

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA No.1957/Del/2023
(Assessment Year : 2015-16)

Ram Nath Memorial Trust Society, 1, Ram Bagh Colony, Sector – 4, Shastri Nagar, Meerut – 250 002 PAN No. AAATT 6054 B (APPELLANT)	Vs.	ACIT Exemption Range, Ghaziabad – 201 005 (RESPONDENT)
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Assessee by	Shri Rohit Agarwal, C.A.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	19.10.2023
Date of Pronouncement:	26.10.2023

PER SHAMIM YAHYA, AM :

This appeal filed by the assessee is directed against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC)-Delhi dated 31.05.2023 pertaining to Assessment Year 2015-16.

2. The grounds of appeal filed by assessee, which reads as under:

- “1. That the Ld. Commissioner of Income Tax (Appeals) NFAC, has erred in law by upholding the order under appeal, as framed by the Ld. Additional Commissioner of Income Tax, Exemption Range, Ghaziabad, who had passed the impugned order without having valid jurisdiction to do so and, therefore, the order under appeal, having been passed without jurisdiction, deserved to have been annulled.
2. That the Ld. Commissioner of Income Tax (Appeals), has erred in law, as well as on the facts of the case, by confirming the disallowance of depreciation on fixed assets of Rs.1,29,33,884/-, without considering the submissions of the appellant in right perspective thereof and the conclusions drawn thereto are, legally

untenable and factually incorrect and that on the facts and under the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals), ought to have directed the allowance of depreciation on cost of all such fixed assets, acquisition of which has not been claimed as application u/s 11 of the Act, in same or any other previous year, details of which were duly submitted before him.

3. *That the appellant respectfully craves leave to add, substitute and/or modify any of the grounds of appeal at any time before or at the time of hearing of appeal in accordance with law.”*

3. At the outset, Learned Counsel for the assessee submitted that he shall not proceed Ground No.1, hence, this ground is dismissed as not pressed.

4. The assessee is a society, which is registered with the Registrar of Society, Uttar Pradesh. Assessee society has been granted registration under section 12AA of the Act. The assessee is running educational institute. During the year under consideration, AO had noted that assessee had claimed depreciation amounting to Rs.1,29,33,884/-. The Assessing Officer was of the opinion that this claim is not allowable in the light of the provisions of Section 11(6) of the Income Tax Act, 1961, which was introduced w.e.f 01.04.2015. The Assessing Officer noted that as per amendment of Income Tax Act w.e.f 01.04.2015 provisions of section 11(6) provides 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 assets, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

5. The assessee submitted certain details to the Assessing Officer regarding previous year where the additions in fixed assets were not considered as application of funds for charitable purpose and assessee pleaded that the depreciation to that extent should be allowed. But the Assessing Officer was not convinced and denied the claim of depreciation. Upon assessee's appeal, Learned CIT(A) confirmed the order of AO, which reads as under :

“In this ground, the appellant has challenged the disallowance of depreciation claimed at Rs 1,29,33,884/- ignoring the fact that investment in fixed asset was not fully claimed and allowed as application by/to the appellant and therefore even after insertion of Sub-Section (6) by Finance Act. 2014 w.e.f. A.Y. 15-16 onward, the same was allowable The findings of the Id. A.O. that the assessing officer during A.Y.13-14 has allowed application of addition in fixed assets at Rs.11,98,47,789/- is factually incorrect and unfounded as during that year the total receipts of the appellant were at Rs.12,38,19,387/- as against which total expenditure including depreciation was Rs.8,37,46,533/- leaving a surplus of Rs.4,00,72,854/- In that view of facts on record, how the A O.could have allowed/application of total amount of Rs.11,98,47,789/- invested in the creation of fixed assets.”

6. After further discussions, Learned CIT(A) concluded as under:

“In the assessment order u/s 143(3) of the Income Tax Act, 1961, dated 11/03/2016 for the A.Y. 2013-14; benefit of addition In fixed assets at Rs. 11,98,47,789/- was allowed by the then AQ. In view of this the claim of the appellant of depreciation of Rs.1,29,33,884/- was rightly disallowed in the light of the provisions of section 11(6) of the Income Tax Act, 1961 which are Introduced with effect from 01/04/2015.

7. Against the above order, assessee is now in appeal before us.

8. Learned Counsel for the assessee reiterated that in earlier years assessee has not claimed the depreciation on certain assets and hence, he submitted that the same should be allowed for depreciation. In this regard, he

submitted the computation on the basis of which he tried to justify the claim of depreciation.

9. Per contra, Learned DR relied upon the order of authorities below and submitted that the claim of the assessee should be factually examined at the level of the Assessing Officer.

10. Upon careful consideration, I find myself in agreement with the proposition that assessee's claim needs to be reviewed in the light of chart now being submitted by the assessee, since, it relates to factual records. Accordingly, the issue is remitted to the Assessing Officer. The Assessing Officer shall examine the chart now being submitted by the assessee and thereafter, decide as per law after affording the reasonable opportunity of being heard to the assessee. Both the parties agreed to the above proposition.

11. In the result, assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open court on 26.10.2023

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Date:- 26.10.2023
Priti Yadav, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI