

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"K" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2900/MUM/2022  
(Assessment Year: 2016-17)**

**Dy. Commissioner of Income  
(Exemption)-1(1), Mumbai,**

Room No. 607, 6<sup>th</sup> Floor, MTNL Building,  
Cumball Hill, Mumbai - 400026

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**Appellant**

**Kohinoor Education Trust,**

1, Kohinoor Corporation Office,  
Senapati Bapat Marg, Dadar (West),  
Mumbai - 400028  
[PAN: AABTK2616D]

Vs

.....

**Respondent**

**Appearance**

For the Appellant/Department

: Ms. Samruddhi Hande

For the Respondent/Assessee

: Shri Samir Shah

**Date**

Conclusion of hearing

: 15.02.2023

Pronouncement of order

: 13.04.2023

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 21/09/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) had allowed the appeal of the Assessee against the Assessment Order, dated 02/12/2018, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised following grounds of appeal:

- "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. CIT(A) 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. Brief facts of the case are that the Assessee-trust is registered as a Charitable Organization under Section 12A of the Act. The Assessee has filed its return of income for the Assessment Year 2016-17 on 29/09/2016 declaring 'Nil' income. The case of the Assessee was selected for scrutiny. The Assessing Officer completed assessment vide order dated 02/12/2018, passed under Section 143(3) of the Act at 'Nil' income after making disallowance of depreciation of INR 5,07,45,402/- claimed by the Assessee by invoking provisions of Section 11(6) of the Income Tax Act. The Assessing Officer was of the view that the Assessee had claimed double deduction by first claiming deduction for the cost of asset as application of income, and thereafter, claiming

deduction for depreciation on the same cost of asset. The Assessing Officer also recorded that vide submission dated 27/11/2018, the Assessee had agreed to the disallowance of depreciation since even after disallowance of depreciation the expenditure was more than the income.

4. Being aggrieved, the Assessee preferred appeal before CIT(A) on this issue. Before the CIT(A) it was contended by the Assessee that the Assessee had never agreed to disallowance of depreciation and the Assessing Officer had misconstrued the alternative concession raised by the Assessee as a concession. It was also contended by the Assessee that over the past six years the Assessee had never claimed the cost of assets as application of income, and therefore, the provisions of Section 11(6) were not attracted in the case of the Assessee. The aforesaid contentions found favour with the CIT(A). The addition of INR 5,07,45,402/- on account of disallowance of depreciation was deleted by the CIT(A).
5. Being aggrieved the Revenue has preferred the present appeal on the grounds reproduced in paragraph 2 above. Since all the grounds are directed against the order of the CIT(A) deleting the addition of INR 5,07,45,402/- on account of disallowance of depreciation, the same are taken up together.
6. The Ld. Departmental Representative appearing before us referred to paragraph 5.2 and 5.3.3-5.3.5 of the Assessment Order and submitted that the provisions of Section 11(6) were clearly attracted in the facts of the present case as the Assessee had failed to bring on record any material to prove that the cost

of asset was not claimed as application of income in the earlier years. The Assessee had also agreed to disallowance of depreciation during the assessment proceedings. The Tribunal erred in relying upon the decision of the Tribunal in the case of the Assessee for the Assessment Year 2013-14 without appreciating that Section 11(6) was introduced with effect from 01/04/2015 and therefore, the aforesaid decision of the Tribunal was not applicable. Per contra, Ld. Authorised Representative for the Assessee supported the order passed by the CIT(A) and reiterated the submissions made before CIT(A).

7. We have heard the rival submissions and perused the material on record. Section 11(6) of the Act, inserted by Finance (No. 2) Act 2014 w.e.f. 01/04/2015, reads as under:

*"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."*

Thus, Section 11(6) of the Act provides that the deduction or allowance by way of depreciation in respect of an asset, the cost of which asset has been claimed as application of income in the same or any other previous year has been claimed, would not be allowed for the purpose of determining the amount of income to be applied, or accumulated or said a part for application for the purpose of Section 11 of the Act.

8. We find that the Assessing Officer had disallowed the claim of depreciation of INR 5,07,45,402/- made by the Assessee by

invoking provision of Section 11(6) of the Act. However, the CIT(A) has, after examining the facts, overturned the decision of the Assessing Officer and allowed the claim of depreciation holding as under:

*"5.1 The AO invoked section 11(6) and made addition mainly on the ground that the assets on which depreciation is claimed by the appellant is acquired and treated as application of income for the purpose of section 11 of the Act and thereby double benefit is claimed by the appellant firstly, when the tax exemption is claimed on the application of income and subsequently, by way of deduction in the form of depreciation. The AO has also noted that the appellant has agreed to the said addition. On the other hand, the appellant has contended that the appellant has, in past six years, never claimed any of the amounts being cost of asset as application of income. Therefore, the AO is factually not correct, argues the appellant.*

*5.2 On the agreement to the addition, the appellant contends that it never agreed for the said addition before the AO and that the AO misconstrued its alternate plea as agreement. Be that as it may, since the appellant is before me in appeal, the issue on merit is being adjudicated upon here.*

*5.3 The appellant has further argued that for the assessment year 2013-14, Hon'ble ITAT has given direction to the AO to allow depreciation and that for the assessment year 2018-19, the AO himself has allowed depreciation in an order passed u/s 143(3) of the Act.*

*5.4 In view of the above and in light of the facts and circumstances of the case, I find that since the appellant has not claimed as the cost of assets as application of income, the AO is not justified in invoking section 11(6) of the Act. Section 11(6) of the Act comes into play when the cost asset has been claimed as application of income. Thus, there is no double benefit to the appellant. Therefore, considering the entirety of the facts and applicable law, the addition of Rs. 5,07,45,402/- is hereby deleted."*

9. On perusal of above, it can be seen that the CIT(A) has returned a finding that Assessee has not claimed cost of asset as application of income in the earlier assessment years. In support of aforesaid conclusion, the CIT(A) has relied upon the fact that the Assessing Officer has, for the Assessment Year 2018-19, allowed depreciation while framing assessment under Section 143(3) of the Act. On the other hand, on perusal of the Assessment Order we find that the Assessing Officer has drawn an inference that the Assessee had claimed the cost of asset as application of income without bringing on record any facts. Further, we are of the view that reference to the decision of the Tribunal for the Assessment Year 2013-14 in paragraph 5.3 of the order passed by the CIT(A) cannot be construed as the basis of deciding the issue in the favour of the Assessee. Even in appellate proceedings before us, while the Revenue asserted that the Assessee has claimed double deduction as the cost of the asset has been claimed as application of income, nothing has been placed on record in support of the same. Thus, the findings returned by the CIT(A) that the Assessee has not claimed cost of asset as application of income in earlier years have gone uncontroverted. Further, the facts that depreciation has been allowed for the Assessment Year 2018-19 while framing assessment under Section 143(3) of the Act has also not been controverted by the Revenue. In view of the above, we do not find any infirmity in the order passed by the CIT(A) deleting the addition of INR 5,07,45,402/- on account of disallowance of depreciation, and holding that the Assessing Officer was not justified in invoking provisions of Section 11(6) of the Act. Thus, all the grounds raised by the Revenue are dismissed.

In result, the present appeal filed by the Revenue is dismissed.

Order pronounced on 13.04.2023.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 13.04.2023  
*Alindra, PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai