

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3660/MUM/2023
(Assessment Year: 2016-2017)**

**Eye Bank Coordination and
Research Centre,**
56/60, K.B.H. Bachooli Hospital,
Merwanji Road, Parel,
Mumbai - 400012
[PAN: AAATE0133C]

..... **Appellant**

**The Income Tax Officer,
(Exem.) Ward 1(2), Mumbai,**
Piramal Chamber, Lal Baug,
Parel, Mumbai - 400012

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Shri P.D. Chougule

Date

Conclusion of hearing : 29.02.2024
Pronouncement of order : 21.03.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 21/08/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 14/12/2018, passed under Section 143(3) of the Income Tax Act, 1961

(hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:

"A) **Principle of Natural Justice Violated**

- "1. *The learned Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)] erred on facts and in law in passing the order u/s. 250 dated 21 August, 2023 without appreciating that the notice dated 8th August, 2023 bearing DIN :ITBA/NFAC/F/APL_1/2023- 24/1054943823(1) specified the date of compliance as 23rd August, 2023. Hence, the order is bad in law.*
 - 2) *The learned CIT(A) erred on facts and in law in not considering the appellant's application under Rule 46A along with the Additional Evidences filed on the 2nd June, 2023 while passing the order dated 21st August, 2023. Hence, the order is bad in law.*
 - 3) *The learned CIT(A) erred on facts and in law in not considering the appellant's response uploaded on the 20th July, 2023 while passing the order dated 21st August, 2023. Hence, the order is bad in law.*
 - 4) *The appellant prays that your honour hold that principles of natural justice have been violated in as much as the CIT(A) has passed the order dated 21 August, 2023 (a) without appreciating that the time for compliance of notice dated 8th August, 2023 was 23rd August, 2023; (b) without considering appellant's Application under Rule 46A along with Additional Evidences submitted on 2nd June, 2023 and (c) not considering the appellant's response uploaded on the 20th July,2023 . Hence, the order of CIT(A) may be set aside.*
- B) **Confirming disallowance of depreciation - Rs. 2,33,133/-**
- 5) *Without prejudice to the above, the learned CIT(A) erred on facts and in law in confirming the disallowance of depreciation amounting to Rs. 2,33,133/- without appreciating that the appellant had not claimed the cost of assets as application of*

income and hence the depreciation claimed on assets could not be disallowed.

- 6) *The appellant prays that your honour hold that the appellant is entitled to depreciation of Rs. 2,33,133/-.*
- C) **Without prejudice, restricting deduction u/s. 11(1)(a) to Rs. 2,199/-**
- 7) *Without prejudice to the above, the learned CIT(A) erred on facts and in law in not adjudicating grounds (6) and (7) regarding restricting deduction u/s. 11(1)(a) to Rs. 2,199/-.*
- 8) *The appellant prays that the AO may be directed to allow deduction u/s. 11(1)(a) as admissible under law.*
- D) **Costs**
- 9) *Appellant being a charitable institution prays that necessary costs for filing this appeal and representing this appeal before the hon'ble Tribunal may be awarded to the appellant.*
- E) **General**
- 10) *The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal."*

3. The relevant facts in brief are that the Appellant is a charitable trust carrying on, inert alia, the activities of eye bank co-ordination and research. The Appellant had filed return of income for the Assessment Year 2016-17 on the 31/3/2017 declaring 'Nil' income. In the return of income the Appellant had claimed deduction for depreciation of INR 2,33,133/-. The case of the Appellant was selected for scrutiny. During the course of assessment proceedings, the Appellant was asked to show cause why the deduction for Depreciation of INR 2,33,133/- should not be disallowed as per

provisions of Section 11(6) of the Act. The Appellant, vide letter dated 29/11/2018, submitted that the Appellant had not claimed the cost of fixed assets as an application of income in any of the earlier years and therefore, the provisions of Section 11(6) of the Act were not applicable to the Appellant. Accordingly, the Appellant was entitled to depreciation of INR 2,33,133/-. However, the Assessing Officer presumed that the cost of fixed assets must have funded out of the amount set apart under Section 11(2) of the Act or under the general provisions where 15% of income is deemed as application. The Assessing Officer accordingly disallowed depreciation of INR 2,33,133/-. Further, while assessing the income of the Assessee, the Assessing Officer allowed deduction under Section 11(1)(a) of the Act only to the extent of INR 2,199/- without appreciating that the Appellant was entitled to deduction @ 15% of the income from property held under trust.

4. Being aggrieved, the Appellant preferred appeal before the CIT(A). The Appellant moved application for admission of additional evidence vide letter, dated 26/05/2023. Vide notice dated 05/07/2023, the Appellant was asked to file submission by 20/07/2023. However, since the Appellant had not received a copy of the remand report on additional evidence filed by the Appellant, the Appellant sought adjournment vide letter dated 05/07/2023. Subsequently another notice dated 08/08/2023, was issued by the CIT(A) giving Appellant time till 23/08/2023 to file the written submissions. However, before the expiry of the aforesaid time, the CIT(A) passed order dated 21/08/2023 dismissing the appeal.
5. Being aggrieved, the Appellant is now in appeal before the Tribunal on the grounds reproduced in paragraph 2 above.

6. When appeal was taken up for hearing none was present on behalf of the Assessee. On perusal of the grounds raised by the Assessee we find that it has been pleaded by the Assessee that the CIT(A) had passed the order impugned without taking into consideration the application for additional evidence dated 26/05/2023 along with the additional evidence furnished by the Assessee, and the letter dated 05/07/2023 filed by the Appellant in response to notice dated 05/07/2023.

7. On perusal of the paper-book (running into 97 pages) filed by the Appellant, we find that the Appellant had moved application for admission of additional evidence before the CIT(A) vide letter dated 26/05/2023. The Assessing Officer had returned a finding that the Appellant had failed to bring on record relevant documents/details to show that the Appellant had not claimed the cost of fixed assets as an application of income in any of the earlier years, the Appellant had placed on record the computation of income along with financial statements for Assessment Year 2006-07 to 2016-17. Further, vide letter dated 05/07/2023, the Appellant had invited the attention of the CIT(A) to the application for additional evidence filed by the Appellant on 26/05/2023 and had sought time to submit comments on the remand report and to file submission. Subsequently, notice dated 08/08/2023, *[placed at page 93 and 94 of the paper-book]* was issued to the Appellant wherein time upto 23/08/2023 was granted to the Appellant for filing written submissions. However, on perusal of order passed by the CIT(A) we find that the none of the aforesaid application/documents/letters filed by the Appellant find any mention in the order passed by the CIT(A). Further, the order was

passed by the CIT(A) on 21/08/2023 whereas vide notice dated 08/08/2023, the Appellant was granted time till 23/08/2023 for filing written submissions. In view of the aforesaid, we are of the view that the order impugned was passed by the CIT(A) in violation of principles of natural justice without considering the material on record. Therefore, we set aside the order dated 21/08/2023, passed by the CIT(A) and restore the appeal before CIT(A) to its original number with the directions to CIT(A) to decide the appeal after taking into consideration the additional evidence filed by the Assessee after calling for remand report from the Assessing Officer, and calling for comments from the Appellant on such remand report in compliance with Rule 46A of the Income Tax Rules, 1962. In view of the aforesaid, Ground No. 2, 3 and 4 raised by the Appellant are allowed while all the other grounds raised by the Appellant are dismissed as being infructuous.

8. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 21.03.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 21.03.2024
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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