

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 324/KOL/2023
Assessment Year: 2016-2017**

***Anand Education Trust,.....Appellant
8th Floor, Room No. 4,
23A, Netaji Subhash Road,
Kolkata-700001
[PAN: AACTA6577E]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-1(1), Exempt, Kolkata,
10B, Middleton Road,
Kolkata-700071***

Appearances by:

*Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

*Shri G. Hukugha Sema, CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : May 25, 2023

Date of pronouncing the order : May 29, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi

dated 27th January, 2023 passed for assessment year 2016-17.

2. The assessee has taken four grounds of appeal. However, at the time of hearing, it has pressed only Ground No. 1. In this ground of appeal, the grievance of the assessee is that the ld. CIT(Appeals) has erred in confirming the disallowance of depreciation of Rs.5,02,77,983/-, which was disallowed by the ld. Assessing Officer under section 11(6) of the Income Tax Act.

3. Brief facts of the case are that the assessee is a Charitable Trust, which is running a School by the name of GEMS Akademia International School. The assessee has been enjoying registration under section 12AA of the Income Tax Act, 1961 since 2009. The assessee has filed its return of income on 15.10.2016 declaring total income at NIL. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that the assessee claimed depreciation of Rs.5,02,77,983/-. The ld. Assessing Officer has disallowed this depreciation by observing as under:-

“4. Depreciation: Rs.5,02,77,983/-

4.1. It is seen from the I & E A/cs. Submitted by the assessee that depreciation of Rs.5,02,77,983/-

has been claimed as application of income. Depreciation is not allowable on the asset of the assessee if acquisition is claimed as application in the year of acquisition. Section 11(6) of the I.T. Act, 1961, as inserted by the Finance (No.2) Act, 2014, applicable for the AY 2016-17, stipulates that whereby 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.

In view of the all above, the claim of depreciation amounting to Rs.5,02,77,983/- as application is allowed from the total income of the assessee”.

4. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

5. The ld. Counsel for the assessee submitted that it is A.Y. 2016-17. As far as position of law is concerned, there is no dispute that 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. He submitted that the question is whether the assessee has claimed application of income on acquisition of those assets for which depreciation is being claimed. The law is applicable with prospective effect, therefore, it is to be seen whether in the immediately preceding assessment year or in this assessment year, assessee has purchased any asset and

claimed acquisition of those towards application of income while computing the income under section 11 of the Income Tax Act or not. For this purpose, he took us through the balance-sheet and computation of income for A.Y. 2015-16. He also drew our attention towards computation of income for A.Y. 2016-17. Copies of these documents are placed in the paper book containing 15 pages.

6. On the other hand, ld. D.R. was unable to controvert the contention of the ld. Counsel for the assessee except submitting that he relied upon the orders of the revenue authorities.

7. We have duly considered the rival contentions and gone through the record carefully. The assessee has placed on record copy of the computation of income on pages no. 6 to 11 of the paper book. A perusal of this would reveal that in A.Y. 2015-16, it has total income of Rs.12.16 crores, out of which Rs.11.93 crores is academic receipts. Similarly in A.Y. 2016-17, it has total Rs.13.77 crores of income. The application of income in both years shown by the assessee reads as under:-

A.Y. 2015-16

Income before application of income		Rs.12,53,10,619
Less: Application of Income		
Academic expense	Rs.1,33,92,296	
Staff payments and	Rs.4,08,74,242	

benefits		
Transportation expense	Rs.1,61,76,006	
Electricity and fuel expense	Rs. 48,18,054	
Technical facility and support service	Rs. 3.32.400	
Kitchen expense	Rs. 82,26,099	
Repair and maintenance	Rs. 33,10,823	
Finance costs	Rs.8,44,57,753	
Advertising and sales promotions	Rs.1,39,19,242	
Other expenses	Rs.6,39,50,575	Rs.24,94,57,490
Gross total income		NIL
Total Income		NIL

A.Y. 2016-17

Income before application of income		Rs.13,84,07,611
Less: Application of Income		
Academic expense	Rs.1,84,89,028	
Staff payments and benefits	Rs.4,99,52,666	
Transportation expense	Rs.1,67,21,846	
Kitchen expense	Rs. 70,93,477	
Repair and maintenance	Rs. 31,83.700	
Finance costs	Rs.8,82,78,344	
Auditor's remuneration	Rs. 1,11,000	
Bad debt written off	Rs. 2,20,402	
Brokerage	Rs. 59,000	
Other expenses	Rs.8,32,91,969	Rs.26,74,01,432
Gross total income		NIL
Total Income		NIL

According to the Id. Counsel for the assessee, it has not acquired any new asset, which indicates capital expenditure incurred by it and claimed as application of income.

8. A perusal of the assessment order extracted supra, it is nowhere discernable as to how ld. Assessing Officer has disallowed the depreciation. He has nowhere referred the income & expenditure account. Similarly the ld. 1st Appellate Authority has also only discussed the position of law. His finding is also very brief without any narration of acquisition of any capital asset, which has been set off as application of money from the gross receipts. His finding also reads as under:-

“5.9. In Ground No. 2, the appellant challenges the action of the AO in holding that depreciation is not allowable if acquisition is claimed as application in the year of acquisition. In view of section 11(6) of the I.T. Act, 1961, as inserted by the Finance (No. 2) Act, 2014, applicable for the AY 2016-17, which stipulates that 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.

5.10. Though the appellant had raised the ground that depreciation should be allowed for computing the income available for accumulation, no further submissions were adduced to rebut the AO's findings of fact and or position of law.

5.11. In view of the above, the order of the AO does not warrant any interference. Ground No. 2 is dismissed”.

9. On due consideration of the above, we are of the view that after the change in law in section 11(6), the assessee has not claimed acquisition of property towards application of income while computing the total taxable

income. If that be so, then depreciation cannot be disallowed to the assessee.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on May 29, 2023.

**Sd/-
(Girish Agrawal)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 29th day of May, 2023

*Copies to : (1) Anand Education Trust,
8th Floor, Room No. 4,
23A, Netaji Subhash Road,
Kolkata-700001*

*(2) Assistant Commissioner of Income Tax,
Circle-1(1), Exempt, Kolkata,
10B, Middleton Road, Kolkata-700071*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

*(4) Commissioner of Income Tax ,
(5) The Departmental Representative
(6) Guard File*

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.