

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'B', New Delhi**

**Before : Shri L.P. Sahu, Accountant Member &  
Smt. Beena A. Pillai, Judicial Member**

**ITA No. 3631/Del/2016  
Assessment Year: 2012-13**

DCIT (Exemption), Circle, Ghaziabad.  <b>(Appellant)</b>	<b>vs.</b>	Institute of Management Studies, 32, New Cantt. Road, Dehradun. PAN – AAAAI 0193D  <b>(Respondent)</b>
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**ITA No. 3632/Del/2016  
Assessment Year: 2012-13**

DCIT (Exemption), Circle, Ghaziabad.  <b>(Appellant)</b>	<b>vs.</b>	Indian Public School Society, PB No. 36, The Mall Road, Dehradun. PAN – AAACI4960N  <b>(Respondent)</b>
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<b>Appellant by</b>	Ms. Nidhi Srivastava, CIT/DR
<b>Respondent by</b>	None

<b>Date of Hearing</b>	20.03.2019
<b>Date of Pronouncement</b>	22.03.2019

**ORDER**

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

These two appeals have been filed by the Revenue in the cases of different assesseees against the orders passed by the Id. CIT(A), Muzaffarpur dated 23.03.2016 for the assessment year 2012-13. Since the common issue is involved in both these appeals, the same were heard together and are being disposed of by this consolidated order for the sake of convenience and

brevity. Both the parties agreed that the decision in one appeal shall equally apply to other appeal. We first take up ITA No. 3631/Del/2016 first. The grounds raised in this appeal read as under :

*"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law and no facts in following the appeal of the assessee on the issue of disallowance of depreciation of Rs.11,29,69,109/- ignoring the facts that depreciation on account of application of income for charitable purposes is not allowable as the capital expenditure on acquiring fixed assets has already been allowed in respective years.*

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

2. The brief facts of the case are that the assessee society filed return of income on 27.09.2012 declaring nil income. The case of selected for scrutiny and statutory notices were issued. The assessee is a society duly registered with Registrar of Societies, Uttaranchal. The assessee had been granted registration u/s. 12AA of the IT Act by CIT, Meerut dated 29.05.1998. The society is carrying out the charitable activities as well as running educational Institutions. In the assessment proceedings, it was noticed that the assessee has claimed depreciation on assets, the cost of which had already been taken as application of income. Therefore, the Assessing Officer following the judgment of Supreme Court in the case of Escorts Ltd., noted that the assessee had claimed double deduction which is contrary to the principles laid down by Hon'ble Supreme Court in the aforesaid case. He also referred to section 32 of the IT Act regarding charging of depreciation on assets. Accordingly, he disallowed the depreciation claimed by the assessee to the

extent of Rs.11,29,69,109/-. The assessee carried the matter in appeal before the Id.CIT(A), where he made detailed written submissions and relied on many case laws. The Id. CIT(A) after considering the submissions of the assessee, allowed the appeal. Aggrieved, the Revenue is in appeal before the ITAT.

3. The Id. DR relying on the order of the Assessing Officer submitted that the assessee has claimed double deduction – firstly at the time of purchase of fixed asset as application of income and secondly by claiming depreciation on the same assets which is against the decision of Hon’ble Apex Court in the case of Escorts Ltd.

4. None is present on behalf of the assessee despite notice issued to the assessee through registered post. We, therefore, have no alternative but to decide the appeal *ex parte* qua assessee.

5. After hearing the submissions of the Id. DR and going through the entire material available on record, we find that the Id. CIT(A) has done good reasoned order after considering the detailed submissions and relying on various case laws. For ready reference, the findings reached by the Id. CIT(A) are reproduced herein below :

*6. Grounds of appeal Nos. 1 & 2 being inter-related are against the disallowance of depreciation claimed at Rs. 11,29,69,109/-.*

*7. The facts of the case as well as submission made by the appellant have been considered. The appellant society is registered u/s 12AA of the*

*Income tax Act, 1961 by the CIT(Meerut) vide order No.2358 dated 29.05.1978. The appellant has claimed depreciation of Rs. 11,29,69,109/- in the income & expenditure statement. The Assessing Officer has not allowed the same by relying upon the decision of Hon'ble Supreme Court in the case of Escorts Limited and also u/s 32 of the Income Tax Act, 1961. The appellant has made detailed submission as reproduced above.*

*The facts of the case along with the reply of the appellant have been considered. On similar facts it has been held by Hon'ble Delhi High Court in the case of Indraprastha Cancer Society; ITA No.240/2014 dated 18-03-2014 that depreciation claimed does not amount to double deduction in case a charitable trust registered u/s 12AA of the Income Tax Act, 1961. Similar view has been expressed by the Hon'ble ITAT, Delhi in the case of Bhardwaj Welfare Trust (ITA No.1979, 2564/Del/2013) dated 13-02-2015, Arihant Charitable Hospital Trust, Ghaziabad (ITA No. 5019/Del/2015) dated 17.11.2015. Respectfully following the above referred decisions, the A.O. is directed to allow claim of depreciation after making necessary verification from record about the claim of the appellant in the return of income. Grounds of appeal Nos. 1 & 2 are allowed."*

6. In view of the aforesaid findings we find no infirmity in the impugned order whereby the Id. CIT(A) after relying upon various case laws on the subject has rightly deleted the disallowance made by the Assessing Officer. In the case of Hon'ble Apex Court in the case of Escorts Ltd. vs. Union of India, 199 ITR, the assessee had claimed two deductions u/s. 32(1)(ii) and 35(1)(iv) of the IT Act, and here in this case, no such situation arose. Accordingly, the aforesaid decision does not render any help to the Revenue. Accordingly, the appeal of the Revenue deserves to be dismissed.

7. As already noted, identical facts and grounds are involved in ITA No. 3632/Del/2016. Therefore, in view of our above findings in ITA No. 3631/Del/2016, this appeal of the Revenue also deserves to fail.

8. In the result, both the appeals of the Revenue are dismissed.  
Order pronounced in the open court on 22.03.2019.

Sd/-

**(Beena A Pillai)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 22.03.2019

*\*aks\**

*Copy of order forwarded to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*