

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.398/PUN/2019

निर्धारण वर्ष / Assessment Year : 2009-10

Sardar Dastur Schools Trust,
2, Col, Tarapore Road,
Pune – 411 001.

..... अपीलार्थी /
Appellant

PAN : AAATS4768F.

बनाम v/s

The Income Tax Officer,
Exemptions HQ., Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri A.T. Hozdar.

Revenue by : Shri Vishwas Mundhe.

सुनवाई की तारीख / Date of Hearing : 06.08.2019	घोषणा की तारीख / Date of Pronouncement: 11.10.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 10, Pune dated 20.01.2019 for A.Y. 2009-10.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an Educational Trust and is engaged in running schools for students from Pre-primary to SSC and Junior College affiliated to Pune University. It has also been granted registration u/s 12A of the Act vide order dated 27.11.1973. The assessee filed its return of income for A.Y. 2009-10 on 05.10.2009 declaring total income of Rs.72,50,810/-.

The case was selected for scrutiny and thereafter assessment was completed u/s 143(3) of the Act vide order dated 05.12.2011. Subsequently, the case was re-opened by issuing notice u/s 148 of the Act. Thereafter, the assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dt.30.03.2015 and the total income before accumulation u/s 11(1)(a) was determined at Rs.1,09,80,355/- and after allowing accumulation u/s 11(1)(a) of Rs.99,48,253/-, the total income was determined at Rs.10,32,102/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 20.01.2019 (in appeal No.PN/CIT(A)10/ITO Exmp/72/15-16) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“1. The learned Commissioner of Income Tax (Appeals)-10 has erred in confirming the total disallowance of depreciation of the assessment year 2009-10. The same should be allowed as deduction in computation of net taxable income.

2. The learned Commissioner of Income Tax (Appeals) has erred in not appreciating the requirement of Law that value of depreciation on assets whose expenditure was treated as revenue only should be added back to taxable income in subsequent years.”

3. Both the grounds being inter-connected are considered together.

4. During the course of assessment, AO noted that assessee had claimed depreciation on fixed assets amounting to Rs.37,25,954/-. AO noted that while framing the assessment u/s 143(3) of the Act, the claim of depreciation was allowed to the assessee. AO was of the view that since the assessee had acquired the assets and the same was allowed as application of income, claim of depreciation on such assets is not allowable. He accordingly denied the claim of depreciation amounting to Rs.37,25,954/-. Aggrieved by the order of AO, assessee carried the

matter before Ld.CIT(A), who following the decision of Hon'ble Kerala High Court in the case of Lissie Medical Institution Vs. CIT dismissed the appeal of assessee.

Aggrieved by the order of Ld.CIT(A) assessee is now in appeal.

5. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that income of Trust is required to be computed u/s 11(1) of the Act on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. He submitted that when the amount has been spent on acquiring the assets and has been treated as application of income of the Trust in the year in which the income was spent in acquiring these assets does not mean that in computing the income from these assets in subsequent years, depreciation in respect of those assets cannot be taken into account. He submitted that there are various decisions to this effect. He therefore submitted that AO was not justified in denying the claim of depreciation. Ld. D.R. on the other hand, supported the order of AO and Ld.CIT(A).

6. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim of depreciation on the assets which were acquired and which were allowed as application of income. I find that the identical issue was settled in favour of the assessee by the Hon'ble Supreme Court in the case of CIT Vs. Rajasthan and Gujarati Charitable Foundation Poona reported in (2018) 402 ITR 441 (SC), wherein the Hon'ble Apex Court has held that in case of assessee which is a charitable institution registered u/s 12A of

the Act, even though expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes u/s 11(1)(a) of the Act, yet depreciation would be allowed on assets so purchased. It had further held that amendment to Section 11(6) of the Act which was brought by the Finance Act No.2/2014 is effective from A.Y. 2015-16 and is prospective in nature. Following the ratio of the aforesaid decision of Hon'ble Apex Court, I am of the view that AO was not justified in denying the claim of depreciation. I accordingly direct the AO to allow the claim of depreciation. Thus, the grounds of the assessee are allowed.

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

Order pronounced on 11th day of October, 2019.

Sd/--

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 11th October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-10, Pune.
4. Pr. CIT-(Exemptions), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.