IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.1989/Del/2016
Assessment Year: 2012-13

JCIT (OSD), Exemption-Circle, Ghaziabad.	Vs.	Shikshadeep Educational Trust, 119, Bagh Bhatiyari, GT Road, Near Palika Bazar, Ghaziabad. PAN: AAGTS8458L
(Appellant)		(Respondent)

Assessee by	:	None
Revenue by	:	Ms Ashima Neb, Sr. DR
Date of Hearing	:	30.01.2019
Date of Pronouncement	:	31.01.2019

ORDER

PER R.K. PANDA, AM:

This appeal by the Revenue is directed against the order dated 12th January, 2016 of the CIT(A), Ghaziabad, relating to Assessment Year 2012-13.

2. None appeared on behalf of the assessee despite service of notice. Therefore, this appeal is being decided on the basis of material available on record and after hearing the ld. DR.

3. Facts of the case, in brief, are that the assessee is a Trust which was incorporated vide Trust Deed dated 1st August, 2007 and registered with Sub-Registrar-2,

Ghaziabad on 1st August, 2007. The Trust has been granted registration u/s 12AA of the IT Act and by CIT, Ghaziabad as per order dated 12th January, 2009. It has also been granted exemption u/s 80G of the IT Act by CIT, Ghaziabad vide order dated 12th January, 2009. The Society runs educational institutions under the name and style of 'Maharaja Agarsain Institute of Technology' at NH-24, Pilkhuwa, Ghaziabad. It field its return of income on 28th September, 2012 declaring nil income. The Assessing Officer, during the course of assessment proceedings, observed that the assessee has claimed depreciation on the assets relating to which entire expenses was already claimed against the receipts either in the last year or this year to exhaust the limit of 85%. He, therefore, asked the assessee to explain as to why the depreciation claimed by the assessee should not be treated as double deduction. Rejecting various explanations given by the assessee and following the decision of the Hon'ble Supreme Court in the case of Escorts Ltd. and following the amendment to section 11(6) of the IT Act which was inserted w.e.f. 01.04.2015, the Assessing Officer disallowed the depreciation of Rs.63,14,679/- and added back the same to the total income of the assessee.

4. In appeal, the ld.CIT(A), following the decision of the Hon'ble Delhi High Court in the case of *DIT(E) vs. Indraprastha Cancer Society* vide *order dated 18.11.2014* allowed the claim of the assessee and deleted the depreciation of Rs.63,14,679/-. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

"1. The ld.CIT(A) has erred in law and on facts in deleting the disallowance of depreciation amounting to Rs.63,14,679/- ignoring the fact that the assessee has claimed purchase of fixed assets as application of income in respective years, therefore allowance of depreciation will amount to double deduction.

2. The order of the ld.CIT(A) be cancelled and the order of the A.O. be restored."

5. We have heard the ld. DR and perused the relevant material on record. First of all, the tax effect involved in the grounds raised by the Revenue is admittedly below Rs.20 lakhs, therefore, in view of the CBDT Circular No.03/2018 dated 11th July, 2018 which is applicable even to pending appeals, the appeal filed by the Revenue is not maintainable. Even otherwise also, the issue stands decided in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of *CIT vs. Rajasthan and Gujarati Charitable Foundation Poona vide Civil Appeal No.7186 of 2014 and batch of other appeals vide consolidated order dated 13th December, 2017.* For the sake of reference, the order of the Hon'ble Supreme Court on this very issue is reproduced as below:-

"These are the petitions and appeals filed by the Income Tax Department against the orders passed by various High Courts granting benefit of depreciation on the assets acquired by the respondents-assessees. It is a matter of record that all the assessees are charitable institutions registered under Section 12A of the Income Tax Act (hereinafter referred to as 'Act'). For this reason, in the previous year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under Section 11(1)(a) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under Section 32 of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assessees had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the

assessee. Though it appears that in most of these cases, the CIT (Appeals) had affirmed the view, but the ITAT reversed the same and the High Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department. From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'Commissioner of Income Tax v. Institute of Banking Personnel Selection (IBPS)' [(2003) 131 Taxman 386 (Bombay)]. In the said judgment, the contention of the Department predicated on double benefit was turned down in the following manner:

> 3. As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property. During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @2½% and they also claimed depreciation on furniture @ 5%. The question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income Tax Act makes provision in respect of computation of income of the Trust from the 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 ahll 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 32of 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 form building, plant and machinery and furniture was liable to be computed in 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 aforesatated judgment of the Bombay High Curt, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department.

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR 463. In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had etc. been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently, Question No. 2 is answered in the Affirmative i.e., in favour of the assessee and against the Department."

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.

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. Commissioner of Income Tax'.

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.
>
> It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.
>
> For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters."

6. Since the assessment year involved in the instant appeal is assessment year 2012-13, therefore, the amendment in section 11(6) of the IT Act, vide Finance Act, 2014 which became effective from assessment year 2015-16 will not be applicable for the impugned assessment year. Since the issue has already been decided by the Hon'ble Supreme Court in the case cited (supra), therefore, we do not find any infirmity in the order of the CIT(A) allowing the claim of depreciation of Rs.63,14,679/- on the assets which were also allowed as application of income in respective years. The grounds raised by the Revenue are, therefore, dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

The decision was pronounced in the open court on 31.01.2019.

Sd/-	Sd/-
(K. NARASIMHA CHARY) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMFBER

Dated: 31st January, 2019

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi