

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष
**BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

आयकर अपील सं./ **ITA No: 1067/Chny/2019**

निर्धारण वर्ष / Assessment Year: 2011-12

M/s. The Indo-Korean Cultural
and Information Centre,
No. 51, 6th Main Road,
Rajah Annamalai Puram,
Chennai – 600 028.

Income Tax Officer,
v. Exemptions Ward -1,
Nungambakkam,
Chennai – 600 034.

[PAN: AAFT-4177-F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. M.S. Deeptha, JCIT

सुनवाई की तारीख/Date of Hearing

: 22.08.2022

घोषणा की तारीख/Date of Pronouncement

: 22.08.2022

आदेश / O R D E R

PER SONJOY SARMA:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-17, Chennai vide order no. 285/15-16 dated 11.02.2019. The assessment order was framed by the Income Tax Officer (Exemptions), Ward-1, Chennai for the Assessment Year 2011-12 u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter "the Act"), vide order dated 26.02.2016.

2. The assessee has raised the following Grounds of appeal that are as under:

1. *The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.*

Ground No 1:

2. *The learned Commissioner of Income tax (Appeals) erred in upholding the denial of exemption u/s 11 of the Income tax Act on the ground that the activities of the appellant are hit by the Proviso to section 2(15) of the Income tax Act.*
3. *The learned CIT (A) erred in holding that the appellant's objects are of the nature of general public utility and that the activities of the appellant are in the nature of trade, commerce or business.*
4. *Having held that the main activity of the appellant is the conducting of classes, courses and programmes in Korean language, English, Calligraphy, Yoga and Tae Kwon Do, the learned CIT (A) erred in holding that the objects of the appellant are of the nature of general public utility. The learned CIT (A) ought to have appreciated that the activities of the appellant are of the nature of education and hence that the activities of the appellant are not hit by the Proviso to Sec 2(15) of the Income tax Act.*
5. *The learned CIT (A) ought to have appreciated that the appellant is a Society registered under the provisions of Societies Registration Act, which prohibits the distribution of surplus arising in a year to the members as well as at the time of dissolution of the society. The Surplus remaining after the payment of all other dues shall not be distributed amongst the members of the society, but have to be contributed to another Society with same or similar objects. When such restrictions are placed by the statute itself, it cannot be said that the institution is carrying on an activity in the nature of trade, commerce or business.*
6. *The learned CIT (A) ought to have appreciated that the main activity of the appellant is providing teaching facilities for learning Korean language/calligraphy. Hence he ought to have held that the collection of fees for the courses or classes is for educational activity and hence Proviso to Sec 2(15) will not apply to the appellant's activities.*
7. *The learned CIT (A) ought to have appreciated that the fees collected in connection with educational activities from the students for learning Korean language and the total expenditure incurred by the appellant on its educational activities is in excess of the receipts which goes to prove that the appellant does not conduct the*

courses/classes with a motive of earning profits and hence ought to have held that the educational activities of the appellant are charitable in nature.

- 8. The learned CIT (A), even after considering the fact that the Trust has never deviated from the objects for which it was formed and that the activities of the trust are in line with the objects of the trust, has erred by not taking into consideration that the receipts of the Trust fell within the purview of section 2(15) of the Income tax Act, 1961.*
- 9. The learned CIT (A) ought to have appreciated that the activities of the appellant are educational in nature and are for the purpose of and on the course of achieving its objects and hence cannot be considered as business or commercial activity or it was for the purposes of earning profit.*
- 10. The learned CIT (A) ought to have appreciated the fact that the predominant object of the trust is to carry out charitable purpose and not to earn profit and the trust does not lose its character of a charitable purpose merely because some profits arises from such activity. Hence, money earned from business held under trust or otherwise to feed charity would not disentitle or negate the claim of engagement in charitable purpose defined under section 2(15) of the Income tax Act.*

Ground No 2:

The learned CIT (A) erred in upholding the disallowance of depreciation on the opening WDV of the block of assets, on the ground that the cost of the fixed assets was claimed as application of income by the appellant in the preceding years.

The learned CIT (A) ought to have appreciated that the appellant had not claimed the cost of acquisition of fixed assets as application of income in any of the preceding previous years and thus is entitled for claiming depreciation on the fixed assets.

The learned CIT (A) ought to have appreciated the decision of the Hon'ble Supreme Court in the case Commissioner of Income Tax - III, Pune Vs Rajasthan and Gujarati Charitable Foundation Poona - Civil Appeal No. 7186 of 2014, wherein the Supreme Court has held that normal depreciation on assets 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, even if the cost of the assets have been fully allowed as application of income under section 11 in the past years.

Without prejudice to the above, the learned CIT (A) erred in confirming the denial of depreciation on the entire opening written down value of the block of assets as at the beginning of the AY 2011-12, made by the AO.

*The learned CIT (A) ought to have appreciated that the AO, having allowed depreciation on the **assets acquired during the AY 2009-10**, in his order u/s 143(3) r.w.s 147 dated 26.12.2016 (even though depreciation was denied on the opening WDV on the ground that additions to fixed assets were allowed as application of income in the assessment years prior to AY 2009-10), erred in not allowing the depreciation in respect of those assets acquired during the A Y 2009-10 in the A Y 201112, which the appellant is entitled to. The appellant craves leave to file additional grounds of appeal before or during the hearing.*

3. At the outset, Ld. Counsel for the assessee submitted that the assessee did not get any relief from the Ld. CIT(A) as the impugned order passed by the CIT(A) did not decide the case on its merit and other documents relied on by the assessee as such instant appeal may be set aside to the file of the Ld. CIT(A). On the other hand Id. DR, vehemently argued in supporting the orders of both the lower authorities.

4. We after hearing the rival submissions of the parties before adverting to the grounds raised on merits, we on perusal of records find that the impugned order passed by the Ld. CIT(A) did not decided case on its merit and even he did not considered and discussed the submissions made by the assessee. Therefore, ends of justice it is necessary to restore all the issues raised in the instant appeal to the file of the Id. CIT(A) for a fresh adjudication with a direction to the assessee to produce necessary details if any and

when called for and also direct that the assessee should not take any adjournment unless otherwise required for reasonable cause. It is made clear that while deciding the issues raised by the assessee before Ld. CIT(A) in the light of documents and submissions made by the assessee if any further documents submitted before him and in case assessee fails to furnish additional details after providing reasonable opportunity, the Ld. CIT(A) can pass the order as per the provisions of law.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the court on 22nd August, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखासदस्य/Accountant Member

Sd/-

(संजय शर्मा)

(SONJOY SARMA)

न्यायिकसदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 22nd August, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |