

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4680/Mum/2023
(Assessment Year :2016-17)**

Sitaben Shah Memorial Trust 412, Floor 4, 17G Vardhaman Chamber Cawasji Patel Road Horniman Circle Fort, Mumbai-400001	Vs.	ACIT, Exemption Circle-2 Mumbai Room No.608, 6 th Floor Cumballa Hill MTNL Building Peddar Road Dr. Gopalrao Deshmukh Marg Mumbai – 400 026
PAN/GIR No.AAGTS6429K		
(Appellant)	..	(Respondent)

Assessee by	Shri Sahil Shah
Revenue by	Shri P.D. Chougule
Date of Hearing	21/05/2024
Date of Pronouncement	27/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 31/10/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2016-17.

2. In the grounds of appeal, the assessee has raised following grounds:-

“1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) ['CIT(A)'] erred in upholding the action of the learned Assessing Officer ['Ld. AO'] of disallowing depreciation of Rs. 73,15,000 on buildings and adding the same to the total income of the Appellant without appreciating the fact that the asset i.e. building on which depreciation was claimed was never treated as application of income in earlier years.

B. ADDITIONAL GROUND OF APPEAL

Incorrect computation of total income in the assessment order dated 7 December 2018

1. On the facts and in the circumstances of the case and in law, the learned Ld AD erred in calculating the total income of the assessee on the basis of.

-Computation of income which was incorrectly submitted by Appellant during the assessment proceedings and

-Not considering the correct figures as per Income tax return filed by the Appellant.

-In doing so Ld AO has allowed amount spent on capital expenses of Rs. 87,76,767 instead of Rs. 4,97,71,129 as correctly claimed by Appellant in the income tax return filed by appellant leading to short claim of Rs. 4,09,94,362.

The Appellant craves leave to add, alter, vary, omit, substitute, modify or delete the above grounds of appeal, at any time before or, at the time of hearing of the appeal, so as to enable to decide this appeal according to law.

3. The brief facts are that assessee is a trust which has been registered as charitable organisation and was granted registration u/s.12A. The trust has been managing and

maintaining three schools in and around Thane. In so far as the issue relating to disallowance of depreciation, Id. AO noted that assessee has claimed depreciation of Rs.1,07,70,672/- in the income and expenditure account and after incorporating Section 11(6), he disallowed the depreciation of Rs.73,15,000/-. Assessee's claim was that no such depreciation has been claimed which fact has been noted by the Id. CIT(A) also in para 7.2.1 which is reproduced hereunder:-

7.2.1 The submission of the appellant is examined. The appellant claimed that the Appellant has claimed application of income of Rs. 15,62,66,033 out of which depreciation only to the extent of Rs. 34,55,672/- is claimed as application to income. The appellant claimed that no depreciation on building of Rs. 73,15,000/- is claimed by the Appellant. The Appellant further claimed that during the course of assessment proceedings it had inadvertently submitted incorrect depreciation workings of depreciation amounting to Rs. 1,07,70,672/-. Therefore, the appellant pleaded to delete the said disallowance of depreciation on buildings amounting to Rs 73,15,000/- which was not even claimed by the Appellant in its return of income.

4. Despite noting this fact that assessee has not claimed any depreciation, Ld. CIT(A) has confirmed the action of the Id. AO.

5. After considering the relevant evidences placed on record as referred to by the Id. Counsel for the assessee, we find that in the income tax returns as well as in the audited accounts there was no such claim for depreciation on building for amount of Rs.73,15,000/-. The only claim pertains to depreciation of Rs.34,55,672/- which was on account of computer, furniture,

plant and machinery and school bus. The assessee has not claimed any depreciation on the building. In fact, this was specifically brought to the knowledge of the ld. AO where assessee had submitted the calculation of depreciation vide letter dated 18/10/2018, the copy of which has been placed in the paper book in the pages 18 & 19. Thus, when assessee has not claimed any depreciation where is the question of any kind of disallowance. This shows lack of application of mind not only by the ld. AO. This is perpetuated by the casual and lackadaisical order by the ld. CIT(A) despite noting this fact in his order (supra). Thus, the disallowance of depreciation made by the ld. AO of Rs.73,15,000/- is deleted.

6. In so far as the second ground is concerned, the only contention of the ld. Counsel is that ld. AO has wrongly computed the income and has given the following working as per ITR and as per the assessment order.

Computation of Income	As per ITR	As per assessment order
<i>Sources of Income</i>		
<i>Gross Income</i>	18,38,81,992	18,38,81,992
<i>Voluntary Contribution</i>	1,65,00,000	1,65,00,000
<i>Total (A)</i>	20,03,81,992	20,03,81,992
<i>Less: Application of Income</i>		

<i>-Revenue</i>	<i>15,62,66,033</i>	<i>16,35,81,033</i>
<i>-Capital</i>	<i>4,97,71,129</i>	<i>87,76,767</i>
<i>Total (B)</i>	<i>20,60,37,162</i>	<i>17,23,57,800</i>
<i>Less: 15% set apart (C)</i>	<i>3,00,57,299</i>	<i>2,80,24,192</i>

<i>Details of Application of Income - Revenue account</i>	<i>Amount (Rs)</i>	<i>Amount (Rs)</i>	<i>Difference</i>
<i>Donation given</i>	<i>4,00,00,000</i>	<i>4,00,00,000</i>	
<i>Expenditure on the objects of the trust</i>	<i>11,28,10,361</i>	<i>11,28,10,361</i>	
<i>Depreciation</i>	<i>34,55,672</i>	<i>1,07,70,672</i>	<i>73,15,000</i>
<i>Total</i>	<i>15,62,66,033</i>	<i>16,35,81,033</i>	

7. Accordingly, ld. AO is directed to compute the income as per the income tax return filed by the assessee because no reason has been given for distorting the application of income without giving any finding specifically when the amount of Rs.27,50,000/- added by the ld. AO on account of treating it as voluntary contribution which has been deleted by the ld. CIT(A). Accordingly, the ld. AO is directed to compute the income correctly.

8. In the result, appeal of the assessee is allowed.

Order pronounced on 27th May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 27/05/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai