

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

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| ITA No.75/Bang/2024 |
| Assessment Year: 2016-17 |

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| ACIT (Exemptions), Circle-1 Bengaluru | Vs. | Sri Raghavendra Educational No.13/4, Sri Raghavendra Hospital, Tumkur Road T. Dasaralli 560 057 Karnataka PAN NO : AACTS7624Q |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | N O N E |
| Revenue by | : | Shri V. Parithivel, D.R. |

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|------------------------------|---|------------|
| Date of Hearing | : | 15.04.2024 |
| Date of Pronouncement | : | 15.04.2024 |

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by revenue is directed against order of NFAC for the assessment year 2016-17 dated 15.11.2023. The assessee has raised following grounds of appeal:

1. *The order of ld. CIT(A) is opposed to facts and circumstances of the case.*
2. *The ld. CIT(A) has erred in not giving a finding about the year of purchase of Fixed Assets in respect of which depreciation was claimed by the assessee during the FY 2015-16.*
3. *The ld. CIT(A) has erred in not giving a finding that the assessee had not claimed the cost of fixe assets in respect of which depreciation was claimed during the FY 2015-16 as “Application of income” in the earlier financial year.*
4. *The ld. CIT(A) has erred in allowing the claim of depreciation for the FY 2015-16 merely on the submission of the assessee that it had not claimed*

the corresponding cost of purchase of fixed assets in the earlier years without verifying the documents relating to the purchase of fixed assets in respect of which depreciation was claimed during the FY 2015-16.

5. *The ld. CIT(A) has erred in allowing the claim of depreciation for the FY 201516 merely on the submission of the assessee that it had not claimed the corresponding cost of purchase of fixed assets in the earlier years without examining the income & expenditure account of the earlier financial years and ascertaining whether the cost of fixed assets in respect of which depreciation was claimed had not been claimed as "Application" in the income & expenditure account of the earlier financial years.*
6. *The appellant craves lead to add, alter or amend all or any of the grounds of appeal before or at the time of the hearing of the appeal.*

2. None appeared before us for the assessee. We proceed to adjudicate the appeal after hearing the ld. D.R.

3. Facts of the case are that the Ld. AO has disallowed depreciation of Rs.2,98,26,716/- on the alleged ground that the cost of acquisition of the assets was allowed as capital expenditure in earlier years and the same was held as Income for the impugned Assessment year. The AO has generalized the issue without any specific mention of the allowance of the capital expenditure in the earlier years. If that were to be so, it was not precluded from mentioning the details as to the assessment year in which the alleged entire cost of assets was said to be allowed and also the AO has not brought on record the assets on which the capital expenditure was said to have been allowed. In the Assessment Order in para 5.1 and 5.2, the AO has held that the deduction u/s. 11 was allowed as application of funds and therefore the depreciation was said to be not allowable. The AO has relied upon the decision of the Hon'ble Supreme Court in the case of M/S. Escort Ltd (191) ITR 043 and also decision of this Tribunal dated 26-10-2010 in the case of M/S. Lissie Medical Institutions and the same was confirmed by the Hon'ble Kerala High Court. In this regard the Assessee submitted that the above judicial decisions are not applicable to the case of the Assessee since no capital expenditure was claimed in earlier years as

contended but the Ld. AO on suspicion, surmise and with element of guess work.

4. The ld. CIT(A) observed that the assessee in the written submission, clearly brought on record that the ld. AO disallowed the depreciation on suspicion/surmise and an element guess work. He further observed that the assessee also submitted that the case laws referred by the ld. AO are not applicable to their case since no capital expenditure was claimed in the earlier years as contended by the ld. AO. When the details are forwarded to the ld.AO, he remained silent in submitting his comments in remand report. The ld. CIT(A) observed that in the written submission the assessee society clarified that for the first time the ld. AO interpreted the issue on wrong premises and disallowed the depreciation. Upon perusal of the details submitted by the assessee, the ld. CIT(A) was inclined to allow this ground taken by the assessee and he directed the ld. AO to delete this addition.

5. We have heard the ld. D.R. and perused the materials available on record. As rightly pointed out by the ld. D.R., the provisions of section 11(6) of the Income Tax Act, 1961 (in short "The Act") reads as follows:

"Section 11(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."

5.1 This section has been inserted by the Finance Act (2), 2014 w.e.f. 1.4.2015. Thus, this provision is applicable w.e.f. the assessment year 2015-16, the assessment year involved herein is 2016-17. However, NFAC has allowed this ground without examining whether assessee has claimed the cost of purchase of fixed asset as an application of income while claiming exemption u/s 11 of the Act in the assessment year when it was acquired these fixed assets and if the assessee has already claimed cost of purchase of

fixed assets as application of income in relevant assessment year while claiming exemption u/s 11 of the Act, the assessee cannot be granted once again the depreciation as a part of application of income in this assessment year, which amounts to double deduction. This fact has to be verified at the end of Id. AO and to decide afresh in the light of provisions of section 11(6) of the Act. Accordingly, this issue is remitted to the file of Id. AO for reconsideration in the light of above observation.

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

Order pronounced in the open court on 15th Apr, 2024

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 15th Apr, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.