

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A .No. 3296/DEL/2015 (A.Y 2010-11)

Raman Educational Society E-8, Kavi Nagar Industrial Area Ghaziabad AAAAR1010N (APPELLANT)	Vs	JCIT Range-2 Ghaziabad (RESPONDENT)
--	----	---

Appellant by	Dr. Rakesh Gupta & Sh. Somil Aggarwal, Advs
Respondent by	Sh. Naina Soin Kapil, SR. DR.

Date of Hearing	08.10.2018
Date of Pronouncement	12.12.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 02/03/2015 passed by CIT(A) , Muzaffarnagar for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

"1. That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the rejection of books of accounts and not granting the benefit of section 11& 12.

2. That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not deleting the observation of Ld. AO on the

applicability of section 13(3).

3. That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the disallowance of depreciation of Rs. 1,10,58,279/-and has further erred in not assessing the loss shown in Income & Expenditure Account.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. The assessee society is registered with Registrar of Societies, Uttar Pradesh and renewal was granted on 25.09.2008 for the period from 25.07.2008 to five years. The society was granted registration under Section 12AA of the Income Tax Act, 1961 by the then CIT, Meerut vide order dated 21.12.2001. In this case return of income was filed on 06.07.2010 declaring Nil income. The case was selected for scrutiny and statutory notice u/s 143(2) dated 15.09.2011 was issued and properly served upon the assessee within stipulated time. Further notice u/s 142(1) along with detailed questionnaire dated 17.04.2012 was issued. In compliance to these notices CA/AR attended the proceedings from time to time and furnished necessary details/explanation. During the course of assessment proceedings cash book, ledger bills and cash fee receipts (voucher) were produced by the assessee which were examined by the Assessing Officer. The Assessing Officer observed that Sri M. P. Garg, the Chairman of the society has taken and repaid unsecured loans from family members which were not disclosed in the return. Therefore, vide notice u/s 142(1) dated 15.03.2013, the assessee was asked to explain as to why the books of account may not be rejected by applying the provisions of Section 145(3) of the Income Tax Act, 1961. In response to notice, the assessee filed reply dated 22.03.2013. After taking into consideration the reply of the assessee, the Assessing Officer held that cash book of the assessee as well as

the books of account cannot be relied and accordingly rejected the books of account by applying provisions of Section 145(3) of the Act. The Assessing Officer further held that since books of accounts are not reliable and the possibility of providing benefit to the relatives cannot be ruled out, benefit u/s 11 & 12 cannot be allowed to the assessee and same is denied. The Assessing Officer also denied the claim of depreciation made by the Assessee. The Assessment was completed in the status of AOP on income of Rs. 1,10,58,279/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that as regards the Ground No. 1, the CIT(A) confirmed the action of Assessing Officer in rejecting the books of accounts of the society and denying the benefit of Section 11 & 12 of the Income Tax Act, 1961. The Assessing Officer rejected the books of the assessee's society as not reliable on the ground that the entry of receipt made in the ledger did not tally date wise with the dates as entered on the receipts and also that possibility of providing alleged benefits to relatives cannot be ruled out. The Ld. AR submitted that the assessing officer was duly explained about why such mismatch has occurred. It was explained that some students seeking hostel accommodation has deposited their hostel fees in advance to make sure that they did not miss the hostel accommodation as the hostel rooms were limited. It was explained that due to heavy rush of admission in the beginning of the academic session, the students had deposited their respective amount of academic fees with the cashier, which could not be put into a proper accounts channel due to the lack of immediate action on the part of accounts clerk who was under heavy pressure of work and also the adequate staff was not available in the college at that time. It was explained that in some cases the respective amounts of academic fees noted against each student was left by the

student/parents with the accounts department to ensure the admission in the college. The Ld. AR further submitted that hostel fees received has been entered into cash book on the date of deposit only but receipts for the same have been issued on later dates after finalization of availability of hostel accommodation. The Ld. AR further submitted that academic fees deposited by students in beginning of the session could not be entered in cash book on the same date because of pressure of work, inadequate staff and certain unavoidable reasons. But the same has been entered in cash book on a later date. The Ld. AR further submitted that in some case academic fees were left by students/parents/guardian etc. with the accounts department to ensure their admission in the college but receipts for the same has been issued on later dates due to reasons mentioned in 2 point. As per replies dated 07.12.2012, 17.12.2012, 05.03.2013 filed before Assessing Officer, the assessee submitted year wise and student wise detail of academy fees and hostel fees received during the year and also year wise detail of academic security, hostel security, advance fee received from students and the liability for mess fee which is to be incurred on students in next financial of the current session. The Ld. AR submitted that proper copies of bank statement along with ledger account and date wise details of fees received by the students under various heads were duly submitted before the Assessing Officer. The Ld. AR submitted that even if it is assumed that the books of accounts are liable to be rejected then also how could the benefit of section 11 & 12 could be denied which could be denied if conditions of those sections are violated. There is no finding to that effect either by Assessing Officer or by CIT(A).

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the material available on record. It is pertinent to note that as per replies dated 07.12.2012, 17.12.2012,

05.03.2013 filed before Assessing Officer, the assessee submitted year wise and student wise detail of academy fees and hostel fees received during the year and also year wise detail of academic security, hostel security, advance fee received from students and the liability for mess fee which is to be incurred on students in next financial of the current session. The assessee submitted copies of bank statement along with ledger account and date wise details of fees received by the students under various heads before the Assessing Officer. All these documentary evidence is not at all verified by the Assessing Officer or by the CIT(A). The submission of the Ld. AR that even if it is assumed that the books of accounts are liable to be rejected then also how could the benefit of section 11 & 12 could be denied which could be denied if conditions of those sections are violated. There is no finding to that effect either by Assessing Officer or by CIT(A). The Assessing Officer while denying the benefit under section 11 and 12 did not mention any conditions prescribed under Section 11 & 12 of the Act were violated by the Assessee. Therefore, we are of the view that the Assessing Officer was not right in rejecting the benefits given by the statute when the assessee did not violate any conditions prescribed u/s. 11 and 12 of the Act. Ground No. 1 is allowed.

8. As regards to Ground No. 2, the Ld. AR submitted that the Assessing Officer rejected the society's claim that the assessee society has not given any benefit to any trustee or any of its relatives as prescribed u/s 13 (3) of the Income Tax Act, 1961. The Ld. AR submitted that the creditor, namely Sh. MP Garg, Smt. Pushpa Garg, Sh. Sweekar Garg and Sh. Abhas Garg had advanced financial aid to the trust and nowhere in the law, it has been mentioned that the relatives of the trustees are barred from extending financial assistance towards trust. There is no reason before the assessing officer to look the whole transaction upside down as all the parties have duly confirmed the amounts advanced by them, their identity and as well as their creditworthiness and

genuineness. The Ld. AR submitted that possibility of some benefit having been given to related parties is surmise resorted to by the Assessing Officer. Rather, it is relatives who have extended benefit to the society which was wrongly understood by Assessing Officer in opposite manner. The Ld. AR relied upon the evidences such as reply submitted before Assessing Officer dated 22.03.2013 against the show cause issued on 15.03.2013 along with annexure and also submitting that Department has not considered the transactions recorded in A/c no. 2647201000275 with Canara bank in the name of society and therefore as per Assessing Officer balance shown in confirmation and as per bank accounts were not matching. The Ld. AR relied upon the copy of Income Tax Returns for AY 2010-11 of the parties, the confirmation from said parties, the Bank Statements of said parties showing the transactions made. The Ld. AR submitted that identity, creditworthiness and genuineness of all the creditors have been proved therefore, observation made to this effect by the Assessing Officer must be quashed.

9. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

10. We have heard both the parties and perused all the material available on record. It is pertinent to note that the assessee society has not given any benefit to any trustee or any of its relatives as prescribed u/s 13 (3) of the Income Tax Act, 1961. This fact is not disputed by the Revenue. The creditors advanced financial aid to the trust and there is no bar in the law that the relatives of the trustees cannot extend financial assistance towards trust. It is admitted fact that all the parties have duly confirmed the amounts advanced by them, their identity as well as their creditworthiness and genuineness were also proved. The Revenue has not considered the transactions recorded in A/c no. 2647201000275 with Canara bank in the name of society which is a clear lapse on part of the Assessing Officer. Therefore, we are of the opinion that the

Assessing Officer as well as CIT(A) failed to take on record the actual facts and evidences placed before them. Hence Ground No. 2 is allowed.

11. The Ld. AR, as regards to Ground No. 3 submitted that the CIT(A) has confirmed the disallowance made by the Assessing Officer on account of depreciation amounting to Rs.1,10,58,279/-. The Ld. AR submitted that the Tribunal New Delhi has allowed the depreciation to the assessee in AY 2011-12 dated 15.02.2017. The Ld. AR further pointed out that in past years the depreciation claimed by the assessee has been duly accepted by the department, which is clearly evident from the details/evidences filed before the Assessing Officer. The Ld. AR submitted that depreciation is allowable and also relied upon the decision in case of Tiny Tots Education Society. The Ld. AR submitted that even if exemption has been denied yet income has to be computed having regard to commercial principles and after allowing depreciation. The Ld. AR relied upon the following decisions:

168 ITD 183 (Jp)

388 ITR 605 (Raj)

152 ITD 637 (Cochin)

43 CCH 310 (Mum)

402 ITR 441 (SC)

12. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

13. We have heard both the parties and perused all the material available on record. The Assessing Officer observed in the Assessment Order that the claim of depreciation is not allowable as the WDV of various assets is Zero being value of capital assets already taken as application of income. It is pertinent to note that in past years the depreciation claimed by the assessee has been duly accepted by the department, which is clearly evident from the details/evidences filed before the Assessing Officer. But the same was not

taken into account by the Assessing Officer. The Hon'ble Apex Court in case of CIT vs. Rajasthan and Gujrati Charitable Foundation 402 ITR 441 has decided identical issue whether depreciation could be denied to assessee, as expenditure on acquisition of assets has to be treated as application of income in the year of acquisition of assets. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer to decide it afresh after taking cognizance of the details/evidences filed by the assessee as well as in light of the decision in case of Rajasthan and Gujrati Charitable Foundation (supra). Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 3 is partly allowed for statistical purpose.

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

Order pronounced in the Open Court on 12th December, 2018.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 12/12/2018

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	08 .10.2018
Date on which the typed draft is placed before the dictating Member	09 .10.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	.12.2018
Date on which the final order is uploaded on the website of ITAT	.12.2018
Date on which the file goes to the Bench Clerk	.12.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	