

passed by the ITO (Exemption), Ward-2, Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for the Assessment Year (A.Y.) 2014-15. Since both the appeals relate to the same assessee these appeals are taken together and are being disposed of by a common order.

2. The Ld. DR at the time of the hearing of the instant appeal relied upon the order passed by the authorities below.

ITA No.113/Ahd/2018 for A.Y. 2014-15 :

3. The assessee trust, an institute establishment to carry out experimental and theoretical research in plasma science with emphasis on the physical and magnetically confined plasma and certain aspect of non-linear phenomena. The assessee has filed its return of income for A.Y. 2014-15 on 26.09.2014 declaring total income at NIL along with Auditor’s Report under section 12A(b) of the Act. Assessment was finalized on 10.10.2016 by disallowing the claim of depreciation of Rs. 27,00,89,497/- and added back to the total income of the assessee which was deleted in appeal and hence the instant appeal before us.

4. Heard the parties, perused the relevant materials available on record. It appears from the records that the issue has already been decided in assessee’s own case by the Co-ordinate Bench in A.Y. 2006-07. The same was also taken into consideration by the Ld. CIT(A). Further that the same issue of allowability of depreciation of the trust has been decided by the jurisdictional High Court in the case of CIT vs. Sheth Manilal Ranchhoddas Vishram Bhavan Trust reported in 198 ITR 598 (Guj.) as also by the judgment passed by the Hon’ble Apex Court in the matter of Escorts Ltd. vs. Union of India (1993) ITR43 (SC). Upon perusal of the order passed by the Ld. CIT(A) it appears that all the judgments mentioned above as relied upon by the Ld. Advocate

appearing for the assessee has been taken care of and ultimately while allowing the claim of the assessee the Ld. CIT(A) observed as follows:-

“4.3 Further, the A.O has relied on the decision of Hon’ble Supreme Court in the case of Escorts Ltd. vs. Union of India (1993) 199 ITR 43 (SC) while disallowing the depreciation of capital assets held by charitable trust. The aspect was also elaborated by Hon’ble ITAT “C” Bench, Ahmedabad in appeal No. 1322/Ahd/2011 in the case of Sardar Patel Institute of Public Administration for Asst. Year: 2008-09. The Hon’ble ITAT vide para-4 has observed as under:-

“Before us Ld. CIT-DR has supported the assessment order and made submission that the view of the Assessing Officer was correct. On the contrary, that the view of the assessee argued that the judgment of Hon’ble Supreme Court in the case of Escorts Ltd. (supra) is not applicable in the present case. The AR further argued that in the identical facts and circumstances of Hon’ble Punjab and Haryana High Court has distinguished the judgment of the Hon’ble Supreme Court in favour of the assessee.

We have considered facts and circumstances of the case and submissions made by the respective Representatives of the parties. The Assessing Officer has disallowed the claim following the judgment passed by the Hon’ble High Court Punjab and Haryana has distinguished the judgment of the Hon’ble Supreme Court in the case of CIT vs. Tiny Tots Education Society 330 ITR 21(P&H) in view of the fact that the issue has already been settled by the Hon’ble High Court of Punjab & Haryana respectfully following the ratio laid therein we had o infirmity into the impugned order of the Ld. CIT(A). Therefore, the present appeal stands dismissed. We find no infirmity in the order of the Ld. CIT(A). In view of the above, the appeal of the Revenue is dismissed.”

4.4 In view above facts and circumstances and respectfully following the judgment by Hon’ble Gujarat High Court in the case of Sheth Manilal Ranchhoddas Vishram Bhavan Trust, 198 ITR 598 (Guj.) mentioned above, the addition of Rs. 27,00,89,497/- on account of disallowance of depreciation is hereby deleted. Thus, this ground of appeal raised by the appellant is allowed.”

Since the issue has already been decided up to the highest level being the Apex Court in favour of the assessee as discussed above, we do not find any ambiguity in the order passed by the Ld. CIT(A) so as to warrant interference and hence the order passed in the affirmative i.e. in favour of the assessee and against the Revenue.

4. In the result, the appeal of the Revenue is dismissed.

CO No.25/Ahd/2019 (in ITA No.113/Ahd/2018) for A.Y. 2014-15 :

5. At the time of hearing of the matter, the Learned Counsel for the assessee submitted before us that he is not pressing the CO. Hence, CO is dismissed as not pressed.

6. In the combined result, revenue's appeal is dismissed and assessee's cross objection is dismissed as not pressed.

This Order pronounced in Open Court on

28/11/2019

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 28/11/2019
TANMAY, Sr.PS

Sd/-

(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि अहमदाबाद ,आयकर अपीलीय अधिकरण / DR, ITAT, Ahmedabad
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उपसहायक पंजीकार/ (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरणअहमदाबाद / ITAT, Ahmedabad