IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

I.T.A. No. 2110/DEL/2017
Assessment Year 2012-13

ACIT, Circle-1(1), New Delhi.	v.	India Trade Promotion Organization Pragati Bhawan, Pragati Maidan, New Delhi.
TAN/PAN: AAAT12955C		
(Appellant)		(Respondent)

Appellant by:	Shri Ved Prakash Mishra, Sr.D.R.		
Respondent by:	None		
Date of hearing:	12	01	2021
Date of pronouncement:	22	01	2021

O R D E R

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 25.01.2017, passed by Ld. Commissioner of Income Tax (Appeals)-XL, Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2012-13. Following grounds have been taken by the Revenue in memo of appeal:

"(i) On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in allowing the appeal of the assessee ignoring the fact that in the case of charitable or religious institutions, the assessee is not eligible for any type of depreciation as the entire expenditure for the purchase of capital

assets is allowed as a deduction and the same is treated as application of income u/s. 11(1) and claiming depreciation on the same capital assets is a double deduction and is not as per law as these capital assets are not used for the purpose of business of profession as provided u/s. 32(1).

(ii) On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that assessee is following mercantile system of accounting and rental income has not accounted in the books. The income as per mercantile method of accounting has to be offered to tax on accrual basis. Such income which has accrued but not received is shown as receivable or under the head Sundry Debtor as the case may be in the Balance Sheet. Such income is entitled as and to be written off subsequently when it actually becomes bad, as per provisions of the Act."

2. In so far as the issue raised in ground no.1, the same stands covered in favour of the assessee by the judgment of Hon'ble Delhi High Court in the appeal for the Assessment Year 2008-09, wherein the Hon'ble High Court in the appeal preferred by the assessee in ITA No.167 & 168/2012 has allowed both the expenditure, i.e., capital expenditure and depreciation as application of income. This order of the Hon'ble High Court has been followed by the ITAT in assessee's own case in the Assessment Years 2009-10, 2010-11 and 2011-12.

3. Similarly, in so far as the issue raised in ground no.2 is concerned, also stands covered in favour of the assessee by

the order of the Tribunal in the appeals for the Assessment Years 2009-10, 2010-11 and 2011-12.

4. The facts in brief are that the assessee is an organization, wholly owned Apex Trade Promotion body of Government of India with senior government officials as Director and Members. It was incorporated u/s.25 of the Companies Act, 1956 as non-profit organization. It was also registered u/s.12A to carry on the objects of promoting the Indian Trade through medium of organizing trade fairs, exhibitions, etc. in India and abroad. It has also got exemption u/s. 10(23)(iv) from Assessment Year 1989-90 onwards. The Tribunal in so far as the issue of allowance of depreciation is concerned had decided this issue in the following manner:

> *"9. AO made disallowance of Rs.2,11,52,612/-, Rs.1,69,34,321/- & Rs.1,37,55,543 in AYs 2009-10, 2010-11 & 2011-12 respectively on the ground that when deduction is allowed in respect of capital expenditure, no depreciation is allowed on the same assets as it would lead to double deduction. However, the ld. CIT (A) allowed the depreciation by relying upon the decision rendered by Hon'ble Delhi High Court in ITA No.7 / 2013 order dated 27.11.2013 rendered in assessee's own case.*
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> *10. Hon'ble Delhi High Court in the aforesaid decision in assessee's own case (supra) vide order dated 06.09.2013 dismissed the appeal preferred by the Revenue*

challenging the order of the Tribunal; the operative part of the order is extracted for ready perusal as under :-

"14. From the year 1984 onwards, there have been a number of decisions of various High Courts taking a similar and identical view, as that of Society of the Sisters of St. Anne (supra). These are as under:-

Income Tax vs. Market Committee, Pipli (2011) 330 ITR 16 (P&H), Income Tax vs. Tiny Tots Education Society, (2011) 330 ITR 21 (P&H), Commissioner of Income Tax vs. Manav Mangal Society, (2010) 328 ITR 421 (P&H), Commissioner of Income Tax vs. Sheth Manilal Ranchhoddas Vishram Bhavan Trust, (1992) 198 ITR 598 (Guj.), Commissioner of Income Tax vs. Raipur Pallottine Society, (1989) 180 ITR 579 (M.P.), Commissioner of Income Tax vs. Institute of Banking, (2003) 264 ITR 110 (Bom), and CIT vs. Shakuntala Tharal Charitable Foundation, (2013) 358 ITR 452 (MP).

15. Kerala High Court was also conscious of the said decisions and the fact that Section 11(1)(a) had been interpreted in a different manner. It was in these circumstances that the Kerala High Court in the last portion of paragraph 6, as quoted above, has stated that the assessee would be entitled to write back depreciation and if done, the Assessing Officer would modify the assessment determining the higher income and allow recomputation of depreciation written back for

the purpose of application of income for charitable purposes in future or subsequent years. This may lead to its own difficulties and problems as suddenly the entire depreciation written off would have to be added first and then in one year substantial application of income would be required. This may be impractical and would disturb the working of many a charitable institutions. The legal interpretation which has continued since 1984, if disturbed and implemented, would not appropriately resolved. Consistency and certainty is more appropriate.

16. The equally plausible and consistent interpretation of clause (a) of Section 11(1) of the Act is that income derived from property must be calculated as per the principles of the Act. The said clause is not a computation provision and does not disturb the "income" earned or available but postulates that the "income" as computed in accordance with the provisions of the Act to the extent of 86% must be applied. Application of income may include purchase of a capital asset. The said purchase is valid and taken into consideration for the purpose of ensuring compliance, i.e., application of money or funds and is not a factor which determines and decides the quantum of income derived from property held under trust. Computation of income is separate and distinct and has to be made on commercial basis by applying provisions of the Act."

> **11.** ***So, following*** *the decision rendered by Hon'ble Delhi High Court in* ***assessee's own case*** *(supra), the ld. CIT (A) has rightly allowed the depreciation in favour of the assessee and thereby deleted the disallowance made by the AO. So, we find no illegality or perversity in the impugned order on this issue. Consequently, ground no.2 in AYs 2009-10, 2010-11 & 2011-12 is determined against the Revenue."*

5. Thus respectfully following the same, ground no.1 raised by the Revenue is dismissed.

6. The brief facts qua the second issue are that there was a long standing dispute between the Government Departments who are in possession of the Space in Pragati Maidan and assessee made endeavours for recovery of space rent. In this regard, the assessee was engaged in long correspondence with the Departments and pursuing the matter for recovery of the space rent at various levels in the Administrative Ministries of the Government of India. One of the organization viz. National Science Centre (NSC) had paid space rent to the ' assessee company @ Rs. 200/- per sq. mtr. p.a. in an earlier year. Subsequently, the rate of space rent was enhanced by the assessee company on year to year basis which was contested by the NSC. Accordingly, the assessee company has accounted for income @ Rs. 200/- per sq. mtr. per year in the Income & Expenditure Account as NSC had paid @ Rs 200/- per sq. mtr. p.a., but contested the increase in rates. The

element of enhanced space rent over Rs.200/- per sq. mtr. p.a. (disputed amount) was kept out of books as "Contested dues not accounted for" and disclosed in the Notes to the Accounts. The assessee is essentially relying on the Accounting Standard 9 issued by the Institute of Chartered Accountants of India relating to Recognition of Income in accordance with para 10 which states that if at the time of raising any claim, it is unreasonable to expect ultimate collection, revenue recognition should be postponed. As regards the other department viz. Crafts Museum, they have not paid any space rent to the assessee company and are maintaining that they were in possession of the space even prior to the formation of the assessee company. On the same analogy of NSC and following AS 9, the assessee company has not raised any invoice for the space rent on Craft Museum any disclosed the disputed amount of space rent relating to the Assessment Year under reference, in the Notes to Accounts. Assessee has not recognised the licence fee pertaining to these departments as income in the books in accordance with para 10 of the Accounting Standard 9 which states that "Revenue from sale or service transactions should be recognised when the requirements as to performance set out in paragraphs 11 & 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.

7. This precise issue has also been considered by the Tribunal in the earlier years wherein it has been discussed in the following manner:

"12. AO made addition of Rs.1,68,73,663, Rs.2,01,86,003 & Rs.1,83,00,000 in AYs 2009-10, 2010-11 & 2011-12 respectively on a/c of space rent income on the basis of disclosure in Notes to Accounts of the assessee. However, ld. CIT(A) deleted the addition on the ground that since space rent account is disputed by two Government Departments viz. National Science Centre and Crafts Museum by contesting the ownership of land attracting rent by the assessee and claimed that they are in possession of the land and as such it is uncertain, no addition can be made.

13. Ld. CIT (A) has thrashed the facts in detail and by applying the decision rendered by various Hon'ble High Courts and Hon'ble Supreme Court, decided the issue in favour of the assessee on the ground that since the dispute has not been resolved till date, the addition is not sustainable.

14. Assessee has brought on record documents and letter of discussion to resolve the disputes between National Science Centre & Crafts Museum and India Trade Promotion Organisation (ITPO) for non-payment of rent, available at pages 93 to 130 of the paper book, which have been duly examined by the ld. CIT(A). We are of the considered view

that when income on account of space rent has not been accrued, as in the instant case due to dispute, there cannot be any rent even though entry in the books of account have been made on account of notional income. So, when the income would be received its taxability can be examined by the Revenue. Ld. DR for the Revenue has not brought on record any document if the dispute between the parties qua the space rent has been resolved. So, in these circumstances, we are of the considered view that there is no illegality or perversity in the findings returned by the ld. CIT (A), consequently ground no.3 in AYs 2009-10, 2010-11 & 2011-12 is determined against the Revenue."

8. Thus, respectfully following the same, the ground no.2 is dismissed.

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

Order pronounced in the open Court on 22nd January, 2021.

Sd/-	Sd/-
[B.R.R. KUMAR]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 22nd January, 2021

PKK: