

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 119/JP/2019
निर्धारण वर्ष / Assessment Year :2015-16

M/s Shree Pragma Jain Smarak Samiti, 537-539, 5 th Floor, Mahima's Trinity, Near Jyoti Rao Phule College, New Sanganer Road, Jaipur.	बनाम Vs.	I.T.O.(E), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACAS 9331 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya &
Shri Hemang Gargieya (Advs)
राजस्व की ओर से / Revenue by : Shri P.P. Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 30/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 03/05/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Ajmer dated 20/12/2018 for the A.Y. 2015-16 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short the Act).

Following grounds have been taken by the assessee.

- "1. The impugned order u/s 143(3) of the Act dated 12.12.2017 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

- 2.1 **Rs. 57,68,908/-:** *The Id. CIT(A) seriously erred in law as well as facts of the case in not allowing the claim made by the Appellant Samiti as application of income u/s 11 in relation to the capital expenditure of Rs. 57,68,908/- lac admittedly incurred during the previous year and thus, thereby, also ignoring the legal and factual position that after considering the same as a valid application of income, the total application of income on revenue 86 capital a/c both, amounted to 88%, which being more than the prescribed statutory limit of 85%, no income at all was taxable. The revised computation of the claim so made though was before the CIT(A) yet, was not considered. The appellant, therefore, kindly be held entitled to the benefit of sec. 11 w.r.t. aforesaid capital expenditure. Consequently, the assessment of the income at Rs. 50,01,644/- through the impugned order u/s 143(3) kindly be quashed.*
- 2.2 *The Id. CIT(A) also erred in law as well as in facts of the case in not considering the additional ground of appeal specifically filed in his office through a separate prayer in writing dated 25.12.2018 and sent through e-mail at the official e-mail id of his office.*
3. **Rs. 38,69,616/-** *The Id. CIT(A) further erred in law as well as facts in the case in confirming the disallowance of depreciation as alleged to have been claimed twice. However, the disallowance so made and confirmed by the CIT(A) is contrary to the provisions of law and facts to the extent of Rs. 38,69,616/- and hence the same kindly be allowed not being a double claim made by the assessee on the facts available on record hence, the same kindly be directed to be allowed to the extent of Rs. 38,69,616/- as application of income.*
4. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."*

2. Rival contentions have been heard and record perused. The facts in brief are that Shree Pragya Jain Smarak Samiti is a registered Samiti under Registrar of Societies, Jaipur vide No. 6/1969-70 w.e.f. 14.04.1969. The Samiti is also registered u/s 12A(a) of the I.T. Act, 1961 with the Commissioner of Income-tax. The Samiti is also registered u/s 80G of the I.T. Act, 1961 vide letter dated 23.01.2008. The assessee has shown income of Rs.1,26,410/- from Gaushala. The Samiti has been running five educational institutions under the name and style of Shri Pragya Mahavidyalaya. Pragya Public Senior Secondary School & Shri Pragya Public School, (Primary & Preprimary Section) at Bijainagar.

3. During the course of assessment, the A.O. found that the assessee Samiti has shown net profit of Rs.59,11,506/- on total receipts of Rs.3,86,48,557/- from running of educational institutes. Apart from this, the Samiti runs a Gaushala from which Samiti receives income by selling milk. The Samiti filed ROI on 07.11.2016 declaring total income at Rs. Nil. The A.O. observed that the Samiti has claimed depreciation of Rs.48,87,421/- on fixed assets as application of income, which in view of the Id. AO, appears to be a case of double deduction in as much as the entire cost of the assets have been claimed out of the exempted income. On being asked, the assessee stated vide letter dated 11.12.2017 reproduced at the pg. 3 of assessment order, that the

depreciation has been claimed on all the fixed assets which were owned, possessed and used by it for implementing its objects as per provisions of S.32 of the Act and the assessee did not claim the benefit by way of depreciation twice. In support of the same the assessee referred CBDT circular No. 5-P(LXX-6) of 1968 dated 19.06.1968 as well as various decisions of High Court. However, rejecting assessee's explanation, the AO completed the assessment at Rs.50,01,644/- by making disallowance of Rs.48,87,421/- claimed on account of depreciation on fixed assets.

