

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2456/Mum/2023
(A.Y. 2016-17)**

The Bombay Hockey Association Ltd. Mahendra Stadium D Road, churchgate Mumbai – 400 020	Vs.	ITO Exemption Ward 2(4) Piramal Chamber, Lal Baug, Parel, Mumbai – 400 012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACT3149E		
Appellant	..	Respondent

Appellant by :	Satish Mody
Respondent by :	Ajeya Kumar Ojha

Date of Hearing	16.10.2023
Date of Pronouncement	20.10.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the NFAC dated 20.05.2023 for A.Y. 2016-17. The assessee has raised the following grounds before us:

- “*The Learned Commissioner of Income-tax Appeal, National Faceless Appeal Centre, Delhi, has erred in confirming the disallowance of depreciation of Rs.61,43,093/-, being allowable expenditure towards application on the Objects of the Trust on the basis that it amounts to double deduction as addition to the assets as well as depreciation thereon both are claimed as an application on the objects of the Trust, without considering the fact that no claim has been made on addition of properties used on Objects of the Trust after the amendment of the Provisions of the 1.T.Act, 1961 as and from 01/04/2015.*
2. *The Learned Commissioner of Income-tax Appeal. National Faceless Appeal Centre, Delhi, has erred in making disallowance of Total*

Depreciation of Rs. 61,43,093/- as appearing in Income & Expenditure A/c without appreciating the fact that Appellant had only claimed Rs. 12,14,789/- as Depreciation as application during A.Y 2016 17 and balance Unabsorbed Depreciation of Rs.49,28,304/- was carried forward to subsequent years for set off.

3. *The Learned Commissioner of Income-tax Appeal, National Faceless Appeal Centre, Delhi, has erred in confirming the disallowance of depreciation as expenditure incurred on assets used for the charitable activities though no claim for deduction of addition of Fixed Assets/ capital expenditure acquired out of Income accumulated us. 11(1)(a) or 11(2) of the I.T. Act, 1961 was made in earlier years*
4. *The Learned Commissioner of Income-tax Appeal, National Faceless Appeal Centre, Delhi, has erred in not allowing set off of the carried forward losses as available to Appellant for earlier years against the Taxable Income arrived as per the Orders of the ITAT and/or High Court with respect to set off of Unabsorbed expenditure of earlier years.*
5. *The Appellant reserves the right to add, alter or amend the above grounds of appeal as and when found necessary.”*

2. Fact in brief is that assessee filed its return of income along with income and expenditure account, balance sheet and audit report in Form No. 10B on 16.10.2016 declaring nil income. The assessee trust was registered as a charitable organization with Charity Commissioner and also registered with CIT(Exemption) u/s 12A of the Act. During the course of assessment the AO noticed that assessee has claimed depreciation of Rs.61,43,093/- (on movable assets of Rs.22,15,281/- and on immovable assets of Rs.39,27,812/-) respectively. The assessing officer has disallowed the claim of depreciation on the ground that it amount to double taxation as addition to the asset as well as depreciation both were claimed as an application of the object of the trust.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee and also not allowed the claim of carry forward losses.

4. During the course of appellate proceedings before us the ld. Counsel submitted that assessee could not made any compliance before the ld. CIT(A) and therefore, ld. CIT(A) has passed ex-parte order u/s 250 of the Act on 20.03.2023. In this regard, the ld. Counsel submitted that assessee has not received any communication regarding the hearing fixed before the ld. CIT(A) because email of the assessee maintained on Hotmail given to the ld. CIT(A) was not active. The ld. Counsel submitted that now the assessee has maintained active new Email on Yahoo.Com as mentioned in Form no. 36, therefore, pleaded that more opportunity should be given to the assessee before the ld. CIT(A) for deciding the case of the assessee on merit.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the fact as elaborated above the ld. CIT(A) has passed ex-parte order u/s 250 of the Act on the ground that assessee has failed to make any response during the course of appellate proceedings. We have perused the copy of form no. 35 filed by the assessee before the ld. CIT(A) and found that in the form no. 35 the assessee has given the email address as sanjiv_k_mitra@hotmail.com which was not active therefore notices of hearing issued on this email was not received. We find that in the form no. 36 filed before us the assessee has given the new Email as sanjiv_k_mitra@yahoo.co.in. In view of the above facts and circumstances in order to decide the issue in appeal on merit, we restore this case to the file of the ld. CIT(A) for deciding afresh after affording opportunity of hearing to the assessee as provided u/s 250(6) of the Act. The ld. CIT(A) is requested to take on record the new Email Id given by the assessee for the purpose of making communication relating to appellate proceedings. The assessee is directed to make compliance

without any failure. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 20.10.2023

Sd/-

(Kuldip Singh)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 20.10.2023

Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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