

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.320/Bang/2023
Assessment Year: 2012-13

Janaseva Trust, Chennenahalli Tavarekere Hobli, Bangalore South, Bengaluru. PAN No. - AAATJ 4025 G	Vs.	The Income Tax Officer (Exemptions), Ward 1, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Smt. Supriya Rao, O.N, Addl. CIT (DR)

Date of Hearing	:	18.07.2023
Date of Pronouncement	:	26.07.2023

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the DIN & Order No. ITBA/NFAC/S/250/2022-23/1050124599(1) dated 25.02.2023, passed by the CIT(Appeal),NAFC Delhi for the assessment year 2012-13 on the following grounds of appeal:-

1. *Depreciation : The Respondent has erred in disallowing the claim of Depreciation at Rs.31,97,283/-*
2. *Building of Corpus Fund : The Respondent has erred in treating Rs.1,05,92,266/- as general receipt and not as building corpus fund.*
3. *Loss on Sale of Assets : The Respondent has erred in disallowing claim of loss of sale of assets to the tune of Rs.Rs.52,413/- as no actual expenditure incurred.*

4. *Refund of Caution Fees : The Respondent has erred in treating a sum of Rs.58,000/- refund of caution deposit to the students, rejecting the claim of application of funds in the absence of proper proof of expenditure.”*

2. During the course of hearing none was present on behalf of the assessee, therefore, the case was heard qua the assessee.

3. The brief facts of the case are that the assessee filed return of income declaring nil income on 29/09/2012 claimed exemption u/s 11 of the Act. The case was selected for scrutiny and statutory notices were issued to the assessee. In response, the assessee filed reply stating the activities of the trust and other documents were filed. The AO noticed that assessee has claimed application of income as capital expenditure of Rs.1,09,46,304/- and depreciation on the same of Rs.31,97,283/-, thus making double claim. Accordingly the AO issued show cause notice. The AR of the assessee submitted that both are allowable as capital expenditure is application of income for purchase of capital asset and depreciation is due to wear and tear of the assets. The AO was not satisfied and observed that value of assets on which depreciation has been claimed has already been claimed towards application of income in the earlier years and depreciation of such assets again would amount to double deduction. Relying on some judgements, he disallowed the depreciation as application of income.

4. The AO further noted that the assessee has received donation of Rs.1,05,92,266/- [24,92,266 + 81,00,000] and claimed it as corpus fund for construction of building. In response to the query, the assessee produced copy of the receipts and list of the donors. On verification, the AO noted that there is no specific direction from the

donors and submissions were not accepted by the AO, therefore, the amount of Rs.1,05,92,266 was treated as general receipts.

5. He further observed that the assessee has claimed loss on sale of assets of Rs.52,413/- which was not allowed by the AO. He further noticed that the assessee has refunded as caution money to students of Rs.58,000/-, In this regard the AR submitted that the this amount was collected from the students at the time of admission and refunded when they leave the institution. The details were called for but in absence of proof of payments/expenditure the same was not allowed as application of fund of the trust. Accordingly, the AO completed the assessment and computed the income as under:-

Surplus as per the I&E statement	12,66,926	
Add: Depreciation claimed as per the I&E	31,97,283	
Add: Building fund - corpus – disallowed as discussed	1,05,92,266	
Add: Loss on sale of asset – disallowed as discussed	52,413	
Add: Caution fund refund – disallowed as discussed	58,000	
Net Surplus		1,51,66,888
Less: Capital Expenditure claimed at Rs.1,09,46,204/-		1,09,46,204
Balance		42,20,684
Less: u/s.11(1)(a)		22,75,033
Balance		19,45,651
Less:11(2) – as discussed above – Rs.20,00,000/- restricted to available balance		19,45,651
Taxable Income		NIL
Tax thereon		NIL

6. Aggrieved from the above order, assessee filed appeal before the CIT(A). The CIT(A) issued noticed but the assessee sought for adjournment and did not appear on the subsequent dates. Accordingly, the Id.CIT(A) passed order on the basis of materials available before him and confirmed the order of the AO.

7. Aggrieved from the above order, the assessee filed appeal before The Income Tax appellate Tribunal.

8. None appeared for the assessee. The Id.DR relied on the orders of the authorities below and she further submitted that ample opportunities were granted by the Id.CIT(A), in spite the assessee did not appear, so she requested the order of the lower authorities should be upheld.

9. We have heard the Id. DR and gone through the statement of facts, grounds of appeal filed by the assessee and materials on record, We notice that in ground No.1, the assessee has claimed depreciation of Rs.31,97,283/- which was claimed as application of income as per sec. 11 of the Act but not allowed by the AO observing that it would amount to double deduction since the assessee has already claimed application of income at the time of purchase of assets. We note that the case of the assessee is prior to 01.04.2015, therefore, the assessee is eligible for claim as application of income on the depreciation charged on fixed assets, even if the assessee has already claimed application of income on the fixed assets in the year of purchase. This issue has been settled by the Hon'ble Supreme Court prior to amendment in the case of *CIT v. Rajasthan & Gujarati Charitable Foundation, Poona, [2018] 89 taxmann.com 127 (SC)*. The Hon'ble Apex Court has decided that the amendment made as prospective in nature. Respectfully following the above judgment, accordingly we allow ground No.1 of the assessee.

10. In respect of ground No.2 relating to Corpus fund of Rs.1,05,92,266/-, as per the assessee, it is towards building corpus fund and not part of the total income, whereas the authorities below considered it as a general receipt of the assessee trust. Since the assessee did not appear before the CIT(A) and substantiate its case,

therefore we remit this issue to the CIT(A) for fresh consideration and decision as per law.

11. Ground No.3 is regarding loss on sale of asset at Rs.52,413/-. The lower authorities have held that the assessee has not incurred any actual expenditure, therefore, they have not allowed application of income. We note that it is not clear from the orders of revenue authorities, whether the loss suffered on the sale of fixed asset is claimed as application of income in the year of purchase of such assets and further whether depreciation is claimed on such assets and/or the depreciation has been claimed as application of income. If yes, then the assessee will not get benefit of application of income in the year of loss suffered on sale of such assets. Therefore, this issue is also remitted back to the file of CIT(A) for verification and fresh decision as per law.

12. In ground No.4, the lower authorities have disallowed claim of Rs.58,000/- as application of income towards refund of caution money to the students which was received by the assessee at the time of admission of students for want of proper details. The assessee is directed to provide the necessary details for proof of payments which could not be produced before the AO. We remit this issue to the CIT(A) for fresh consideration and decision as per law.

13. To sum up, ground No.1 raised by the assessee is allowed and ground Nos.2,3,4 are remitted back to the file of CIT(A) for fresh consideration after giving reasonable opportunity of being heard to the assessee and assessee is given liberty for substantiating its case.

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

Order pronounced in the open court on 26th July, 2023.

Sd/-
(George George K)
Vice President

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 26th July, 2023
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.

By order

Asst. Registrar/ITAT, Bangalore

- 1.श्रुतलेख की तारीख.....
DATE OF DICTATION.....
- 2.तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व.निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. तारीख, जिसपर टाइप किया हुआ मसौदे, संबंधित सदस्य (2) के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE SECOND MEMBER.....
5. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER FOR PRONOUNCEMENT.....
6. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 7 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
8. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
9. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
10. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
11. फाइल कार्यालय अधीक्षक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE OFFICE SUPERINTENDENT.....
12. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR SIGNATURE ON THE ORDER.....
13. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH OF THE TRIBUNAL ORDER.....
14. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....