4. In addition to the ground of disallowance of depreciation before the Id. CIT(A), the assessee has taken additional ground which reads as under:

"The entire expenditure incurred for acquisition of capital assets during the year should be treated as application of income for which charitable purposes u/s 11(1)(a) of the Act and as such the learned Assessing Officer should be directed to re-compute the income of the society afresh in the light of above grounds.", however, in addition thereto, the assessee also filed a separate prayer of additional ground vide its letter dated 25.12.2018 (PB 58-59) supported by an affidavit (PB 60-61) which was sent through email (PB 63) and was also sent through courier separately."

However, the Id. CIT(A) has not discussed this ground and confirmed the disallowance of depreciation. The assessee is in further appeal before the ITAT.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that during the course of appellate proceedings, the appellant raised an alternate claim of capital expenditure of Rs. 57.69 lac as application of income. In addition to the ground of appeal no. 3 before CIT(A), the assessee also filed a separate prayer of additional ground vide its letter dated 25.12.2018 supported by an affidavit which was sent through email and was also sent through courier separately. There apart, in the written submissions, the appellant provided calculations based on these contentions. However, the Id. CIT(A) did not consider the same and dismiss the assessee's appeal. We found that all the facts and figures were already available on the record and this did not require any investigation of fact by the Id. CIT(A). Keeping in mind the amended law, the appellant Samiti thought it proper to raise the alternate claim before the CIT(A). However, the Id. CIT(A) has ignored the ground of appeal no. 3, the additional ground as discussed above but at the same time he also ignored a revised calculation given by the Id. AR before him in his submission dated 26.03.2018, in pars 33. This was purely a legal ground, requiring no investigation into facts. Hence, must have been admitted.

6. As per the calculation given by the assessee before the Id. CIT(A), it appears that the capital expenditure incurred by the assessee this year of Rs. 57.69 Lakh was claimed together with revenue expenditure as application of income which, resulted into the application of 88% w.r.t the gross receipts i.e. more than 85%. In the chart submitted before the Id. CIT(A), following calculation was given:

Chart showing application of Income without Depreciation

Gross Receipts during the year (PB 47)		3,86,48,557/-		
Less: Donation for Corpus Fund (PB 47)		4,88,401/-		
Total Income (Net Receipts) (A)			3,81,60,156/-	
Total Application of Income (Only revenue expenditure claimed) as per Form-10B (PB 7, 47)	3,27,37,051/-			
Less: Depreciation	48,87,421/-			
Revenue Expenditure without Depreciation (i)				2,78,49,630/-
Shri Pragya Mahavidyalaya (Smarak) (PB 48)	98,419/-			
Shri Pragya School (PB 49)	55,44,989/-			
Shri Pragya Mahavidyalaya (Boys Fund) (PB 51)	1,25,500/-			
Capital Expenditure During the year (II)				57,68,908/-
Total Expenses excluding Depreciation (i + ii) (B)			3,36,18,538/-	

Total Income before Application	(A)	3,81,60,156/-
Amount of Expenditure applied for Charitable Purpose	(B)	3,36,18,538/-
Total Income applied for Charitable Purpose without depreciation in percentage		88.10%

However, it is not clear from the above chart as to whether the capital expenditure so incurred was out of corpus fund received by the assessee in earlier years. Therefore, in the substantial interest of justice, we restore the issue back to the file of the A.O. for deciding the alternate

ground taken by the assessee with regard to income of 88.10% applied by the assessee for charitable purposes even without claim of depreciation. The A.O. has to decide the issue afresh as per law.

7. With regard to the assessee's claim of depreciation, we found that as per the amended law U/s 11(6) of the Act inserted by the Finance Act, 2014 w.e.f. 01/4/2015 i.e. A.Y. 2015-16 which is under consideration, the assessee is not eligible for depreciation in respect of capital assets which have been taken full credit while computing the income applied for charitable purposes. Accordingly, the A.O. was justified in declining claim of depreciation.

8. In the result, appeal of the assessee is allowed in part for statistical purposes, in terms indicated hereinabove.

Order pronounced in the open court on 03rd May, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 03rd May, 2019

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Shree Pragya Jain Smarak Samiti, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O.(E), Ajmer.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 119/JP/2019)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar