
**JUDICIAL MEMBER**

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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'E' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai