

आयकर अपीलीय अधिकरण  
मुंबई पीठ " एच", मुंबई पीठ  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री गगन गोयल, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " H ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
आअसं. 2901/मुं/ 2022 (नि.व. 2015-16)  
ITA NO. 2901/MUM/2022(A.Y.2015-16)

Dy. Commissioner of Income Tax  
(Exemption)-1(1), Mumbai  
Room No.607, 6<sup>th</sup> Floor, MTNL Building,  
Cumballa Hill, Mumbai 400 026.

..... अपीलार्थी /Appellant

बनाम Vs.

Kohinoor Education Trust,  
1 Kohinoor Corporation Office,  
Senapati Bapat Marg,  
Dadar West, Mumbai 400028.  
PAN:AABTK-2616-D

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Smt. Madhumalti Ghosh

प्रतिवादी द्वारा/Respondent by : Shri Jayesh Dadia

सुनवाई की तिथि/ Date of hearing : 03/01/2023

घोषणा की तिथि/ Date of pronouncement : 13/01/2023

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 21/09/2022 for the Assessment Year 2015-16.

2. The Revenue in appeal has raised following grounds:

*“1. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in allowing the claim of depreciation of the assessee without appreciating the fact that no supporting evidences has been provided to prove that the cost of such assets has been claimed as application of income for the year?”*

*2. “Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in allowing the claim of depreciation to the assessee without appreciating the fact that as per Section 11(6) of the Income-tax Act, 1961, the acquisition of any asset has been claimed as an application of income in any previous year, no deduction or allowance for depreciation in respect to that asset would be allowable.*

*3. Whether on the facts and in the circumstances of the case and in law, the Ld. CTA) was justified in relying upon the judgment of Ld. CIT(A) in the assessee's own case for AY 2013-14 without appreciating the fact that the same are not applicable for AY 2015-16 in light of the provisions of amended Section 11(6) of the Income tax Act?”*

3. Smt. Madhumalti Ghosh representing the Department submits that the assessee Trust has claimed investment in assets as application of funds and has also claimed depreciation on the said assets. Thus, the assessee has claimed double benefit. The provisions of section 11(6) of the Income Tax Act, 1961 [in short ‘the Act’] have been amended w.e.f. Assessment Year 2015-16. The amended provisions does not permit the assessee to claim benefit of depreciation as well as investment in assets as application of funds. The Id. Departmental Representative further pointed that during the course of assessment proceedings, the assessee had agreed for disallowance of depreciation claimed. The Id. Departmental Representative prayed for reversing the findings of the CIT(A) and to uphold the assessment order.

4. Per contra, Shri Jayesh Dadia appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing the appeal of the Revenue. The Id. Authorized Representative for the assessee made a statement at Bar that the assessee has not claimed cost of assets as application of funds. The Id. Authorized Representative for the assessee further submits that the assessee never conceded before the Assessing

Officer for making disallowance of depreciation claim. The Id. Authorized Representative for the assessee referred to the submissions made before the Assessing Officer at page -2 of the paper book. He pointed that in para -2 of the submissions, the assessee did mention about the revised computation without claiming depreciation as deduction, however, that was the alternate claim and the reason for making said claim was that even if depreciation is disallowed it would result in loss. The Id. Authorized Representative for the assessee pointed that this aspect has been considered by the CIT(A) in para – 5.2 of the impugned order. The Id. Departmental Representative further pointed that in preceding Assessment Years and in the Assessment Year under appeal and even thereafter, the assessee had never claimed any of the amounts towards cost of assets as application of income.

5. Both sides heard, orders of authorities below examined. Sub-section (6) to Section -11 was inserted by the Finance (No.2) Act 2014 w.e.f. 01/04/2015. The provisions of sub-section(6) are reproduced herein below for ready reference.

*“Section 11(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.”*

As per the provisions of sub-section(6), the income applied or accumulated for application shall not be eligible for benefit of deduction or allowance by way of depreciation. In the instant case the assessee has claimed depreciation of Rs.5,52,77,341/-. The Assessing Officer disallowed assessee’s claim of depreciation on mere presumption that the assessee has claimed cost of asset as application of funds. A perusal of the impugned order shows that the CIT(A) has recorded finding of fact that the assessee in the past six years has

never claimed any amount being cost of asset as application. This fact has not been rebutted by the Revenue. In the impugned assessment year, the assessee has not utilized/set apart any amount towards the cost of asset. In so far as observations of the Assessing Officer that the assessee has agreed for the disallowance of depreciation, we find that the disallowance was made by the Assessing Officer on misreading/misinterpretation of the written submissions filed by the assessee. We find no infirmity in the findings of CIT(A), hence, the same are upheld and appeal by the Revenue is dismissed being devoid of any merit.

6. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on Friday the 13<sup>th</sup> day of January, 2023.

Sd/-

( GAGAN GOYAL )

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 13/01/2023  
Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषित**Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar), ITAT, Mumbai