

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. Nos. 440 to 444/JP/2023
निर्धारण वर्ष / Assessment Years : 2006-07, 2011-12, 2012-13, 2013-14 & 2014-15

Rambagh Golf Club C/o Rambagh Golf Club, Bhawani Singh Road, Jaipur	बनाम Vs.	ITO Exemption, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAR 0294 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal (FCA)
राजस्व की ओर से / Revenue by : Smt. Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2023
उदघोषणा की तारीख / Date of Pronouncement : 09/11/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These five appeals are filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as 'NFAC'] for the assessment years 2006-07, 2011-12, 2012-13, 2013-14 & 2014-15 dated 22.05.2023 & 31.05.2023 which in turn arises from the order passed by the AO, Jaipur passed under Section 143(3) of the Income tax Act, 1961 (in short

'the Act') dated 22.12.2008 & 28.01.2014, 29.03.2015, 29.02.2016 & 29.12.2016.

2. At the outset, the Id. AR has submitted that the matter pertaining to Rambagh Golf Club in ITA no. 440/JP/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount in other assessment year. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 440/JP/2023 is taken as a lead and all these appeals are disposed off by this common order with the agreement of both parties.

3. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 440/JP/2023 on the following grounds;

“1. That the learned CIT Appeals, NFAC erred in disallowing the claim of depreciation amounting to Rs. 2,36,078/- as discussed in para 6 of order.

2. That the order so passed by the learned CIT, Appeals NFAC is bad in law as well as on facts.

3. *That the petitioner craves to add alter or amend any or all of the grounds of appeal on or before the due date of hearing.”*

4. The fact as culled out from the records is that the assessee filed its Return of income on 30.10.2006 along with return of income declaring the value of fringe benefits at NIL. The case was selected for scrutiny and a notice u/s 143(2) was issued on 25.10.2007 and served upon the assessee, fixing the date of hearing on 06.11.2007. The Id. AR of the assessee appeared, filed the required details from time to time.

5. The assessee derives income from golf club. On perusal of details filed it is noticed that society had claimed depreciation on purchase of assets. The Id. AO further noted that the assessee on purchase of assets also taken deduction as application of income. The Id. AO also noted that the purchase of assets in the earlier years has been taken by the assessee as application of Income. Moreover the “depreciation” is only a notional expenditure and there is no out of lay of money. The accounts of the trust are required to be maintained in the receipt and payment form. Depreciation being only a notional expense it cannot hold to be any payment for the purpose of receipt and payment account. The

Id. AO based on these reasons and relying on the decision in the case of Escorts Ltd. Vs. Union of India (1993) 199 ITR 43, the Supreme Court held that when deduction under section 35(2) (iv) was allowed in respect of capital expenditure on scientific research, no depreciation was to be allowed under section 32 on the same assets. There is a fundamental axiom that double deduction is not intended unless there is a clear statutory indication on the contrary. The Supreme Court also referred to para 3.29 of the Choksi Committee Report (December, 1997), in this context. This para read as follows:

“3.29 Our attention has also been drawn to certain anomalous situations in the matter of allowance of depreciation. In certain cases where as full deduction has been allowed in relation to a capital assets under other section (As for example, section 35 which permits a deduction in respect of capital expenditure for scientific research), the tax payers have contended that such deduction is independent of the allowance by way of depreciation. In our view, the intention of the legislature is not to allow a double deduction (of 200) in respect of the same assels, once under section 35 and, again by way of depreciation under section 32). If and to the extent that there is any anomaly or contrary view possible on a construction of section 35, we recommend that the law should be clarified to provide that no depreciation under section 32 shall be allowable in respect of capital expenditure fin scientific research qualifying for deduction under section 35.” (p 59)

Therefore, in the light of the Supreme Court decision, though in a different context, it can be held that depreciation is not admissible on those assets against which 100% deduction has already been taken e.g. in the cases of trusts where Assets has been acquired

by way of application of fund. This is also clear because wherever any purpose of assets is allowed as revenue expenditure, depreciation on the same cannot again be allowed treating the same asset as capital expenditure. Therefore, the depreciation of Rs. 2,36,078/-, claimed on assets acquired the application of income this year and in the precious years, is disallowed and added to the income of the society.

6. Aggrieved from the order of the assessment, the assessee preferred an appeal before the Id CIT(A). Apropos to the grounds so raised the finding of the Id. CIT(A) is reproduced here in below:

“6.1 I have carefully considered the facts and circumstances of the case and the submission of the appellant. Relying on judicial pronouncement as highlighted above, I find that AO in assessment order has mentioned the fact that assessee is claiming depreciation on those assets in subsequent years against which 100% deduction has been taken in the year of purchase. It is seen that the assessee is claiming the double benefit of depreciation and therefore AO was justified in denying the same. Hence I find no infirmity in AO's order and confirm the addition made by AO.

7. In the result, appeal is dismissed.”

7. Feeling dissatisfied the assessee has preferred this appeal on the grounds as reiterated here in above challenging the disallowance of deprecation claimed in the return of income. To support the ground so raised the Id. AR appearing on behalf of the assessee relied upon the contention so raised before the Id.

CIT(A), wherein the assessee contended that Section 11 was amended and sub-section (6) was inserted via the Finance Act No. 2/2014. This sub-section specifically deals with this issue and stipulates that where the use of funds for acquisition of an asset has been accepted as application of income of the charitable trust, no deduction of depreciation or otherwise in respect of such asset would be allowed for determining the income of such charitable organization. This sub-section came into effect from assessment year (AY 2015-16). As pointed out by CIT(A) in Angoori Devi, this amendment was held to be prospective by ITAT, Bangalore in the case of Jyothy Charitable Trust v. DCIT (Exemptions), and the Supreme Court in Commissioner of Income Tax v. Rajasthan and Gujarati Charitable Foundation Poona, also agreed that the amendment is prospective. Therefore, for the AYS prior to 2015-2016, depreciation can be claimed on the assets, expenditure on which has already been accounted as application of income. The Id. AR of the assessee thus relied upon the said amendment and the judgment in the case of Supreme Court in the case of CIT Vs. Rajasthan & Gujarati Foundation 402 ITR 441(SC) and Jansava Trust Vs. ITO (Exemption) in ITA No. 320/Bang/2023 where in the claim of the depreciation is allowed.

8. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A) and that of the assessing officer. Based on those contentions so recorded the Id. DR prayed to sustain the addition.

9. Heard the parties, perused the material and judicial decision cited before us to drive home to the respective contentions so raised by the parties. The bench noted that in this appeal the only grievance of the assessee is disallowance of claim of depreciation in the scrutiny assessment by the Id. AO for an amount of Rs. 2,36,078/- and the confirmation of the said action by the Id. CIT(A) without any relief. Thus, the apple of discord in this case is whether the assessee is eligible to claim the deprecation in addition to the claim of the capital expenditure already claimed as application of income for the year under consideration or not. It is not under dispute that the assessee has claimed application of income as per section 11 of the Act in respect of the capital expenditure in the year of purchase. The assessee also claiming the depreciation of the said capital expenditure which the Id. AO disallowed for the year under consideration i.e. A. Y. 2006-07. The section 11 has

been amended w.e.f. 01.04.2015 and the relevant part of the amended section reads as under :

Section 11(6):

(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.

Thus, the amendment being prospective in nature cannot be applied in the year under consideration. We get strength of the view from the decision of the apex court in the case of CIT Vs. Rajasthan & Gujarati Foundation [402 ITR 441] where in the court held that

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of *Director of Income-tax (Exemption) v. Framjee Cawasjee Institute* [1993] 109 CTR 463. In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently,

Question No. 2 is answered in the Affirmative *i.e.*, in favour of the assessee and against the Department."

2. After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.

3. It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in '*Lissie Medical Institutions v. CIT* [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344'.

4. It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income-tax Act, has made amendment in Section 11(6) of the Act *vide* Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.

5. It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

6. For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters.

Thus, respectfully following the view of the apex court that the legislature, realising that there was no specific provision in this behalf in the Income-tax Act, has made amendment in Section 11(6) of the Act *vide* Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. Based on that observation we allow ground no. 1 raised by the assessee. The ground no. 2 & 3 being general in nature does not require our adjudication.

In the result the appeal of the assessee in ITA No. 440/JP/2023.

10. The fact of the case in ITA Nos. 441 to 444/JP/2023 is similar to the case in ITA No. 440/JP/2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal Nos. 441 to 444/JP/2023 are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 440/JP/2023 for the Assessment Year 2006-07 shall apply mutatis mutandis in the case of Rambagh Golf Club in ITA Nos. 441 to 444/JP/2023 for the Assessment Year 2011-12 to 2014-15.

In the result, five appeals of the assessee are allowed.

Order pronounced in the open Court on 09/11/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 09/11/2023

***Ganesh Kumar, PS**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-Rambagh Golf Club, Jaipur
2. प्रत्यर्थी / The Respondent- ITO Exemption, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA Nos. 440 to 444/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar