

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
MS. KAVITHA RAJAGOPAL, JM

**ITA No. 2928/Mum/2017**

(Assessment Year: 2011-12)

Swami Vivekanand Trading &  
Education Centre P. Ltd.  
6-3-655/2/3 1<sup>st</sup> Floor,  
Somajigudda, Hyderabad,  
Mumbai-400 082

Vs.

DCIT-4(3)  
Mumbai

**(Appellant)**

**(Respondent)**

**PAN No. AADCS1050N**

**Assessee by** : Shri P. Murali Mohal Rao, CA  
**Revenue by** : Shri Manoj Kumar Singh, DR

**Date of hearing:** 27.03.2024  
**Date of pronouncement :** 28.03.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Swami Vivekanand Training and education center Private Limited for assessment year 2011 – 12 against appellate order passed by Commissioner of income tax (appeals) – 9, Mumbai (the learned CIT – A) dated 19/12/2016 wherein appeal filed by the assessee against the assessment order passed under section 143 (3) on 18/3/2014 by the deputy Commissioner of income tax – 4 (3), Mumbai (the learned AO) was dismissed.
02. Assessee has raised following grounds of appeal: –



*"1. The order of the Ld. CIT(A)-9, Mumbai is erroneous both on facts and in law.*

*2. The Ld. CIT(A) erred in upholding the disallowance of the claim of depreciation u/s 32 of the Act for Rs.47,93,682/-*

*3. The Ld. CIT(A) ought to have appreciated that depreciation u/s 32 of the Act is allowable once the asset is kept ready for its use in the earlier year(s) Le. prior to the assessment year under consideration.*

*4. The Ld. CIT(A) erred in upholding the addition of Rs.4,15,44,689/- towards Unexplained Share Application Money.*

*5. The Ld. CIT(A) ought to have appreciated that the assessee company has not accepted any share application money during the financial year relevant to the assessment year under consideration.*

*6. The Ld. CIT(A) ought to have appreciated that no addition to the share capital has been made during the year under consideration.*

*7. The Ld. CIT(A) ought to have appreciated from the balance sheet that the amounts mentioned in Reserves & Surplus and Membership fees are brought forward figures and that there is no fresh increase during the year under consideration.*

*8. The appellant may add, alter or modify or substitute any other point to the grounds of appeal at*



*any time before or at the time of hearing of the appeal.”*

03. Brief facts of the case shows that assessee is stated to be engaged in the business of training and education filed its return of income on 17/9/2011 at loss of ₹ 12,239,085/-. The return of income was picked up for scrutiny by issue of notice under section 143 (2) of the act on 27/9/2012.
04. Assessee was issued notices under section 142 (1) on 5/6/2013 which was not complied with. AO further issued several notices however, the same were not complied with and no information was provided. Thus, the AO held that numbers of opportunities were provided to the assessee to furnish the documentary evidences in support of its return of income however, assessee has not submitted anything. The learned AO noted that in the annual accounts there was a note that as there was no commercial operation for the company during the year, quantitative details of sales and information as required under paragraph 3 and 4C of part II of schedule VI to the companies act, 1956 is not applicable. Further, on verification of the profit and loss account the learned AO also observed that the assessee has not shown any income for the year under consideration. However it was noted that assessee has claimed various expenditure under various heads and depreciation of ₹ 4,831,712/-. In the computation of income they assessee has added back the depreciation under the companies act of ₹ 4,793,682/- against the said expenditure of ₹ 4,831,712 and the balance amount of ₹



30 8030/- and depreciation as per the income tax act of ₹ 12,201,055/- totaling to ₹ 12,239,085 was shown as a current year loss and claimed to be carried forward for future years. The learned assessing officer noted that as assessee has not carried out any business 60 activity and on perusal of the depreciation schedule it was noted that assessee has claimed depreciation of ₹ of one crore 22,01,055/- as the assessee has not carried out any business activity during the year the assessee was asked to explain about the allowability of depreciation which was not replied to. Therefore the learned assessing officer noted that as in the profit and loss account the assessee has not shown any receipt and further there was no business activity therefore the assessee cannot be said to be used for the purposes of the business and accordingly he held that assessee has not satisfy the requirement of provisions of section 32 four claim of the depreciation accordingly the depreciation of ₹ 12,201,055/- was disallowed.

05. The AO further noted that assessee has shown said application money of ₹ 46,434,698/- which has been shown under the head membership as on 31/3/2011 and the same figure as on 31/3/2010. However on verification of the return of income for assessment year 2000 – 11 he found that assessee has shown said application money of ₹ 4,890,000/- only as on 31/3/2010. However as per the return filed as on 31/3/2011, the said application money was shown at ₹ 46,434,698/-. Therefore according to him there is an increase in the share application



money/membership fees of ₹ 41,544,698 compared to the previous year. As the assessee has not furnished any information with respect to the above sum and no confirmation has furnished, he found that the above sum is required to be added under section 68 of the income tax act as unexplained cash credit. He made such addition. Accordingly the assessment order under section 143 (3) of the act was passed on 18/3/2014 determining total income of the assessee at ₹ 41,506,670 against the returned loss of ₹ 12,239,085/-.

06. Aggrieved with the assessment order, appeal was preferred before the learned CIT – A which was disposed of per order dated 19/12/2016. The learned CIT – A considered claim of depreciation under section 32 of the income tax act but rejected it for the reason that according to the notes to accounts there was no commercial operation for the company during the year, in the profit and loss account there is no revenue therefore the assessee has not proved that the said assets were used for the business purpose during the relevant assessment year or not. With respect to the addition under section 68 of the income tax act of share application money and membership fees he considered the explanation of the assessee and confirmed the addition as assessee has not brought on record anything that this amount was genuinely received from genuine identifiable person/members through banking channel and the members were contributing own funds towards subscription. As the assessee has failed to show the above



details the addition made by the learned assessing officer was upheld.

07. Assessee aggrieved with the appellate order preferred the appeal before us. The learned authorised representative referred to the 109 pages paper book submitted before us. With respect to disallowance of depreciation he submitted that there is an opening block of assets at the beginning of the year, no new assets were purchased during the year, therefore it is only claim of depreciation on the opening WDV. He submits that in such circumstances, it is not required to prove the claim of depreciation by establishing user of the assets for subsequent years. To support his proposition he relied on the decision of the coordinate bench in 87/HYD/2007 in case of Coromandal fertiliser. With respect to the addition made under section 68 of the income tax act he referred to the annual accounts of the company for the year. He referred to the balance sheet and submitted that as per shareholder funds the capital as on 31/3/2010 is ₹ 49,90,800 and the same capital remained as at 31/3/2011. He further submitted that in case of the membership fees as on 31/3/2010 ₹ 46,434,698/- is the opening balance which also remained as on 31/3/2011. Therefore according to him when there is no new credit appearing in the balance sheet, the provisions of section 68 of the income tax act does not apply. He submits that the above sums are outstanding in the books of the company for last several years. To show this fact he referred to the annual accounts for financial year 2007 - 08 also wherein the identical sum is



outstanding. He further referred to the order of the learned CIT – A wherein this fact is admitted. Accordingly he submitted that both the additions are unwarranted.

08. The learned departmental representative vehemently supported the orders of the lower authorities. He submits that the assessee has not furnished any information before the learned assessing officer and therefore the addition is made under section 68 of the income tax act with respect to the membership fees and said application money. With respect to the depreciation he submits that argument of the assessee is unsustainable because assessee is not carrying on any business during the assessment year. The assessee has not fulfilled the basic condition of the user of the asset. He submits that the depreciation is claimed by the assessee on all block of the assets therefore the argument of the assessee that user is to be seen only in the year in which the assets enter into the Block is not relevant in this case. He submits that the depreciation is claimed on all the blocks of the assets which have not been used during the year. It is not the case of the assessee that depreciation is denied on one of the assets forming part of one of the blocks of assets.
09. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts clearly shows that during the course of assessment proceedings the assessee did not appear before the learned assessing officer despite issue of several notices. Even the notices for non-compliance were also issued.

However on appeal before the learned CIT – A assessee made submissions which were considered.

010. There are only to substantive issues in this appeal. As per ground number 2 and 3 assessee has challenged the disallowance of depreciation under section 32 of the income tax act of ₹ 4,793,682/-. By ground number 4 – 7 assessee has challenged the addition of ₹ 41,544,689 towards unexplained sale application money.

011. On the first issue of the depreciation it is apparent that assessee has claimed depreciation of ₹ 12,201,055 during the year. The details of the depreciation is stated in the computation of total income is comprising of block of building, furniture and fittings, plant and machinery and computer. There is no addition or deletion during the year. It is also a fact that in the profit and loss account there is nil income shown. Assessee has stated revenue stream of income of guest accommodation, restaurants and banquets, subscription from members and others. There is no revenue for the year. The assessee has debited general expenses of profit and loss account of ₹ 27,000 and audit fees of ₹ 11,030. As per the companies act depreciation debited to the profit and loss account is ₹ 4,793,682 resulting into loss of ₹ 4,831,712/-. In the notes on accounts company has categorically stated that there were no commercial operations for the company during the year. Therefore admittedly there is no business activity carried on by the assessee. According to the provisions of section 32 (1) of the act depreciation is allowable on block



of assets if the assets are used by the assessee for the purposes of the business. The claim of the learned assessing officer and the learned CIT – A is that there is no business carried on by the assessee during the year. Further it is not the case of the assessee that the learned assessing officer has singled out any asset forming part of the block of the asset to test its individual user. Therefore the judicial precedents relied upon by the learned authorised representative does not help the case of the assessee. Further before the learned CIT – A assessee has raised several legal contentions, none of those decisions were considered by the learned CIT – A. The learned CIT – A merely referred to the notes to the accounts and confirmed the disallowance of depreciation. However as assessee did not get any opportunity of explanation before the learned assessing officer who passed an assessment order is assessee did not furnish details before him, in the interest of justice, we set-aside this issue back to the file of the learned assessing officer with a direction to the assessee to prove that in absence of any business activity carried on by the assessee, how the assessee is entitled to claim of depreciation under section 32 (1) of the act. The learned AO may examine the same and decide the issue afresh.

012. Coming to the second issue of the addition under section 68 of the income tax act it is apparent that share capital of the company does not have any increase during the year. The opening share capital was ₹ 4,990,800/- and the same remained at the close of the year. Further the



membership fees at the beginning of the year was ₹ 46,434,698/- and which also remain the same as on 31/3/2011. Thus it is apparent that there is no fresh credit during the year in either of the two accounts. Therefore the claim of the assessee that there are no fresh credits during the year is apparent. However, as the learned assessing officer in the assessment order has specifically stated that the reason addition of ₹ 41,544,698/- during the year and the same amount has been added as unexplained cash credit under section 68 of the act. Neither the learned authorised representative nor the learned departmental representative could explain how the above figure is arrived at. Further the learned CIT - A also not considered that how the amount of ₹ 41,544,698/- has been arrived at by the learned assessing officer. Without examining the fact that whether the assessee has received any sum during the year or not, he has confirmed the addition under section 68 of the act. The learned CIT - A also did not consider the facts stated by the assessee that the share capital of the assessee company remains unchanged for last 3 years. Therefore, we set-aside the whole issue back to the file of the learned assessing officer within direction to the assessee to substantiate before the learned assessing officer that there are no credits in the books of account during the year on account of share application money or membership fees. The learned assessing officer may examine the same and decide the issue afresh.



013. Accordingly, both the issues of allowance of depreciation as well as addition under section 68 of the income tax act are restored back to the file of the learned assessing officer.

014. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28.03.2024.

Sd/-  
(KAVITHA RAJAGOPAL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.03.2024

*Sudip Sarkar, Sr.PS/Dragon*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai