

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)
**Before: Ms. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 425/Rjt/2017
Assessment Year 2014-15**

Dr. Subhash Pethaljibhai Chavda Ahir Kelvani Mandal Khamdhrol, C/0 Near Railway Cross, Khamdhrol Village Road, Khamdhrol, Junagadh- 362001 PAN No:AAATD1612K (Appellant)	Vs	The Income Tax Officer (Exemption), Ward-2, Rajkot (Respondent)
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**Appellant by : Shri Vimal Desai, A.R.
Respondent by : Shri Nihar Ranjan Samal, Sr.D.R.**

Date of hearing : 01-03-2022
Date of pronouncement : 01-06-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-2, Rajkot, (in short referred to as CIT(A)), dated 21-09-2017, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2014-15.

2. The solitary issue in the present appeal relates to disallowance of claim of depreciation amounting to Rs. 32,70,994/- in the background of the facts that the assessee is a charitable trust registered as such u/s. 12AA of the Act and the depreciation was denied for the reason that the assessee had claimed the investment in fixed assets, to which the depreciation related, as application of its income u/s 11 of the Act while as per the Revenue the claim of depreciation in the subsequent years therefore tantamounted to double deduction. The relevant findings of the A.O. at Para 3.2 of the order is as under:

3.2 In the case of a trust the income is not computed in normal commercial manner. The allowance of depreciation as further application of receipts in subsequent year would apparently be double deduction which would be apparently inconsistent with accounting principles and not so as provided in law and hence untenable. The decision of the Supreme Court held that when deduction u/s. 35(2)(iv) was allowed in respect of capital expenditure on Scientific Research, no depreciation has to be allowed u/s. 32 on the asset. For the said reason the amount so claimed as depreciation to the tune of Rs.32,70,994/- is added back to the income of the trust. In view of the above, it is seen that there is willful attempt of concealment of income and misguide the department to conceal the liability of tax. Penalty proceedings u/s 271(l)(c) of the I.T.Act is initiated for concealment of income by way of furnishing in accurate particulars of its income.

3. And that of the Id. CIT(A) confirming the addition at para 6 of his order is as under:

6. Decision

Having considered facts and circumstances of the case and rival contentions I find that the assessee is not eligible for claim of deduction of depreciation on assets which have been claimed, as application of income. It is not the case of assessee that said asset were not claimed as application. The law is very clear on this issue. When an asset has been claimed as application of income further deduction of depreciation is not allowable to assessee. The contention of assessee that it is not double deduction is not tenable. The assessee has not claimed that the said assets were not claimed as application. Therefore the action of AO in disallowing the deduction of depreciation, being double deduction, calls for no interference. The ground of appeal no 1 is rejected.

No argument have been advanced in support of the ground of appeal no. 2. The addition is therefore sustained. Ground of appeal is rejected.

4. The ground raised by the assessee challenging the order of the Id. CIT(A) in this regard is as under:

1.0 The Learned Commissioner of Income Tax (Appeals)- 2, Rajkot has erred in law and facts in disallowing claim of depreciation of Rs. 32,70,994/-, which may kindly allowed and justice be done.

5. Before us, Id. Counsel for the assessee pointed out that the issue stands covered as settled in favour of the assessee by the decision of the Hon'ble Apex Court in the case of CIT vs. Rajasthan and Gujarati Charitable Foundation Poona reported in [2018] 402 ITR 441 (SC) wherein in identical facts and circumstances, it was pointed out, the Hon'ble Apex Court had allowed the claim of depreciation dismissing the Revenue's contention that it tantamounted to double deduction in view of the fact that the entire cost of the assets had been allowed as application while computing the income

of the assessee as per the provisions of Section 11 of the Act. Copy of the order was placed before us.

6. Ld. D.R. was unable to point out any distinguishing fact vis-à-vis the decision of the Hon'ble Apex Court, though, he heavily supported the order of the Ld. CIT(A).

7. Having considered the contentions of both the parties and the findings of the authorities below and on going through the decision of the Hon'ble Apex Court in the case of Rajasthan and Gujarati Charitable Foundation Poona (supra), We are in agreement with the Id. Counsel for the assessee that the issue of disallowance of depreciation, in the backdrop of the fact that the assessee has already been allowed the cost of investment in fixed assets as application of income as per the provisions of Section 11 of the Act, has already been settled by the Hon'ble Apex Court in favour of the assessee, categorically holding that the assessee is entitled to the same. We have noted that the Hon'ble Apex Court has taken note of the amendment to the Act in this regard in Section 11 (6) vide Finance Act 2/2014, denying claim of depreciation in such circumstances and has held the same to be prospective in nature, with effect from assessment year 2015-16. The relevant findings of the Hon'ble Apex Court in the regard is as under:

1. These are the petitions and appeals filed by the Income Tax Department against the orders passed by various High Courts granting benefit of depreciation on the assets acquired by the respondents-assesseees. It is a matter of record that all the assesseees are charitable institutions registered under Section 12A of the Income Tax Act (hereinafter referred to as 'Act'). For this reason, in the previous

year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under Section 11(1)(a) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under Section 32 of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assessee had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the assessee. Though it appears that in most of these cases, the CIT (Appeals) had affirmed the view, but the ITAT reversed the same and the High Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department. From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'Commissioner of Income Tax v. Institute of Banking Personnel Selection (IBPS)' [(2003) 131 Taxman 386 (Bombay)]. In the said judgment, the contention of the Department predicated on double benefit was turned down in the following manner:

3. As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property. During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @2½% and they also claimed depreciation on furniture @ 5%. The question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income Tax Act makes provision in respect of computation of income of the Trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, section 28 of the Income Tax Act deals with chargeability of income from profits and gains of business and section 29

provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 34. In that matter also, a similar argument, as in the present case, was advanced on behalf of the revenue, namely, that depreciation can be allowed as deduction only under section 32 of the Income Tax Act and not under general principles. The Court rejected this argument. It was held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income Tax Act The Court rejected the argument on behalf of the revenue that section 32 of the Income Tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income Tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. In view of the aforesatated judgment of the Bombay High Curt, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department.

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR 463. In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in

the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently, Question No. 2 is answered in the Affirmative i.e., in favour of the assessee and against the Department."

After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.

It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions v. Commissioner of Income Tax'.

It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income Tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.

It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters.

8 The facts and circumstances of the case before us being identical to that before the Hon'ble Apex Court, with the assessee being a charitable trust registered as such u/s. 12AA of the Act and having claimed depreciation on assets, investments in which had been allowed as application of income in preceding years as per the provisions of Section 11 of the Act and the

impugned assessment year being assessment year 2014-15, the issue we find is squarely covered by the decision of the Hon'ble Apex Court in its favour.

9. In view of the same, we hold that the assessee is entitled to deduction of depreciation amounting to Rs. 32,70,994 and the A.O. is directed accordingly to allow the same for the purposes of computing its income. Ground of appeal raised by the assessee is accordingly allowed.

10. In effect, the appeal of the assessee is allowed.

Order pronounced in the open court on 01-06-2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER True Copy
Ahmedabad : Dated 01/06/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट