

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
&  
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

**ITA No. 4284/Del/2016  
Assessment Year: 2012-13**

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| DCIT(Exemption)<br>Circle-2(1), Room No. 2408,<br>24 <sup>th</sup> Floor, Block E-2,<br>Dr. S.P. Mukherjee Civic Centre<br>New Delhi. | <b>vs</b> | Prakash Educational Society<br>620-A, Faiz Road,<br>Karol Bagh,<br>New Delhi.<br><b>PAN No. AAATP1227G</b> |
| <b>APPELLANT</b>  |           | <b>RESPONDENT</b>  |

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|--------------------|----------------------------------|
| <b>Revenue by</b>  | <b>Shri Surender Pal. Sr. DR</b> |
| <b>Assessee by</b> | <b>Shri Anoop Sharma, Adv.</b>   |

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| <b>Date of Hearing</b>       | <b>30.05.2019</b> |
| <b>Date of Pronouncement</b> | <b>10.06.2019</b> |

**ORDER**

**PER SHRI R K PANDA, A.M.**

This appeal filed by the Revenue is directed against the order dated 6<sup>th</sup> May, 2016 of the Ld. CIT(Appeals)-40, New Delhi relating to AY 2012-13.

2. The only effective ground raised by the Revenue reads as under:

1. *“On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that when deduction is allowed in*

*respect of capital expenditure, no depreciation is allowed on the same assets as this will tantamount to double deduction.*

*2. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

3. Facts of the case, in brief are that the assessee society is registered under Society's Registration Act, 1860 vide registration certificate no. S-11550 dated 24.02.1981. The assessee society is registered u/s 12A of the Income Tax Act, 1961 vide order No. CIT-VI/TE(241)/81/4133 dated 22.03.1982. The assessee society is notified u/s 10(23C)(vi) of the Income Tax Act, 1961 vide order no. F. No. DGIT(E)/10(23C)(vi)/2008-09/1624 dated 26.02.2009. The objects of the society are to establish schools, colleges and other institutions for imparting education and/or grant of financial assistance and donations etc. to the existing schools colleges, universities and other institutions. It filed its return of income on 28<sup>th</sup> September, 2012 declaring nil income. The return was accompanied with the audit report dated 16<sup>th</sup> May, 2012. The AO during the course of assessment proceedings observed that in a case where the capital expenditure has been treated to have been applied for the object of the trust, allowance of deduction on account of depreciation will amount to double deduction. He noted that the assessee registered u/s 12A of the Act do not compute/offer their income under the head “profit and gains of business or profession”. Therefore, no question of allowance of depreciation u/s 32 of the Act arises in these cases. Relying on

various decisions and CBDT clarification dated 03.01.2011 the AO disallowed depreciation of Rs. 1,14,59,837/-.

3.1 Before CIT(A) it was argued that AO is not justified in disallowing the depreciation as the assessee has not claimed any double deduction. It was argued that total depreciation claimed is Rs. 1,17,52,513/- which includes depreciation on building of Rs. 59,39,744/- for which no depreciation has been claimed as the investment in the building was earlier treated as application of income u/s 11(1) of the Act. It was submitted that assessee has claimed the depreciation of Rs. 58,12,769/- only on various items on which no deduction as application of income has been claimed by the assessee. It was argued that assessee could have claimed the entire expenditure as application of income but the assessee is consistently following the principle of claiming the depreciation on the assets other than the building. It was submitted that the assessee had been claiming the capital investment in building as application of income and all other expenses on investments are not treated as application of income but the assessee claimed depreciation on such items other than the building. Various decisions were also relied upon. It was further submitted that during AY 2009-10 the AO had denied depreciation but the same was allowed by the CIT(A) and in appeal by the Revenue the Tribunal dismissed the appeal.

4. Based on the arguments advanced by the assessee the Ld. CIT(A) deleted the disallowance made by the AO by observing as under:

*“4.2 I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submissions of the assessee that the assessee has not claimed any double deduction as discussed above the departmental appeal on the issue has been dismissed by the Hon’ble Tribunal during the AY 2009-10 and accordingly the AO is directed to allow the depreciation.*

*4.3 I would like to place on record the appreciation that the assessee is at least following the ethical principle by not claiming double deductions first by claiming the capital investment as application of income and then claiming depreciation on the same capital assets on which the assessee had got the full deduction which is done by many of the other assessees and the same is being allowed by many of the Hon’ble High Courts.*

*4.4 However, the AO is directed to verify the facts and allow the depreciation and as such the appeal of the assessee is allowed.”*

5. Aggrieved with such order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

5.1 We have considered the rival arguments made by both the sides and perused the orders of the authorities below. The factual finding given by the CIT(A) that assessee has not claimed any double deduction could not be controverted by the Ld. DR. Further, the Ld. CIT(A) has given a direction to the AO to verify the facts and allow the depreciation, therefore, the Revenue should not have any grievance. In view of the finding given by the CIT(A)

and in absence of any contrary material brought to our notice by the CIT(A) that assessee has claimed double deduction, we find no infirmity in the order of the CIT(A) directing the AO to delete the disallowance. Accordingly, the same is upheld and the ground raised by the Revenue is dismissed.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 10/06/2019

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 10/06/2019

\*Kavita Arora

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ITAT NEW DELHI

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| Date of dictation   | 10.06.2019 |
| Date on which the typed draft is placed before the dictating Member                   | 10.06.2019 |
| Date on which the typed draft is placed before the Other Member                       | 10.6.2019  |
| Date on which the approved draft comes to the Sr. PS/PS                               | 10.6.2019  |
| Date on which the fair order is placed before the Dictating Member for pronouncement  | 10.6.2019  |
| Date on which the fair order comes back to the Sr. PS/PS                              | 10.6.2019  |
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