

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD M JAGTAP, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 115/Ahd/2018
(Assessment Year: 2014-15)

DCIT(Exemption) Circle-1, Ahmedabad	Vs.	N. H. Kapadia Education Trust, The H. B. Kapadia New High School, Gurukul Road, Memnagar, Ahmedabad
[PAN No.AAATN1417G]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Vijay Kumar Jaiswal, CIT D.R.
Respondent by:	Shri S. N. Divatia, Advocate

Date of Hearing	20.07.2022
Date of Pronouncement	29.07.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 11.10.2017 passed by the Commissioner of Income Tax (Appeals)-7, Ahmedabad arising out of the order dated 26.12.2016 passed by the ACIT(E), Circle-1, Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2014-15.

2. **Ground No.1:-** This ground relates to allowing the depreciation of Rs. 79,81,376/- to the assessee.
3. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.
4. During the course of assessment proceeding the A.O. noticed that the appellant has claimed depreciation of Rs. 79,81,376/- in its income and

expenditure account. The AO was of the view that investment in asset is already allowed as deduction as application of funds so that the depreciation allows would result into double deduction. The Ld. AO, therefore, disallowed the claim of depreciation of Rs. 79,81,376/- made by the assessee and added back to the total income of the assessee.

5. Before the First Appellate Authority the assessee could establish that the identical issue of disallowance of depreciation was decided in favour of the assessee in its own case for A.Y. 2010-11 by the Coordinate Bench by and under the order dated 18.05.2017 in ITA No. 2387/Ahd/2014. Relying upon the order passed by the Coordinate Bench the Ld. CIT(A), therefore, deleted the addition made by the Ld. AO. It is relevant to mention that while deciding the issue in favour of the assessee the Coordinate Bench was pleased to observe as follows:-

“3. We have heard rival submissions. Learned Departmental Representative’s only argument is that the assessee has already allowed cost of the assets in question for the purpose of seeking benefit of application of income towards activities performed in furtherance to its subject. He therefore submits that the assessee cannot get double deduction by claiming the impugned depreciation. He however fails to dispute the fact that hon’ble jurisdictional high court’s decision in case of Ahmedabad South Indian Charitable Trust has already rejected Revenue’s identical contentions as followed by a catena of case law hereinabove. We thus see no reason to interfere with the lower appellate authority’s findings under challenge. This former substantive ground fails.”

6. Having regard to the order passed by the Coordinate Bench as stated hereinabove in the absence of any changed circumstances we do not find any reason to interfere with the same. Hence, we do not any merit in the ground preferred by the Revenue. The same is, therefore, dismissed.

7. **Ground No.2:-** Deletion of addition of Rs. 6,10,37,380/- made on account of admission fees has been challenged before us.

8. During the course of assessment proceeding the assessee was asked about the earmarked fund and its treatment as per provision of Section 11 & 12 of the Act. Further that the assessee was asked to furnish the details of “one time admission fees/development fund” if any, by and under the notice dated 21.10.2016. The assessee filed the following reply:

*“Your honor had called why Corpus donation should not be disallowed. In this regard we would like to state that this issue has been, settled by the decision in our own ease for A.Y.2008-2009 by Appellate Tribunal and followed by the ITAT for A.Y.2004-05, 2005-06 and 2009-10. The copy of the order of the Hon'ble ITAT, Ahmedabad for the A.Y. 2004-05, 2005-06, 2008-09 & 2009-10 is enclosed herewith for your perusal vide Annexure-1. Therefore, there does not arise any question for treating the corpus donation as income of the Trust. In any view of the matter, the submissions made by us in the proceedings for the said years may please be considered for this year also and the same are not repeated here for the sake of brevity. We may also state that our submission dated 12-01-2016 includes the list of the students with name, PAN of the parents/guardian, who have given the said donation. The samples of the receipts issued to them are also enclosed in the past. **Thus the facts of the present year are identical to the facts of the earlier years and following the decision in earlier years, you are requested no to make any addition on this point.**”*

9. The receipts issued to the students for the payment of one time admission fee has been duly considered by the Ld. AO. Said receipts clearly mentioned that the amount is paid for the one time admission fees and therefore, the said receipt is not a voluntary contribution given with a specific provision to treat the same as corpus donation which can be claimed as exempt as of the opinion of the Ld. AO. In that view of the matter the “One Time Admission Fee” is the income of the assessee and is not a capital receipt as claimed by the assessee and the claim to the tune of Rs. 6,10,37,380/- was added to the total income of the assessee. In appeal the Ld. CIT(A) relying upon the order passed in assessee’s own case for A.Y. 2010-11 deleted such disallowance. Hence, the instant appeal before us.

10. At the time of hearing of the instant appeal the D.R. relied upon the Ld. AO's order. It was further submitted by the Ld. DR that only voluntary contribution with a specific provision by the doner to treat the same as corpus donation could be allowed. Since one time admission fees is not a corpus donation, it has rightly not allowed as exempt income of the assessee trust by the Ld. AO. On this regard, he has drawn our attention to the Paragraph 5 & 6 of the AO's order which speaks about the receipts of the student for the payment of the onetime admission fees clearly mentioning that the amount is paid for the "onetime admission fees" and therefore, the receipt is not a voluntary contribution given with a specific provision to treat the same as corpus donation which could be claimed as exempt.

11. On the other hand, the Ld. Counsel appearing for the assessee submitted before us that the case is covered in assessee's own case for A.Y. 2010-11. In this regard, the assessee relied upon a compilation annexing the receipts mentioning the said deduction to be used as corpus fund. However, upon examining the said receipt it appears that those receipts are of 2007-08 and not for the year under consideration.

12. We have also considered the receipt submitted before us being No. 140/1 Form No. 2682 for standard 5th of a donation of Rs. 15,000/- for A.Y. 2014-15 which was brought to our notice by the Ld. D.R. The receipt does not speak about corpus donation. He has also drawn our attention to very many same kind of receipts of different amounts for admission fees from the same set of documents submitted by the appellant before us. However, none of these receipts, as pointed out by the Ld. DR mentioned about corpus donation. Relevant to mention that the assessment of A.Y. 2010-11 though claimed to be on the identical issues, the receipts relied upon by the assessee for that

particular Assessment Year speaks of corpus fund and therefore, the same ratio is not applicable to the year under consideration.

13. Thus, having regard to the facts and circumstances of the case we find it fit and proper to sent the matter to the file of the Ld. AO to examine this receipts and any further document which he deems fit and proper to come to a conclusion whether the assessee is entitled to the claim exemption on account of admission fees which could be treated as corpus fund. The Ld. AO is also directed to pass a reasoned order upon giving an opportunity of being heard to the assessee and upon considering evidence which the assessee may choose to file at the time of hearing of the matter. We also make it clear that the assessee would also cooperate with the Ld. AO without requesting for any unnecessary adjournment. This ground of appeal is allowed for statistical purpose.

13. **Ground No.3:-** Allowing the accumulation of 15% under Section 11(1)(a) of the Act made by the Ld. CIT(A) which has not been claimed by the assessee in its return of income is challenged before us.

14. However, we find that this ground is consequential to Ground No. 2 and the Ld. AO is, therefore, directed to decide the same afresh upon considering the facts and circumstances of the matter. Hence, this ground of appeal is allowed for statistical purpose.

15. In the result, the appeal preferred by the Revenue is partly allowed.

This Order pronounced in Open Court on	29/07/2022
---	-------------------

Sd/-
(PRAMOD M JAGTAP)
VICE PRESIDENT
Ahmedabad; Dated 29/07/2022
TANMAY, Sr. PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad