



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.255/CTK/2017
Assessment Year : 2012-2013

Adhikar , Plot No.- 113/2524, Khandagiri Vihar, Khandagiri, Bhubaneswar.	Vs.	Income Tax Officer, Ward- 2(1), Bhubaneswar
PAN/GIR No. AAATA 3160 D		
(Appellant)	..	(Respondent)

Assessee by : Shri S.C.Bhadra, AR
Revenue by : Shri Subhendu Datta, DR

Date of Hearing : 05/09/ 2018
Date of Pronouncement : 27 /09/ 2018

ORDER

Per N.S.Saini, AM

The appeal filed by the assessee is directed against the order of the CIT(A)-3, Bhubaneswar dated 29.3.2017 for the assessment year 2012-2013.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the disallowance of depreciation of 10,39,569/- and addition of Rs.7,96,911/- being transfer to general fund, Rs.72,29,426/- advances and Rs.35,56,860/- liabilities.

3. The facts of the case are that the Assessing Officer disallowed depreciation of Rs.10,39,569/- to the assessee on the ground that in the computation, the assessee has claimed both purchase of fixed assets and depreciation as utilisation of income.

4. On appeal, the CIT(A) confirmed the action of the Assessing Officer on the ground that the assessee has claimed cost of assets as capital expenditure in earlier years and, therefore, depreciation is not allowable during the year under appeal as it will amount to double deduction to the assessee.

5. We find that the issue is now settled by the Hon'ble Supreme Court in the case of Rajasthan and Gujrati Charitable and Foundation Poon, reported in 402 ITR 441 (SC), wherein, it has been held that in the case of CIT vs. Institute of Banking Personnel and Selection (IBPS), 131 Taxman 386 (Bom), it was held that section 11 makes provisions in respect of computation of income of the the trust from property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, section 28 of the Income-tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with

section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 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 section 32 of the Income-tax 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 section 11(1)(a) of the Income-tax Act. The court rejected the argument on behalf of the Revenue that section 32 of the Income-tax 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 a 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, section 32 of the Income-tax 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 section 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 Hon'ble Bombay High Court, the Hon'ble Supreme Court answered the question No.1 in the affirmative in favour of the assessee and against the revenue. Respectfully following the above quoted decision of Hon'ble Supreme Court, we set aside the orders of lower authorities and direct the Assessing Officer to allow depreciation of Rs.10,39,569/- to the assessee.

6. As regards the transfer to general fund of Rs.7,96,911/-, we find that the Assessing Officer has disallowed the same on the ground that the amounts were not utilized during the year for the objects of the charitable trust, which was confirmed in appeal by the CIT(A).

7. The Assessing Officer held that such transfer has been included as part of expenses claimed under development fund of Rs.57,61,323/-, which fact has not been disputed by the assessee. He held that such transfer to general fund cannot be treated as expenditure and, accordingly, added the same while computing the income of the assessee.

8. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

9. Similarly, the Assessing Officer observed that the assessee has claimed advance of Rs.72,29,426/-. The Assessing Officer observed that the advance included Rs.20,58,314/- towards community diary project, Rs.17,33,943/- towards purchase of fixed asset, Rs.2,08,500/- towards rent advance, Rs.2,50,606/- towards staff advance and Rs.3,73,022/- towards staff vehicle loans. The Assessing Officer observed that various expenses are additionally claimed through schedule to the financial statement from where the surplus or loss from various funds and project are taken to income and expenditure account. He observed that these aspects have not been disputed by the assessee. Therefore, he held that the expenses which have been additionally claimed in the shape of advance through schedule was disallowed.

10. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

11. Further, the Assessing Officer observed that the assessee has shown liabilities of Rs.35,56,860/- towards expenses in the

balance sheet. He observed that the assessee contended that balance sheet item cannot be treated as disallowance. The Assessing Officer rejected the contention of the assessee as not tenable on the ground that if any expenditure remains outstanding in the books of account, it only reflects that the cash flow on account of that expenditure has not happened.

12. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

13. Before us, Id A.R. could not controvert the findings of the Assessing Officer and the CIT(A) by bringing any relevant and cogent material on record. In absence of the same, we find no good reason to interfere with the orders of lower authorities. Hence, the order of the CIT(A) is confirmed with regard to the addition of Rs.7,96,911/- transfer to general fund, Rs.72,29,426/- towards advance and Rs.35,56,860/- towards liabilities.

14. In the result, appeal of the assessee is partly allowed.

Order pronounced on 27/09/2018.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 27 /09/2018
B.K.Parida, SPS



Copy of the Order forwarded to :

1. The Revenue: ITO, Ward 2(1), Bhubaneswar.
2. The Assessee: Adhikar, Bhubaneswar.
3. The CIT(A)-3, Bhubaneswar
4. Pr.CIT-3, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Cuttack**