

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1005/Mum/2024
(Assessment Year :2016-17)**

Nandlal Tolani Charitable Trust 10-A A Bakhtawar Nariman Point Mumbai-400 021	Vs.	ITO EXEM Ward 2(1) 618, 6 th Floor MTNL TE Building Dr. Gopalrao Deshmukh Marg Cumbala Hill Road Mumbai - 400 026
PAN/GIR No.AAATN0043Q		
(Appellant)	..	(Respondent)

Assessee by	Shri Satyaprakash Singh
Revenue by	Shri Ashok Kumar Ambastha
Date of Hearing	13/06/2024
Date of Pronouncement	28/06/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 18/01/2024 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 assessee has raised following grounds:-

1. *The Learned CTT(A) and Learned A.O. have erred in disallowing depreciation of Rs.60,59,429/- on the ground that Assessee has claimed the original purchase price of assets as deduction u/s.11(1)(a) of the Act which amounts to double deduction overlooking that Appellant has not claimed deduction for capital expenditure as deduction as application of funds towards charitable purposes between A.Y.1992-93 and A.Y.2016-17 and therefore there is no double deduction and, hence depreciation on such assets cannot be disallowed.*
2. *The Learned CIT(A) and the Learned A.O. have erred in overlooking the provisions of Section 11(6) of the Act which provides that income shall be determined without deduction or allowance of depreciation in respect of any assets, acquisition of which has been claimed as an application of income in the same or any other previous year which makes it very clear that for assets, where application of income on such assets is not claimed in the same or any other previous years, the Assessee cannot be denied the deduction of depreciation.*
3. *The Learned A.O. has erred in not considering the MEMORANDUM explaining the insertion of Section 11(6) which provides that "The provisions need to be rationalized to ensure that double benefit is not claimed", as in the case of the Appellant the original cost of assets has not been claimed as deduction and therefore there is no double benefit claimed by Assessee and therefore depreciation u/s.11(6) cannot be disallowed.*
4. *The Learned A.O. has erred in not allowing deduction u/s.11(2) of Rs.2,81,32,854, surplus income as determined in the Assessment Order and restricted the deduction u/s.11(2) to Rs.2,20,73,425, surplus income as determined in the Return of Income.*
5. *The Learned A.O. has erred in charging interest of Rs.3,08,187/- u/s.234B of the Act.*

6. *The Appellant craves to add and or alter the above grounds of appeal.*

3. The brief facts are that assessee is a charitable trust registered with Charity Commissioner and has also granted registration u/s.12A by the Commissioner of Income Tax. It has filed its return of income on 29/09/2016 alongwith income & expenditure account, balance sheet and audit report in Form 10 declaring 'Nil' income after claiming deduction u/s.11. The ld. AO noted that the assessee trust has claimed depreciation of Rs.60,59,429/-. He further observed that assessee trust has also claimed it as capital expenditure in the computation of income, hence, the same amounts to double deduction. However, the assessee in response to notice by the ld. AO categorically submitted that no deduction for the capital asset acquired has been claimed in any of the assessment years and the relevant extract in the reply as noted in the assessment order is reproduced hereunder:-

1. The assessee submits that in the computation of Income the assessee trust has claimed depreciation of Rs.60,59,429. It is to be noted that no deduction for the capital assets acquired have been claimed in any of the years until A.Y.2012-13. The same can be observed from the copies of the statement of total income enclosed herewith for AY 1992-93 onwards

2. Informatively, the assessee has not claimed deduction of capital assets in any of the earlier years as application of income till AY 2012-13. Therefore question of claiming double deduction ie. deduction for capital assets purchase and deduction for depreciation does not arise. The assessee has claimed deduction for depreciation on the capital expenditure till AY 2012-13.

3. Commencing from AY 2013-14, the appellant has been claiming deduction for the cost of capital assets purchased, while

computing taxable income. However no deduction for depreciation has been claimed on the same capital assets in the computation of income.

4. We are enclosing a statement containing information for last 25 years showing details of deduction claimed in respect of capital assets and depreciation

5. In view of the above, we are to reiterate that the claim of depreciation of Rs.60,59,429/- in the AY 2016-17 and no deduction has been claimed on capital assets in respect of which depreciation has been claimed as an application of income and therefore the question of double deduction does not arise.

4. Despite that ld. AO held that same is double deduction and proceeded to disallow depreciation. The ld. CIT(A) had confirmed the action of the ld. AO after noting the entire written submissions of the assessee and incorporating Section 11(6) of the Act and held that where a trust needs to apply its income and the same has been applied by way of acquisition of an asset, an allowance or deduction by way of depreciation shall not be allowable. The amendment in the said Section 11(6) has been brought w.e.f. 01/04/2013 from A.Y.2015-16. He further noted that assessee has claimed the benefit of capital expenditure for A.Y.2013-14 and 2014-15 without elaborating it from the records as to whether any such claim or benefit was taken.

5. Before us, ld. Counsel submitted that at no point of time assessee had claimed any application of income or claim in capital expenditure in all the years. Therefore, there was no case of any double deduction, once in the form of application of income towards capital and secondly, as depreciation on such

capital asset. The assessee had only been claiming deduction in the form of depreciation. On this particular asset where depreciation has been claimed, the same was acquired in 1992-93 and till 2012-13, no such utilization of capital asset was claimed. Assessee has claimed deduction for cost of capital asset purchased on entirely different asset while computing the taxable income for which no depreciation was claimed. In so far as claim of depreciation on the asset shown in the balance sheet no utilisation has been claimed in any of the year. Thus, he submitted that no deduction has been claimed on capital asset in respect of the asset on which depreciation has been claimed as application of income, therefore, there was no question of any double deduction.

5. From the perusal of the facts and material brought on record and the submissions of the assessee as incorporated in the impugned orders, we find that assessee trust had claimed depreciation of Rs.60,59,429/- in A.Y.2016-17 which has been claimed on capital asset which was never claimed as deduction as an application of income. However this aspect has not been properly examined assessee brought on record, thus, for the limited purpose, this issue is remitted back to the file of the ld. AO, to examine whether, the depreciation had been claimed on a capital asset which was never claimed as deduction or application of income in earlier years. If it has not been claimed, then depreciation cannot be disallowed by invoking Section 11(6). Accordingly, ld. AO after verifying the contention of the assessee and the records will allow the depreciation.

6. In so far as issue raised in Ground No.4, the same has been held to be academic because if depreciation is allowed, then there would not be any surplus income which has been determined in the assessment order. Accordingly, this issue is treated as consequential.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 28th June, 2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 28/06/2024
KARUNA, sr.ps

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