

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]

ITA No.729/Ahd/2017
Assessment Year: 2013-14

**Asstt. Commissioner of Income Tax (Exemptions),
Circle-1, Ahmedabad.**

.....**Appellant**

Vs.

Eklavya Education Foundation,
Core House, Off, C.G. Road,
Nr. Parimal Garden, Ellisbridge,
Ahmedabad – 380 006.
[PAN: AAACE 7987 R]

.....**Respondent**

ITA No.508/Ahd/2017
Assessment Year: 2013-14

Eklavya Education Foundation,
Core House, Off, C.G. Road,
Nr. Parimal Garden, Ellisbridge,
Ahmedabad – 380 006.
[PAN: AAACE 7987 R]

.....**Appellant**

Vs.

**Dy. Commissioner of Income Tax (Exemptions),
Circle-1, Ahmedabad.**

.....**Respondent**

Appearances by

S.K. Dev for the Revenue

M.K. Patel for the assessee

Date of concluding the hearing : 09.01.2019

Date of pronouncing the order : 01.04.2019

O R D E R

Per Pramod Kumar, Vice President:

1. These cross appeals are directed against the order dated 9th January 2017 passed by the Id. CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2013-14.
2. We will first take up the appeal filed by the Assessing Officer.
3. In the first ground of appeal, the Assessing Officer has raised the following grievance:-

“1) Whether on the facts and in the circumstances of the case is the Ld. CIT(A) justified in allowing the assessee’s claim of depreciation when the entire cost of fixed assets has been allowed towards application.”

4. Learned representatives fairly agree that this issue is now covered, in favour of the assessee, by Hon’ble Supreme Court’s judgement in the case of CIT vs. Rajasthan & Guajarati Charitable Foundation [(2018) 402 ITR 441 (SC)]. In this view of the matter, we confirm the conclusions arrived at by the leaned CIT(A) and decline to interfere in the matter.

5. Ground no.1 is dismissed.

6. In ground no.2, the appellant has raised the following grievance:

“2) Whether on the facts and in the circumstances is the Ld. CIT(A) justified in directing the A.O. to allow set off or brought forward losses against current year surplus.”

7. Learned representatives agree that this issue is also covered, in favour of the assessee, by Hon’ble jurisdictional High Court’s judgement in the case of CIT vs. Shri Plot Shwetamber Murti Pujack Jain Mandal [(1995) 211 ITR 293 (Guj)], and learned CIT(A) has simply followed that binding judicial precedent. Even though learned Departmental Representative vehemently relied upon the stand of the Assessing Officer, he could not point out any distinguishing features. In view of these discussions, and bearing in mind entirety of the case, we approve the conclusions arrived at by the learned CIT(A) on this point as well.

8. Ground no.2 is dismissed.

9. In the result, the appeal of the Assessing Officer is dismissed

10. As regards the appeal filed by the assessee, only grievance raised therein is as follows:-

“1) The learned Assessing Officer has erred in law and on facts in making addition of one time admission fees which are capital receipts and as such are not includible in the total income, and Hon’ble CIT(A) has erred in confirming the same.”

11. We find that this issue is also covered, in favour of the assessee and in assessee’s own case for the assessment years 2010-11, 2011-12 and 2012-13. A copy of the decision dated 09.04.2018 in assessee’s own case in ITA No.2754/Ahd/2015 was also placed before us. As a matter of fact, learned CIT(A), in the impugned order, had deviated from the stand of his predecessors, but then the stand of the predecessors has already been confirmed by

the Tribunal. In view of this factual position, we uphold the grievance of the assessee and direct the Assessing Officer to delete the impugned addition of Rs.78,55,000/-. The assessee gets the relief accordingly.

12. In the result, the appeal of the assessee is allowed.

13. In the result, the appeal of the Assessing Officer is dismissed and the appeal of the assessee is allowed. Pronounced in the open Court on this 1st day of April, 2019.

Sd/-
Ms. Madhumita Roy
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Ahmedabad, the 1st day of April, 2019

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<i>Copies to:</i>	(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
Ahmedabad benches, Ahmedabad*