

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 399/RJT/2017
(Assessment Years: 2014-15)**

Swaminarayan Seva Niketan, Plot No. 83, Swaminarayan Mandir Junagadh-362001	V/S	The Income Tax Officer (Exemption) Ward-2, Rajkot
PAN No. AAATS9081K		
(Appellant)		(Respondent)

**Appellant by : Smt. Astha Maniar, A.R.
Respondent by : Shri S. S. Rathi, A.R.**

(आदेश)/ORDER

Date of hearing : 21 -09-2021
Date of Pronouncement : 27-09-2021

PER MAHAVIR PRASAD, J.M.

1. This appeal has been filed by the Assessee is directed against the order of the Commissioner of Income Tax (hereinafter called CIT(A)) order no. CIT(A)-2/10200(2016-17)//2017-18 order dated 10/08/2017 arising out of assessment order dated 30.11.2016. Assessee has taken following grounds of appeal:

- 1. The Ld. CIT(A)-2, Rajkot has erred in law and on facts in dismissing the appeal without giving adequate opportunity of being heard.*
- 2. The Ld. CIT(A)-2, Rajkot has erred in law and on facts in confirming disallowance of depreciation of Rs.29,51,998/- treating the same as double deduction claimed by the Appellant.*
- 3. Without prejudice to above, the Ld. AO has erred in law and on facts in not allowing credit of 15% of gross receipts in terms of Section 12(2) r.w.s 11(1) of the Act while computing the assessed income of the Appellant.*
- 4. The Appellant craves leave to add, amend, delete or alter one or more grounds of appeal.*

2. Facts of the case are that the assessee is registered as trust with Assistant Charity Commissioner, Junagadh vide registration No.B-1722-Junagadh. The trust has been created with the objects of carrying out various charitable activities as per the Trust Deed, The trust provides training and developing the knowledge, skill mind and character of students by normal schooling, travelling etc. During the year under consideration the trust has carried out its activities towards the objects of the trust. The income of the trust is income by way of Bank interest, income from other sources and voluntary contributions.
3. During the course of assessment proceedings, the AR was requested to file copy of registration granted u/s.12A(a) of the IT, Act, The A.R. has furnished copy of registration certificate u/sJ2A(a) bearing No.CIT-R/66-S-156/88-89 dated 27-04-1989 issued by the Commissioner of Income-tax, Rajkot.
4. During the course of assessment proceedings, it was noticed that the trust has claimed depreciation of Rs.29,51,998/- In this respect the assessee trust was given show cause in respect of its claim for depreciation as under:

"During the course of assessment proceedings, it is seen that during the year under consideration, the trust has claimed Depreciation to the tune of Rs.29,51,998/-. The authorized representative of the trust represented the case on 11-07-2016. He was asked as to why said sum should not be disallowed

and added back to the income of the Trust or else justify the said claim as the same has been allowed as Capital expenditure in the preceding year and further allowance of the same would tantamount to double deduction and this would go against the normal accounting principles.”

5. In this regard it may be stated that in the case of a charitable/religious trusts, even capital expenditure is considered as application of income towards the objects of the trust Therefore, it is the view of the Assessing Officers that if depreciation is allowed on the assets of such a trust, then the same will lead to double deduction; first by way of deduction of capital expenditure and thereafter, by way of deduction of depreciation on the assets of the trust.
6. The aforesaid view of the Assessing Officers is, however, not correct, keeping in view the scheme of taxation in respect of charitable/religious trusts. In this matter we have never claim/deduct the capital expenditure in any past years hence we have claim the depreciation as deduction for utilization of fund kindly allow the depreciation as a deductible expenses as there were no any double deduction.
7. But Ld. A.O. did not agree with the contention of the assessee and after relying the several judgments disallowance the claim of depreciation.
8. Thereafter assessee preferred first statutory appeal before the Ld. CIT(A) who confirmed the action of the Assessing Officer and dismissed the appeal of the assessee.
9. Now assessee has come before us by way of second statutory appeal.
10. We have gone through the relevant record and impugned order. Question before us is whether depreciation is to be claimed as double deduction whether in case of the

charitable trust that is assessee before us disallowance of depreciation is to be claimed as double deduction or not.

11. The Hon'ble Apex Court in the matter of CIT vs. Rajasthan & Gujarati Charitable Foundation [2018] 402 ITR 441 wherein Apex Court has held as follows:

“Depreciation - Allowance/Rate of (Charitable trust) (Position prior to 1-4-2015) - Whether in case of assessee-charitable institution registered under section 12A, even though expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under section 11(1)(a), yet depreciation would be allowed on assets so purchased - Held, yes [Para 5] [In favour of assessee].”

12. ITAT, Ahmedabad Co-ordinate Bench in the case of Gujarat Cricket Association vs. Assistant Director of Income-tax (Exemption), Ahmedabad [2019] 101 taxmann.com 510 (Ahmedabad-Trib.) , wherein it is held as follows:

“III. Section 11, read with section 32, of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under (Application of income) - Assessment year 2004-05 - Whether, in case of assessee a cricket association engaged in promotion of cricket in specified areas of Gujarat, for purpose of computing income under section 11, its claim for depreciation on capital assets was to be allowed - Held, yes - Whether, even if amount spent on acquiring depreciable asset was treated as application of income of trust in year of acquisition, depreciation would still be allowable in subsequent years - Held, yes[Para 24] [In favour of assessee].”

13. In the matter of CIT(Exemptions) vs. Gujarat Maritime Board 428 ITR 177 (Gul) wherein the Hon'ble Gujarat High Court has held as follows:

"5.3 It is pertinent to note that the aforesaid issue is covered against the Revenue in terms of the judgment of the Apex Court in the Commissioner of Income Tax - III, Pune (supra), referred to above. The order of the I TAT discusses, after relying on the Judgment of the Apex Court in the Rajasthani and Gujarati Charitable Foundation (supra) that the

income of the trust is required to be computed u/s. 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from the gross income of the trust."

14. Since all deduction and exemptions Trust is extending its services towards the betterment of the society by way of religious and other activities.
15. Thus respectfully following the judgment of Hon'ble Apex Court and Hon'ble Gujarat High Court as well as parity with the Co-ordinate Bench, we allow the appeal of the assessee.
16. In the result, appeal filed by the Assessee is allowed.

Order pronounced in Open Court on 27-09-2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 27/09/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Rajkot