

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE HON'BLE N.K. BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.2738/Del./2017  
(ASSESSMENT YEAR : 2012-13)**

M/s. Ardee Foundation,  
17<sup>th</sup> Floor, Dr. Gopal Dass Bhawan,  
28, Barakhambha Road,  
Connaught Place,  
New Delhi.

**(PAN : AAATA1829P)**

**(APPELLANT)**

vs. CIT (Exemptions),  
New Delhi.

**(RESPONDENT)**

ASSESSEE BY : Shri U.N. Marwah, CA  
Shri Sumit Singh, CA

REVENUE BY : Shri Satpal Gulati, CIT DR

**Date of Hearing : 23.06.2021**

**Date of Order : 30.06.2021**

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Ardee Foundation (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 20.03.2017 passed by the Commissioner of Income-tax (Exemptions), New Delhi under section 263 of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2012-13 on the grounds inter alia that :-

**“1. That order dated 20.3.2017 u/s 263 of the Act by learned Commissioner of Income Tax (Exemption), New Delhi has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.**

**1.1 That learned Commissioner of Income Tax has erred both in law and on facts in holding that depreciation of Rs.37,70,021/- is a case of double deduction and has been allowed without getting into the details since the cost of the assets has been allowed as application of income in the past. This finding is factually incorrect, legally misconceived, contrary to record and untenable.**

**1.2 That conclusion of the learned Commissioner of Income Tax that "so far as issue of depreciation is concerned, the AO has not made any enquiry before allowing depreciation on assets to know whether the cost of such assets have been allowed as application on income in the past" is erroneous both factually and legally misconceived.**

**1.3 That the learned Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.**

**1.4 That further the learned Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment on the issue of depreciation and as such, impugned order is contrary to law and hence, unsustainable.**

**It is therefore prayed that, impugned order made under section 263 of the Act dated 20.3.2017 be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.”**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee society being registered under section 12A of the Act filed return declaring nil income which was

subjected to scrutiny. Assessment was framed under section 143(3) of the Act by treating assessee's activities charitable in nature as per section 2(15) of the Act. However, Id. CIT (E) by invoking the provisions contained u/s 263 of the Act set aside the assessment order framed in this case on the ground that the AO has not made any enquiry before allowing depreciation on assets to know whether the cost of such assets are allowable as application of income in the past and thereby quashed the assessment order being erroneous and prejudicial to the interest of the Revenue.

3, Feeling aggrieved by the order passed by the Id. CIT (E), the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order contended that the issue of claiming depreciation on assets being allowable as application of income has already been settled in favour of the assessee in view of the judgment rendered by **Hon'ble Supreme Court in case of CIT vs. Rajasthan & Gujrat Charitable Foundation, Pune 402 ITR 441 (SC)** by Id. CIT (E)

in assessee's own case for AY 2011-12 vide order dated 27.03.2018. Ld. DR for the Revenue has failed to controvert this fact.

6. We are of the considered view that the Id. CIT (E) has misdirected himself while taking the view that depreciation of Rs.37,70,021/- has been allowed without getting into the details which amounts to double deduction by ignoring the fact that the identical issue has been decided in favour of the assessee by the **coordinate Bench of the Tribunal in assessment year 2011-12 vide order dated 04.09.2018 in ITA No.3086/Del/2016** in which assessment framed u/s 143(3) of the Act was also set aside by invoking the provisions contained u/s 263 of the Act by relying upon the decision rendered by Hon'ble Supreme Court in case of CIT vs. Rajasthan & Gujrat Charitable Foundation (supra) and as such, depreciation on assets has to be allowed as application of income. Consequently, we hereby set aside the order passed by the Id. CIT(E) u/s 263 of the Act. Resultantly, the appeal filed by the assessee is hereby allowed.

**Order pronounced in open court on this 30<sup>th</sup> day of June, 2021.**

Sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

**Dated the 30<sup>th</sup> day of June, 2021/TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(E), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.