

आयकर अपीलीय अधीकरण, खंडपीठ गुवाहाटी ,
*IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.14-19/Gau/2018
Assessment Years :2008-09 to 2013-14

Siksha Niketan H.S. School, Indranagar, ITI Road, Agartala, West Tripura [PAN No.AAAJS 5135 J]	V/s.	ACIT, Circle-Agartala
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Nirnoy Paul, Advocate
राजस्व की ओर से/By Respondent	Shri D.Loyi, Addl. JCIT-DR
सुनवाई की तारीख/Date of Hearing	01-07-2019
घोषणा की तारीख/Date of Pronouncement	03-07-2019

आदेश /ORDER

PER BENCH:-

The assessee has filed instant six appeal(s) relating to assessment years(s) 2008-09 to 2013-14 against the Commissioner of Income Tax (Appeals)-Shillong's common order dated 20.12.2017 passed in case Nos.Agt-02-07/2017-18 involving proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the learned representatives. Case file(s) perused.

2. It transpires at the outset that the instant "*lis*" is second round of proceedings before us. The assessee preferred earlier appeals against the

CIT(A)'s first round order(s) passed on 30.12.2015 affirming the Assessing Officer's action treating the receipts from sale of books and transportation charges from students in school buses involving varying sum to be unexplained cash credits u/s 68 of the Act. The assessee's former two grievances sought to delete the corresponding receipts treated as unexplained income u/s 68 of the Act. Its third and fourth substantive grievances challenged correctness of both the lower authorities claim treating its payments involving different sums made to Neera Chatterjee as excessive inviting sec. 40(A)(2) disallowance. Learned lower authorities thereafter disallowed assessee's depreciation claim(s) on the ground that there was no evidence tendered during the course of assessment establishing its status either as an owner or lessee *qua* asset in question.

3. We have given our thoughtful consideration to rival contentions. This tribunal's earlier order appears to have restored assessee's first round lis back to CIT(A) with the direction to decide as to whether its income in question was exempt u/s10(23C)(iiiad) of the Act. The CIT(A)'s consequential lower appellate order in all six assessment year(s) holds that the assessee's receipts cross threshold limit of Rs.1 crore and therefore, it is not entitled for the impugned exemption. There is hardly any dispute that he has simply reiterated his same findings in first round of lower appellate order invoking sec. 68 of the Act. All this clinching facts have gone unrebutted from the Revenue side.

4. Mr. Loyi vehemently contends during the course of hearing that CIT(A)'s order has been passed in compliance to the tribunal's remand directions in letter and spirit after taking into consideration all the relevant facts and circumstances. He fails to dispute the crucial fact that CIT(A) has himself accepted genuineness of the assessee's former two receipts in the nature of sale of books as well as transportation fees to be genuine so as to conclude that the same cross threshold limit(s) u/s 10(23C) of the Act. We conclude in

this backdrop of facts that there is hardly any merit left in Revenue's arguments now so far as application of deemed income addition u/s 68 of the Act in the nature of unexplained cash credits regarding these two former head(s) is concerned. We therefore delete the two additions u/s 68 for this precise reason alone. All the corresponding additions sums relating to these former two issues in assessment year(s) before us shall automatically follow suit.

5. Next comes u/s 40(A)(2) disallowance made by the lower authorities in case of remuneration paid to Smt. N. Chatterjee. We find from a perusal of the CIT(A)'s order that neither of the lower authority has drawn any comparison of the impugned payments to market rates comprising a case of identical services rendered. We wish to make it clear that the impugned statutory provision envisages disallowance of excessive or unreasonable element of the payment in issue compared to market rate as follows:-

"7. Ground No.4

This ground is directed against disallowance of Rs.9,39,000/- which represents remuneration paid to Smt. Neera Chatterjee.

7.1 AO dealt with this issue at Para (9) of his order. On being questioned regarding the remuneration paid to Smt. Neera Chatterjee, the assessee stated before the AO that as per decision of the Managing Committee of the school, it was agreed that remuneration of Rs.35,000/- p.m. was to be paid to Smt. Neera Chatterjee. It was stated that the minute book containing decisions of Managing Committee was misplaced. It was also stated before the AO that the honorarium was paid to Smt. Neera Chatterjee considering the voluminous service rendered by her towards the Trust and School and also provided her own landed property for the purpose of the said school. The AO stated that no documentary proof of Managing Committee authorizing the payment of honorarium was produced. He also stated that as per statement of the Vice Chairman of Managing Committee, the honorarium paid was utilized for construction of a school in Kolkata. Since AO was not satisfied with explanation given, he disallowed the sum of Rs.9,39,000/- that was paid to Smt. Neera Chatterjee.

7.2 I have carefully considered the issue. Smt. Neera Chatterjee was President of the Managing Committee of the school. During the course of assessment proceedings, Sri Gopal Chakraborty, Vice President of the Managing Committee was summoned by the AO u/s 131 of the Act. It was stated by Sri Chakraborty that Smt. Neera Chatterjee was involved in running a school named Oxford House in Kolkata. She was also engaged in setting up a new school named G.N.Chatterjee Siksha Niketan in Kolkata. It was also stated that honorarium received by her was utilized for funding the new school being set up. Statement of auditor of accounts of appellant was also taken and from that statement, it is seen that the payment made to Smt. Neera Chatterjee was initially shown as advances. The account was revised subsequently and the payment was later on shown as honorarium. Undoubted facts

on the issue were that honorarium/remuneration was paid to Chairman of Managing Committee. It has been stated that the Managing Committee had decided to pay the honorarium @ Rs.35,000/- per month w.e.f. FY 2006-07. Though the minute of the Committee Meeting authorizing such payments was not produced, the Vice President of the Committee, in an affidavit dated 12.08.2015 stated that the school Managing Committee decided to pay honorarium @ Rs.35,000/- per month w.e.f. April, 2006 till further decisions. The honorarium was stated to have been paid towards her contributions to the Trust, School, and also providing her landed property for the said school. This piece of affidavit cannot be ignored off hand. It has to be considered in deciding the issue. I do not find anything wrong if voluntary payment is made for professional service rendered without the normal fee. But the assessee itself has admitted that the monthly honorarium authorized was Rs.35,000/- per month. Annual payment, therefore, should not exceed Rs.4,20,000/-. The monthly rate of Rs.35,000/- has been admitted by the Vice President in his affidavit. But the payment made was Rs.39,39,00/-. The excess of Rs.9,39,000/- over Rs.4,20,000/- which comes to Rs.5,39,000/- has to be disallowed. Apape gets relief of Rs.4,20,000/- Ground No.4 is partly allowed.”

6. There is further no issue raised by any of the lower authorities that Smt. Chatterjee / the payee herein has not rendered any services at all. We therefore direct the Assessing Officer to delete the impugned corresponding disallowance in all these assessment years.

7. We all now left on assessee's last substantive grievance that both the lower authorities have erred in disallowance its depreciation claim(s) regarding school building. We are taken to CIT(A)'s identical findings in ground No.5 which reading as under:-

“8. Ground NO.5

This ground is directed against disallowance of depreciation amounting to Rs.5,20,829/-.

8.1 Assessee was claiming depreciation on school building. When AO asked why the depreciation should be allowed, it was stated that school construction was started by Sri (Late) G.N.Chatterjee, h/o Smt. Neera Chatterjee. The school construction kept on increasing. The land was afterwards given on lease to Siksha Niketanm for 90 years. It was also stated that construction was done from the fund of the school only. AO examined the land deed and property documents and he noticed that the property was in the name of Smt.Neerea Chatterjee. He also found that the lease claimed by appellant was agreed upon only on 29.11.2014. Since assessee was not the owner of the property nor was the lessee at the material time, AO disallowed the claim of depreciation.

8.2 Before me also, appellant was unable to give any evidence to show that the property belonged to it or was holder of lease at the relevant time. In absence of any evidence, assessee cannot claim depreciation.”

The CIT(A) holds that the assessee got lease agreement in issue only on 29.11.2014 and therefore, the impugned depreciation claim is not admissible in leading year. We notice in this backdrop of facts that department is very fair in not denying the clinching fact about the assessee having raised construction of the school building in issue. The hon'ble apex court's landmark decision in *Mysore Mineral Ltd. vs. CIT* (1999) 239 ITR 775 (SC). Their lordships hold that beneficial ownership in such a backdrop has to be taken as vested with the person having dominies over the asset for business purposes. We therefore delete this last depreciation disallowance in corresponding assessment years. This assessee's appeals are allowed in above terms.

No other issue has been argued before us by the learned representative during the course of hearing.

8. These assessee's six appeals are allowed.

Order pronounced in the open court 03/07/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Guwahati,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp

दिनांक:- 03/07/2019 गूवाहाठी ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Siksha Niketan H.S School Indranagar, ITI Rd. Agartala, West Tripura
2. राजस्व/Revenue-ACIT, Circle, Agartala, Tripura
3. संबंधित आयकर आयुक्त गूवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Shillong
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाठी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True copy/

By order/आदेश से,

Sr. Private Secretary (on tour)
आयकर अपीलीय अधिकरण,
गूवाहाठी ।