

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.6256/Del/2018
(ASSESSMENT YEAR 2015-16)**

Uttaranchal Welfare Society, B-249, Patel Nagar-II, Ghaziabad. PAN-AAATU 1374P (Appellant)	Vs.	DCIT, Exemption Circle, Ghaziabad. (Respondent)
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Appellant By	Sh. Kapil Goel, Adv.
Respondent by	Sh. Umesh Takyar, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-Ghaziabad [Ld. CIT(A)", for short], dated 31.07.2018 for Assessment Year 2015-16. Grounds taken in this appeal of Assessee are as under:

"1. That the Ld. CIT(A), Ghaziabad has erred in law and on facts in dismissing the appeal of the assessee in arbitrarily and prejudicial manner.

2. That Ld. CIT(A) Ghaziabad was duly bound to adjudicate the following grounds no.3 & 4 as specifically raised before him in form 35:-

2.1 That Ld. Assessing Officer has erred in law as well as on facts of the case by not allowing the repayment of loan by not following the CBDT Circular No.100 and therefore repayment of loan amount to Rs.8,87,53,469/- deserves to be allowed.

2.2 That Ld. Assessing Officer has erred in law as well as on facts of the case by not allowing the benefits of carry forwarded losses of earlier to be set off.

3. That Ld. CIT(A) has erred in law as well as on the facts of the case by deciding that ground no.3 & 4 of form 35 are not emanated from the assessment order and Ld. CIT(A) dismissed the grounds no.3 & 4 in total disregard of CBDT Circular and Delhi ITAT (Jurisdictional ITAT) decision which has precedent value on CIT(A).

4. That Ld. CIT(A) has erred in law as well as on the facts of the case by confirming the action of Ld. Assessing Officer on disallowance of depreciation, while assessee has not claimed the depreciation in computation of income.

5. Without prejudice to above, Ld. CIT(A) has erred in law as well as on the facts of the case by confirming the chargeability of tax at maximum marginal rate without appreciating the submissions made by assessee and in arbitrarily and prejudicial manner dismissed the ground and submissions raised by assessee.

6. Assessee craves leave to add, modify and/or amend any ground of appeal.”

(B) In this case, return of income was filed by the assessee declaring Nil income. Assessment Order dated 08.12.2017 was passed by the Assessing Officer determining the income of the assessee at Rs.24,25,180/-. The relevant portion of the Assessment Order is reproduced as under:

"2. The assessee is a society, which is duly registered with the Registrar of Society, Uttar Pradesh under Society Registration Act. The assessee society has been granted registration u/s 12AA of the I.T. Act by the Ld. Commissioner of Income Tax, Ghaziabad vide order C. No. 40 (14) /Registration/Ghaziabad/98-99/10505 dated 09.10.1998. The assessee society was granted 80G by the Ld. Commissioner of Income Tax, Ghaziabad vide order C. No. 58 (93)/Tax Exemption/CIT-GZB/2011 - 12/1473 dated 26.07.2011.

3. The assessee society is running education institutes namely Invertis University, Invertis Institute of Engineering & Management and Invertis Institute of Engineering & Technology at Bareilly. The assessee has filed the copy of audit report u/s 12A (b) of the Income Tax Act as prescribed in the case of Charitable or religious trusts or institution along with balance sheet, income & expenditure A/e. During the year, assessee has disclosed total receipts of Rs. 44,59,50.898/- against which total revenue expenditure has been claimed at Rs. 41,46.35,254/- including depreciation and surplus of Rs. 3,11,92,623/- has been shown in income & expenditure A/c. Further, the assessee has incurred capital expenditure at Rs. 3,11.92,623 /- during the year.

4. During the year under consideration, the assessee has claimed depreciation of Rs.7,04,87,148/-. The claim of the assessee of depreciation of Rs.7,04,87,148/- is not allowable in the light of the provisions of sec. 11 (6) of I T Act which are introduced with effect from 01.04.2015. As per amendment of I. T. Act. 1961 w. e. f. 01.04.2015, provisions of section 11 (6) are reproduced as under: -

" In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any assets,

acquisition of which has been claimed as an application of income under this section in the same or any other previous year. "

Accordingly, the depreciation of Rs. 7,04,87,148/- claimed by the assessee is hereby disallowed and added to the income of the assessee.

(Addition: Rs. 7,04,87,148/-)

5. *The computation of income available for application to charitable purposes is made as under:*

Actual Application		Income available for application to J charitable purposes	
Income declared applied for charitable purposes as per Income & Expenditure (excluding depreciation)"	414685254	Total receipts	445950898
Less: Depreciation	70487148	Available for Application I	379058263 (85%)
Balance	344198106	Actually applied	376633086
Add: Capital Expenditure	32434980	Short Application	24,25,177 1
Total applied to charitable purpose	376633086	Addition	24,25,177

From the above chart, it is clear that the assessee trust has total receipts of Rs.44,59,50,898/-during F. Y. 2014-15. The assessee was required to apply Rs.37,90,58,263/-, which is 85% of total receipts. However, the assessee has applied short amount of Rs. 24,25,177/- from the required amount i. e . 85% of total receipts."

(B.1) The assessee's appeal against the aforesaid assessment order was disposed off by the Ld. CIT(A) vide impugned appellate order dated 31.07.2018, whereby the Ld. CIT(A) dismissed the assessee's appeal. The assessee had taken the following grounds of appeal in the appeal filed before the Ld. CIT(A):

"1. That Ld. Assessing officer has erred in law as well as on the facts of the case by completing the assessment under section 143(3) of I.T. Acton Rs.24.25.180/- against the returned income of Rs. NIL and therefore assessment order is deserve to be annulled.

2. That Ld. Assessing officer failed to provide any proper opportunity of being heard in as much as no proper show cause notice is given before completing the assessment and therefore provisions of natural justice has been defeated.

3. That Ld. Assessing officer has erred in law as well as facts of the case by disallowing the depreciation of Rs.7,04,87,148/- without appreciating the facts in right perspective as assessee has not claimed any depreciation in computation of income and therefore addition in the assessment order c~ account of depreciation amounting to Rs. 7,04,87,148/- deserves to be cancelled.

4. That Ld. Assessing officer has erred in law as well as on the facts of the case by not allowing the repayment of loan by not following the CBDT Circular no. 100 and therefore repayment of loan amounting to Rs. 8,87,53,469/- deserves to be allowed.

5. That Ld. Assessing officer has erred in law as well as on the facts of the case by not allowing the benefits of carry forward losses of earlier years to be set off.

6. That Ld. Assessing officer has erred in law as well as on the facts of the case by charging the tax at maximum marginal rate on assessed income without appreciating the provision of Income Tax Act in right perspective and therefore tax levied by the assessing officer deserves to be cancelled and tax (if applicable) can be levied at normal rate of taxes.”

(B.2) The decision of the Ld. CIT(A) on the aforesaid grounds of appeal is as under:

“5. Appellate findings:

I have considered assessment order, submission and all case laws referred to therein.

5.1 Ground nos. 1 and 7 are general in nature requiring no adjudication.

5.2 Ground nos. 4 and 5 are not emanating from the order challenged thus cannot be adjudicated.

5.3 Ground nos. 2 and 3: The appellant has challenged the order passed by the AO contending that no opportunity of being heard has been given and AO has wrongly disallowed the depreciation. It is observed that appellant has brought in completely different facts Including the details of computation of income then the one given in the assessment order without

moving application under Rule 46A. In the present case the counsel has represented before AO and order has been passed u/s 143(3). In above circumstances the grounds of appeal are being adjudicated based on the facts given in the assessment order only.

5.3.1 Examination of facts reveals that appellant has been given opportunity by AO on various dates such as 31.08.2016, 23.01.2017 etc. and books of accounts were produced before AO which were test checked. Thus under these circumstances it cannot be concluded that appellant was not given opportunity of being heard. Moreover, as far as claim of depreciation is concerned neither during assessment proceedings nor during appellate proceedings appellant could substantiate that depreciation of Rs. 7,04,87,148/- is allowable, in the light of provisions of section 11(6) introduced w.e.f 01.04.2015 i.e. the relevant year. Keeping in view above facts and position of law, these grounds of appeal are not maintainable: Accordingly these grounds of appeal are dismissed.

5.4 Ground no.6: The appellant has challenged the chargeability of income at Maximum Marginal Rate. Examination of facts reveals that as per Finance Act for the relevant year, the income is to be charged at Maximum Marginal Rate. Keeping in view these facts this ground of appeal is dismissed.”

(C) At the time of hearing before us, the Ld. Counsel for assessee placed reliance on submissions made before the Ld. CIT(A) which were recorded by the Ld. CIT(A) in paragraph 4 of the impugned aforesaid appellate order dated 31.07.2018. The Ld. Counsel for the assessee contended that the Assessing Officer made an addition of Rs. 7,04,87,148/- on account of depreciation, even though the assessee had not claimed depreciation at all. He drew our attention to the tabular information in paragraph-5 of the assessment order wherein the amount of Rs.41,46,85,254/- is stated by the Assessing

Officer to be the amount declared as applied for charitable purposes (excluding depreciation); and vehemently contended, in this context, that the, aforesaid addition of Rs.7,04,87,148/- could not have made at all. Regarding the other issues in dispute, the Ld. Counsel for assessee submitted that the Assessing Officer has passed a non speaking order without giving consideration to the relevant facts and circumstances. He further contended that the Ld. CIT(A) has passed the appellate order in cryptic manner without giving due consideration to relevant facts of the case, CBDT Circular, and applicable law. He submitted before us that the issues in dispute in the present appeal should be set aside to the Assessing Officer for fresh order as per law, including applicable CBDT Circular, having regard to the facts and circumstances of the case. The Ld. Departmental Representative ("DR", for short) was in agreement with the request made by the Ld. Counsel for the assessee that the issues in dispute be set aside to the Assessing Officer for fresh order as per law, including applicable CBDT Circular, having regard to the facts and circumstances of the case. However he contended

that ground 2.1 of appeal can be decided by ITAT. For this ground of appeal, the Ld. DR relied on the orders of Ld. CIT(A) and the AO.

(D) We have heard both sides and have perused the materials on record. We find that both sides are in agreement that all the issues in dispute, except ground no.2.1 of appeal, should be set aside to the file of the Assessing Officer for fresh order as per law, including applicable CBDT Circular, having regard to the facts and circumstances of the case.

(D.1) Regarding ground no.2.1 of appeal, dealing with the payment of loan amounting to Rs.8,87,53,469/-, we find that neither the Assessing Officer nor the Ld. CIT(A) has discussed this issue at all in their respective orders. We also find that the relevant facts for adjudication of this ground are not available in the records of ITAT. Otherwise also, at the time of hearing, the Ld. DR merely relied on the orders of the Ld. CIT(A) and AO; and did not bring any further materials for our consideration. In view of the foregoing, therefore, for this ground of appeal also (ground 2.1 of appeal), we are in agreement with the submission of the Ld. Counsel for

assessee that the matter should be set aside to the file of the Assessing Officer for fresh order as per law, including applicable CBDT Circular, having regard to the facts and circumstances of the case.

(D.2) In view of the foregoing, we set aside all the issues in dispute in the present appeal before us, to the file of the Assessing Officer, with the direction to pass a fresh order as per law including CBDT Circular, having regard to the facts and circumstances of the case, after providing reasonable opportunity to the assessee. This appeal is disposed off in accordance with the aforesaid directions. For statistical purposes, the appeal is partly allowed.

(E) This order was already pronounced orally in the open Court after conclusion of the hearing on 05.01.2022, in the presence of representatives of both sides. Now, this written order is signed today on 06.01.2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Dated: 06.01.2022
PK

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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