

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'G', New Delhi
Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 3086/Del/2016
Assessment Year: 2011-12**

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| Ardee Foundation, Dr. Gopal Dass Bhawan, 28, Barakhamba Road, Connaught Place, New Delhi. PAN- AAATA1929P (Appellant) | vs. | DDIT(Exemption), New Delhi. (Respondent) |
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| Assessee by | S/Sh. Gautam Jain, Piyush Kumar & Lalit Mohan, Adv. |
| Revenue by | Sh. Pradeep Singh Gautam, Sr. DR |

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| Date of Hearing | 28.08.2018 |
| Date of Pronouncement | 04.09.2018 |

ORDER

Per L.P. Sahu, A.M.:

This appeal at the instance of assessee arise out of an order u/s. 263 of the IT Act dated 31.03.2016 of ld. CIT(E), New Delhi for the assessment year 2011-12, whereby the matter relating to allowance of depreciation on the assets was set aside by the ld. CIT(E) to the file of AO to make proper enquiries whether the cost of such assets have been allowed as application of income in the past or not and then to decide the issue afresh.

2. In pursuance to this revision order u/s. 263, the AO disallowed the impugned depreciation of Rs.40,62,845/- to the assessee vide order dated 30.06.2016 u/s. 143(3)/263 of the Act. In appeal against this order, the ld.

CIT(A) vide order dated 27.03.2018 allowed the depreciation as application of income in view of the decision of Hon'ble Supreme Court in the case of CIT vs. Rajashthan & Gujrat Charitable Foundation, Pune, 402 ITR 441(SC).

3. Having considered the submissions of both the sides and going through the material on record and also keeping in view the aforesaid facts, in our considered opinion, once the issue under consideration stands decided by the ld. CIT(A) in favour of the assessee, there remains nothing to be decided in the present appeal at this stage. Moreover, since the issue has been decided by Hon'ble Supreme Court in the case of CIT vs. Rajashthan & Gujrat Charitable Foundation (supra) in favour of the assessee, the order u/s. 263 would not survive at all.

4. We, accordingly, set aside the order u/s. 263 and allow the appeal of the assessee.

5. In the result, the appeal is allowed.

Order pronounced in the open court on 4th September, 2018.

Sd/-

(Bhavnes Saini)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 4th September, 2018

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| (1) The appellant | (2) The respondent |
| (3) Commissioner | (4) CIT(A) |
| (5) Departmental Representative | (6) Guard File |

By order

Assistant Registrar
Income Tax Appellate Tribunal