

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 1630/Mum/2022 (A.Y. 2017-18)

M/s. Podar Literacy & Education Trust 103/1, Basavanpura Off. Bannerghatta Road Bengaluru, Karnataka 560 083. PAN : AAATP9197P (Appellant)	Vs.	DCIT, Central Circle-1(4) Room No. 902 9 th Floor Old CGO Building M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Sidharth Kothari
Department by	Shri Santhil Kumaran
Date of Hearing	08.09.2022
Date of Pronouncement	13.09.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 11.05.2022 passed by Ld CIT(A)-47, Mumbai and it relates to the assessment year 2017-18. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of depreciation of Rs.2,19,21,165/- made by the assessing officer.

2. The facts relating to the case are that the assessee is a charitable institution and the assessing officer has computed income of the assessee as per the provisions of sec.11 of the Act. The assessee belongs to Podar group and the said group was subjected to search operations u/s 132 of the Act on 09-01-2018. Consequently, the present assessment was completed by the AO u/s 143(3) r.w.s 153A of the Act. During the course of assessment proceedings, the AO noticed that the assessee has claimed depreciation of Rs.2,19,21,165/- in the profit and loss account. The AO referred to the

provision of sec.11(6), which states that the depreciation shall not be allowed as deduction, if the cost of relevant asset has been claimed as application of income. Hence the AO reduced the amount of depreciation from the aggregate amount utilised for charitable purposes, i.e., the AO did not treat the depreciation amount as application of income. The Ld CIT(A) also confirmed the same. Aggrieved, the assessee has filed this appeal before the Tribunal.

3. The Ld A.R submitted that the assessee has purchased some of the assets by utilising loans and hence it cannot be said that the entire cost of asset was claimed as application of income. Accordingly, he submitted that the depreciation attributable to loan amount should not be allowed.

4. The Ld D.R, on the contrary, submitted that the assessee has not furnished any material to substantiate contentions raised by Ld A.R. He further submitted that these contentions are raised for the first time before the Tribunal. Accordingly, the Ld D.R submitted that these contentions are liable to be rejected. The Ld D.R also submitted that the assessee has failed to prove that the provisions of sec.11(6) do not apply to it.

5. We have heard rival contentions and perused the record. We notice that the AO has disallowed the claim of depreciation as per the mandate of provisions of sec.11(6) of the Act, which reads as under:-

“(6) 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 asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.”

There should not be any dispute that the responsibility to show that the provisions of sec.11(6) are not applicable to it, shall lie upon the shoulders of the assessee. As rightly pointed out by Ld D.R, the assessee has not placed any material to show that the value of assets in respect of which the

depreciation has been claimed was not claimed as application of income in any of the year. Hence, we are unable to interfere with the decision rendered by Ld CIT(A) on this issue. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 13.09.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 13/09/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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