

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

**SHRI OMPRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITANo.2382/MUM/2023
(Assessment Year: 2015-16)**

Royal Common wealth Society for Blind,
A-3, Shivdham CHS Ltd. Link Road,
Kanchapada, Malad,
Mumbai-400064 (West)
[PAN: AAATR0444H]

..... Appellant

DCIT (Exemption)-II(I), Mumbai
Piramal Chambers, 5th Floor,
Lalbaug, Parel, Mumbai-400012

Vs

• • • Respondent

Appearance

For the Appellant/Assessee : Shri Mohammad Ammar
For the Respondent/Department : Shri Rajendra Chandekar

Date

Conclusion of hearing : 23.02.2024
Pronouncement of order : 27.03.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 26/04/2023, 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 2015-16, whereby the Ld. CIT(A) dismissed the appeal of the Assessee against the Assessment Order, dated 30/11/2017, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in Disallowing the depreciation of Rs. 35,35,702/- claimed by the assessee as application of fund without appreciating the fact that assessee Trust has not claimed cost of the assets as application fund at any time.*
 - 2. On the facts and in the circumstances of the case and in law, the learned CAT(A) erred in holding the act/on of the AO by wrongly interpreted the provisions of sub-section(6) of Section 11 of the Act inserted by Finance Act 2014 and was further wrong to disallow the depreciation.*
 - 3. On the facts and in the circumstances of the case and in law, the learned CAT(A) erred in holding the finding of Ld. AO that depreciation allowed in case of Trust only when the assets purchase out of the corpus fund or borrowed fund.*
 - 4. On the facts and in the circumstances of the case and in law, the initiation of penalty proceeding under section 271(1)(c) is bad in law keeping in view the grounds mentioned above."*
3. The relevant facts in brief are that the Appellant is a Trust running charitable activities for the visually impaired and holding registration as a charitable organization under Section 12A of the Act as well as under Bombay Public Trusts Act, 1950.
 4. For the Assessment Year 2015-16, the Appellant filed return of income on 15/09/2015 declaring 'Nil' income. The case of the Appellant was selected for scrutiny. During the assessment proceedings the Assessing Officer noted that the Appellant had claimed depreciation of INR 35,35,702/-. Vide order sheet entry, dated 13/10/2017, the Appellant was asked to explain as to why the aforesaid claim for depreciation should not be disallowed in view of the provisions contained in Section 11(6) of the Act. The Appellant in its reply letter, dated 16/11/2017, inter alia, submitted that the claim for depreciation made by the Appellant was in compliance with the provisions of Section 11(6) of the Act as the Appellant had claimed

depreciation in respect of the assets the cost of acquisition of which was not claimed as application of income during the relevant previous year or any other previous years. However, the Assessing Officer denied deduction for depreciation claimed by the Appellant. The Assessing Officer was of the view that Appellant had not purchased the assets under consideration either from corpus funds or borrowed funds. Therefore, the Appellant had purchased the assets under consideration either from the funds accumulated in terms of Section 11(2) or from the 15% deemed application of income and in both the said cases it can be said that the Appellant had claimed cost of the asset as application of income. Thus, vide Assessment Order, dated 30/11/2017, passed under Section 143(3) of the Act, the Assessing Officer disallowed depreciation of INR 35,35,702/-claimed by the Appellant.

5. In appeal preferred by the Appellant before the CIT(A) against the above disallowance of depreciation, the CIT(A) agreed with the Assessing Officer and confirmed the disallowance vide order, dated 26/04/2023.
6. Being aggrieved by the above order, dated 26/04/2023, passed by the CIT(A) dismissing the appeal, the Appellant is now in appeal before us on the grounds reproduced in paragraph 2 above.
7. We have heard the considered the rival submission and taken into consideration the material placed before us including the submission dated 12/12/2023 filed by the Appellant alongwith the relevant details/documents and extracts of the Income & Expenditure Account and Balance Sheet of the Appellant for the Assessment Years 2006- 07 to 2015-16.
8. One perusal of the material on record item emerges that as per

Depreciation Schedule, being part of Notes forming part of the Financial Statement for the Financial Year 2014-15 relevant to Assessment Year 2015-16, the depreciation as per books of accounts stood at INR 45,77,078/- consisting of deprecation of INR 85,772/- on the immovable properties and INR 44,91,306/- on the movable properties. Before the CIT(A), the Appellant had filed a chart summarizing the claim of depreciation and claim of application on income made during various assessment years starting from the Assessment Year 2007-08 and ending with Assessment Year 2015-16. As per the aforesaid chart, the Appellant had claimed depreciation for INR 35,35,702/- for the Assessment Year 2015-16. During the course of hearing it was explained that the difference of INR 10,41,376/- [INR 44,91,306 Less INR 35,35,702/-] was on Account of deprecation on Gift Assets which has been adjusted against Gift Reserve and has not been claimed as deduction by the Appellant. On perusal of paragraph 3.3 of the order passed by the CIT(A) wherein the submission of the Appellant have been reproduced (*at page 15 of 21 of the order impugned*), we find that fixed assets were received as grants-in-kind from the Royal Commonwealth Society for the Blind, United Kingdom by the Appellant and the actual value given in the gift certificate was debited to the Fixed Asset Account while corresponding credit was made to the Gift Reserve Account. The depreciation on Fixed Assets received as grant-in-aid was not claimed as deduction and was set off against the Gift Reserve Account. In the present appeal we are concerned with the depreciation claim of INR 35,35,702/- made by the Appellant after exclusion of deprecation of INR 10,41,376/- out of the total book deprecation of INR 45,77,078/-. The contention of the Appellant before us was that the authorities below had failed to appreciate that the depreciation of INR 35,35,702/- claimed during

the relevant previous year consists of depreciation claimed in respect of fixed assets purchased during the relevant previous year and the preceding assessment years in respect of the which cost of purchase has not been claimed as application of income. On perusal of record we find that the aforesaid contention of the Appellant is supported by the documents on record. On perusal of the depreciation schedule for the Assessment Year 2015-16, we find that addition of INR 69,64,862/- was made to the Capital &IT Assets during the relevant previous year and depreciation on the same (computed at the rate of 40%)comes to INR 27,85,945/-.Similar additions to fixed assets have been made during the preceding assessment years as reflected in the respective depreciation schedules forming part of financial statements for the Assessment Year 2010-11 to 2014-15. We have gone through the summary of the claim of depreciation and application of income made in Assessment Years 2007-08 to 2015-16 contained in the summary chart submitted by the Appellant as part of written submissions. According to the said chart from Assessment Year 2010-11 to Assessment Year 2015-16 the Appellant had not claimed cost of fixed assets purchased as application of income and has been claiming depreciation on the fixed assets purchased during the aforesaid period. Therefore,we find merit in the contention of the Appellant that the depreciation of INR 35,35,702/- claimed in the computation of income for the Assessment Year 2015-16 does not pertain to fixed assets cost of which has been claimed as application of income in the relevant assessment year or the any other assessment year. Since the claim of depreciation made by the Appellant is in accordance with the provisions contained in Section 11(6) of the Act, we delete the disallowance of INR 35,35,702/- and direct the Assessing Officer to allow Appellant's claim of depreciation of INR 35,35,702/-. Accordingly, Ground No. 1 & 2 raised by the

Appellant are allowed, while GroundNo.3, 4 & 5 are dismissed as being infructuous.

- 9 In terms of paragraph 8 above, the present appeal is allowed for statistical purposes.

Order pronounced on 27.03.2024.

Sd/-
(OmPrakash Kant)
Accountant Member

मुंबई Mumbai; दिनांक Dated: 27.03.2024
Alindra, PS

Sd/-
(Rahul Chaudhary)
Judicial Member

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,

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