

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'B'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.170 and 173/Ahd/2018
निर्धारण वर्ष/Asstt. Year: 2010-11 and 2014-15**

DCIT (Exemptions)-2 Ahmedabad.	Vs.	Charotar Education Society C/o. D.N. High School Station Road Anand, Gujarat 380 001. PAN : AAATC 1582 H
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अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
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Revenue by :	Shri Mudit Nagpal, Sr.DR
Assessee by :	None

सुनवाई की तारीख/Date of Hearing : 08/04/2019
घोषणा की तारीख/Date of Pronouncement: 10/04/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present two appeals are directed at the instance of the Revenue against separate orders of the Id.CIT(A)-9 dated 13.11.2017 passed for the Asstt.Years 2010-11 and 2014-15.

2. Common grievance of the Revenue in both the assessment years relates to allowance of depreciation amounting to Rs.2,04,91,801/- and Rs.2,39,88,849/- in the Asstt.Year 2010-11 and 2014-15 respectively by the Id.CIT(A).

3. In response to the notice of hearing none has come present on behalf of the assessee. The facts on all vital points are common, therefore for the facility of reference we take the facts from the Asstt.Year 2010-11.

4. Brief facts of the case are that the assessee has filed its return of income at Rs.NIL. The assessment under section 143(3) of the Income Tax Act was completed on 4.9.2010 determining total income at Rs.NIL. The AO thereafter harboured a belief that the assessee has claimed depreciation of Rs.2,04,91,801/- which is not admissible to it. Therefore, he reopened the assessment and notice under section 148 of the Act was issued to the assessee. In response to the show cause notice of the AO, the assessee filed submissions on 28.12.2015. It has contended that amendment in section 11 has been made by Finance Act(No.2) of 2014 w.e.f. Asstt.Year 2015-16. After this amendment, it has been provided that depreciation as well as capital expenditure in the shape of application of income cannot be claimed simultaneously; but upto Asstt.Year 2014-15 both were admissible to an assessee who is an institution engaged in charitable activities and enjoying the benefit of sections 11 and 12. References to a large number of decisions were made by the assessee, but the Id.AO was not satisfied with the explanation of the assessee. He disallowed the claim of depreciation on the ground that the assessee has already availed deduction for the capital expenditure for acquiring such assets as application of income.

5. Similar view has been taken in the Asstt.Year 2014-15. On appeal, the Id.CIT(A) has deleted this disallowance by following

decisions of judgment of Hon'ble Gujarat High Court in the case of CIT Vs. She4th Manilal Ranchhoddas Vishram Bhavan Trust, 198 ITR 598 (Guj). The Id.DR conceded that in view of latest decision of Hon'ble supreme Court reported in (2018) 402 ITR 441 (SC) in the case of CIT vs. Rajasthan and Gujarati Foundation, assessee trust is entitled for the depreciation.

6. On due consideration of the above facts, and law laid down by the Hon'ble Supreme Court in the case of Rajasthan & Gujarati Foundation (supra), we do not find any merit in these appeals. They are dismissed.

7. In the result, appeals of the Revenue are dismissed.

Order pronounced in the Court on 10th April, 2019.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER