

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 2652 /Ahd/2017
Assessment Year 2014-15**

Asstt. CIT (OSD)(Exemption), Circle-2, Ahmedabad (Appellant)	Vs	Sardar Patel Education Trust, C/O C.P. Patel & F.H. Shah Commerce College, Bhalej Road, Anand-388001 PAN: AABTS2321M (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Aseem L. Thakkar, A.R.**

Date of hearing : 05-03-2019
Date of pronouncement : 07-03-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This revenue's appeal for A.Y. 2014-15, arises from order of the CIT(A)-9, Ahmedabad dated 13-09-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The solitary ground of appeal of the revenue is against the decision of Id. CIT(A) in allowing the depreciation of Rs. 82,64,501/- to the assessee which amounts to double deduction as 100% deduction was already allowed to the assessee as application of income.

3. The issue in appeal is pertained to the claim of depreciation which was disallowed by the assessing officer on the ground that application of the income was already allowed as expenditure in the earlier assessment years as application of funds, therefore, allowing depreciation would amount to double deduction. At the time of hearing before us, Id. representatives have brought to our notice that the Id. CIT(A) has allowed the appeal of the assessee by stating that the issue on allowability of depreciation in the case of charitable trust has been decided by the Honøble Gujarat High Court in the case of CIT vs. Sheth Manilal Ranchhoddas Vishram Bhavan Trust 198 ITR 598 (Guj).

4. We have heard the rival contentions and perused the material on record carefully. The assessment u/s. 143(3) of the act was completed by determining income at nil in the case of the assessee and the claim of depreciation of Rs. 82,64,501/- was disallowed on the ground that the capital expenditure incurred on the fixed assets had been allowed as an expenditure in the earlier years as appreciation of funds. The Id. CIT(A) has allowed the claim of depreciation after placing reliance on the decision of Honøble Gujarat High Court in the case of CIT vs. Sheth Manilal Ranchhoddas Vishram Bhavan Trust 198 ITR 598 (Guj) and the decision of the Co-ordinate Bench of the ITAT Ahmedabad in the case of Sardar Patel

Institute of Public Administration assessment year 2008-09 vide ITA no. 1322/Ahd/2011. During the course of appellate proceedings before us, it was brought to our notice by the ld. counsel that Honøble Supreme Court in the decision of CIT-III, Pune vs. Rajasthan and Gujarat Charitable Foundation Poona vide (2018) 89 taxmann.com 127 has decided the identical issue in favour of the assessee by following the decision of Honøble Bombay High Court in CIT vs. Institute of Banking Personnel Selection (IBPS) (2003) 131 Taxman 386 (Bombay). It was held by the Honøble Bombay High Court that 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 above facts and judicial findings, we do not find any reason to interfere in the decision of ld. CIT(A). Therefore, the appeal of the Revenue is dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 07-03-2019

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 07/03/2019

आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद