

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'E', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos.6258 & 6259/Del/2017
(Assessment Years : 2013-14 & 2014-15)

ACIT (E) Circle – 1(1), New Delhi PAN : AAAAL 6364 M (APPELLANT)	Vs.	Lal Bahadur Shastri Educational Society Plot No.11/7, Sector – 11, Near Metro Station Dwarka New Delhi-110 075 (RESPONDENT)
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Assessee by	Shri Hitesh Ambani, C.A.
Revenue by	Shri Manu Chaurasiya, Sr. D.R.

Date of hearing:	03.11.2021
Date of Pronouncement:	17.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

Both the appeals filed by the Revenue are directed against the consolidated order dated 06.07.2017 of the Commissioner of Income Tax (Appeals)-40, Delhi relating to Assessment Years 2013-14 & 2014-15.

2. At the outset, Learned AR submitted that the issue involved in both the appeals are identical except for the year and amounts involved and therefore the submissions made by him for one year would be applicable to the other year also. Ld DR did not controvert the aforesaid submissions of Ld AR. In view of the aforesaid submissions of the Counsel, we for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2013-14.

3. The relevant facts as culled from the material on records are as under :

4. Assessee is a trust. The objective of the trust is stated to establish, maintain, support or subsidies schools, colleges etc. Assessee filed its return of income for A.Y. 2013-14 on 30.09.2013 declaring Nil income. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 23.03.2016 and the total income was determined at Rs.2,29,34,115/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who by consolidated order dated 06.07.2017 for A.Y. 2013-14 & 2014-15 granted partial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now before us and has raised the following grounds:

“1. On the basis of facts and circumstances of the case and in law, the Learned CIT(A) has erred in allowing the assessee’s claim of depreciation amounting to Rs.2,29,34,154/- for A.Y.

2013-14 and Rs.1,95,91,799/- for the A.Y. 2014-15 by relying upon the decision of Hon'ble Delhi High Court in the matter of DIT (Exemption) vs. Indraprastha Cancer Society in ITA No.240, 348, 406, 463 & 464/2014.

2. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."*

5. Similar grounds are raised by Revenue in ITA No.6259/Del/2017 for A.Y. 2014-15.

6. During the course of assessment proceedings, AO noticed that assessee has claimed depreciation of Rs.2,29,34,154/- as application of income. AO was of the view that depreciation was not allowable to the assessee as the benefit of application of fund has already been claimed when the fixed asset was acquired. He was further of the view that allowing the claim of depreciation would result into double deduction which was not permissible. He therefore denied the claim of depreciation.

7. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) by relying on the decision of Hon'ble Delhi High Court in the case of DIT (E) vs. Indraprastha Cancer Society [(2015) 53 taxmann.com 463 (Del)] and other decisions cited in the order held that assessee was eligible for deprecation. CIT(A) also noted that amendment made to Section 11 of the Act by the Finance (No. 2) Act, 2014 was effective from the assessment year 2015-16 and subsequent years and therefore not applicable to

the year under consideration. She thus decided the issue in favour of the assessee.

8. Aggrieved by the order of CIT(A), Revenue is now in appeal.

9. Before us, Learned DR relied on the order of AO. Learned AR on the other hand reiterated the submissions made before lower authorities and supported the order of CIT(A).

10. We have heard the rival submissions and perused the material available on record. The issue in the present appeal is the allowance of claim of depreciation. AO denied the claim of depreciation as he was of the view that when the assessee had purchased fixed assets, the same was allowed as application of income and if the depreciation on the same assets is allowed, it would amount to double deduction, which was not permissible. When the matter was carried before CIT(A), CIT(A) by relying on the decision of jurisdictional High Court and other decisions, amendment made by Finance (No.2) Act 2014, decided the issue in favour of the assessee. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

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

12. **As far as ITA No.6259/Del/2017 for A.Y. 2014-15** is concerned, before us, both the parties have submitted that the issue raised in the appeal for A.Y. 2014-15 is identical to that of A.Y. 2013-14. We have hereinabove while deciding the appeal for A.Y. 2013-14 for the reasons stated therein have dismissed the appeal of the Revenue. We for similar reasons also dismiss the appeal of the Revenue for A.Y. 2014-15. Thus **the ground of the Revenue is dismissed.**

13. In the result, both appeals of the Revenue are dismissed.

Order pronounced in the open court on 17.11.2021

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

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

*Date:- 17.11.2021
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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI