

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.3996/Del./2016
Assessment Year 2012-2013

The DCIT (Exemption) CGO Complex-II, Room No.105, 1 st Floor, Kamla Nehru Nagar, Ghaziabad.	vs	BSA College of Engineering & Technology Institute, 1- Near Bus Stand, Mathura. PAN AAATB4009N
		(Respondent)

For Revenue :	Shri P.V. Gupta, Sr. D.R.
For Assessee :	Shri M.M. Agrawal, FCA

Date of Hearing :	22.04.2019
Date of Pronouncement :	23.04.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-2, Agra, Dated 29.01.2016, for the A.Y. 2012-2013, on the following ground :

1. *“That the Ld. CIT(A) has erred in law and on the facts in allowing the appeal of the assessee on the issue of disallowance of depreciation of Rs.1,00,01,063/-*

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. It is noted in the impugned order that assessee is an educational institution registered under section 12AA of the I.T. Act, 1961. The A.O. observed that assessee in its return of income has claimed depreciation on its fixed assets. However, the said claim of assessee was not admitted by the A.O. as the A.O. in the assessment order has taken a view that assessee is a Trust and its claim of depreciation was not admissible in respect of the assets which have been allowed as “application of income” and allowing depreciation would amount to double deduction. The A.O. while holding the said view has taken support from Section 11(6) of the I.T. Act as inserted by Finance Act, 2014, w.e.f. 01.04.2015 and while applying the same has observed that the newly brought provision has clarificatory in nature and hence, retrospective in effect. Accordingly, the A.O. rejected assessee’s claim of

depreciation amounting to Rs.1,00,01,062/- and framed the assessment in assessee's case making the above addition.

3. Assessee submitted before the Ld. CIT(A) that the claim of depreciation have been allowed in past on the same reasoning. Therefore, principles of consistency shall apply to the facts of the case and relied upon decision of Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT 193 ITR 321. It was further submitted that amendment in Section-11 have been made w.e.f. 01.04.2015 i.e., from A.Y. 2015-2016. Circular to that effect is also available. It was, therefore, submitted that depreciation shall have to be allowed to assessee. The assessee relied upon several decisions of various High Courts in support of the contention that depreciation is allowable to the assessee in the given circumstances. The Ld. CIT(A) accepted the claim of assessee and held that claim of assessee for depreciation is allowable and the proposed amendment in Section-11 is prospective in nature, therefore, the same would not apply against the

assessee. The appeal of assessee was thus, allowed.

3.1. Learned Counsel for the Assessee submitted that now the issue is covered by Judgment of the Hon'ble Supreme Court in the case of CIT-III, Pune vs. Rajasthan & Gujarati Charitable Foundation Poona [2018] 89 taxmann.com 127 (SC) in which it was held as under :

“In case of assessee-charitable institution registered under section 12A, even though expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under section 11 (1)(a), yet depreciation would be allowed on assets so purchased (Position prior to 1-4-2015)”

4. The Ld. D.R. did not dispute the same.

5. Considering the facts of the case in the light of findings of the Ld. CIT(A) above, we are of the view that the issue is covered in favour of the assessee by the Judgment of Hon'ble Supreme Court in the case of CIT-III, Pune vs.

Rajasthan & Gujarati Charitable Foundation Poona
(supra). Following the same, we dismiss the appeal of the
Department.

6. In the result, appeal of the Department
dismissed.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 23rd April, 2019.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.