



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No. 09/LKW/2020
Assessment Year: 2014-15

ACIT (Exemptions) T. C. 46V, 5 th Floor, U.P.S.I.D.C Ltd, Vibhuti Khand, Gomti Nagar, Lucknow-226010.	v.	Shiv Ram Das Gulati Memorial Society 53, Leader Road, Allahabad, UP
		PAN:AABTS4990G
(Appellant)		(Respondent)

C. O. No. 05/LKW/2022
(In arising out of ITA. No. 09/LKW/2020)
Assessment Year:. 2014-15

Shiv Ram Das Gulati Memorial Society 53, Leader Road, Allahabad, UP.	v.	ACIT (Exemptions) T. C. 46V, 5 th Floor, U.P.S.I.D.C Ltd, Vibhuti Khand, Gomti Nagar, Lucknow-226010.
PAN:AABTS4990G		
(Appellant)		(Respondent)

Appellant by:	Shri Manish Kumar Deorah, CA		
Respondent by:	Smt. Namita S. Pandey, CIT(DR)		
Date of hearing:	13	08	2024
Date of pronouncement:	29	08	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This is an appeal preferred by the revenue and the cross-objection (CO) preferred by the assessee against the order of the Ld. ACIT(E), Lucknow dated 30.10.2019 relating to the AY 2014-15. The grounds of appeal of the Revenue (for AY. 2014-15) are as under: -

"1. Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition made of Rs.8,48,32,796/- under head depreciation

without appreciating the facts that claim of depreciation amounts to double deduction which is not permissible under I. T. Act.

2. Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition made under head donation amounting to Rs.95,191/- without appreciating the facts that donation was paid to other persons, whom objects are not similar to the assessee.”

2. Brief facts of the case are that the assessee is a registered society u/s 12AA of the Income Tax Act, 1961 (hereinafter “the Act”) which carried on educational activities claiming benefits u/s 11 & 12 of the Act. While framing the assessment, the Assessing Officer (“AO”) has made a disallowance of depreciation of Rs.8,48,32,796/- and disallowance of donation paid of Rs.95,191/- since there is no provision in the Act for allowing the claim of the assessee of Rs. 8,48,32,796/- regarding depreciation amounts to double deduction and Rs.95,191/- regarding the donation paid to other persons. Feeling aggrieved by the above order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who deleted the addition made by the AO but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

3. We have heard both the parties and perused the record. We have also perused the written submission submitted by Ld. CIT(DR), forming part of the paper book from page no. 1 to 8. On perusal of the record, we find that in assessee’s own case the decision of Hon'ble Allahabad High Court in the case of CIT and Anr Vs. Shiv Ram Das Gulati Memorial Society All, in Appeal No. 323 of 2011 order dated 19/01/2018, has on earlier occasion decided the issue regarding allowability of depreciation in favour of the assessee. The relevant portion of order is reproduced as under: -

“These questions have already been answered in favour of the assessee and against the department by the Hon'ble Apex Court in the case of Commissioner of Income Tax –III, Pune Vs. Rajasthan and Gujarati

Charitable Foundation Poona decided on 13th December, 2017 wherein the Apex Court has held that the assessee is liable to depreciation on the assets of a charitable organization. The same view has also been taken in favour of the assessee by the Division Bench of this Court in CIT Vs. Seth Anandram Jaipuria Edu. Society Cantonment, Kanpur decided on 07/03/2017.

In view of above, the question of law is answered in favour of the assessee and against the department. The appeal is accordingly dismissed.”

5. For the various reasons discussed in the foregoing and following the judgment cited above, more particularly of the binding Hon'ble Allahabad High Court in the cases of Shiv Ram Das Gulati Memorial Society (supra), we direct the AO to allow the depreciation in accordance to law.

6. Ground no. 2 is relating to donation amounting to Rs.95,191/-. The Ld. DR has argued that the Ld. CIT(A) has wrongly deleted the donation amounting to Rs.95,191/- made by the AO. The Ld. AR relied upon by the impugned appellate order of the Ld. CIT(A) in earlier assessee's appeal. On perusal of the record, we find that this issue is covered in favour of the assessee in earlier year for AY. 2012-13, Allahabad/10600/2015-16 dated 07/03/2019 and for AY. 2013-14, Appeal No. CIT(A), All/10600/2015-16 dated 08/03/2019. Therefore, we direct the AO to allow the amounting to Rs.95,191/- in accordance to law.

C.O. No. 05/LKW/2022 (for AY. 2014-15)

6. Now, we take up the cross objection of the assessee i.e. C.O. No.05/LKW/2022 for the AY. 2014-15. The cross-objections are time barred by 987 days. The assessee has filed application supported by an affidavit seeking condonation of delay in filing of the cross objection. In the cross objection, the assessee has raised the following grounds are as under: -

“1. BECAUSE the disallowance of Rs.8,48,32,796/- made by the ld. Assessing Officer towards the depreciation claimed by the assessee/cross objector during the year under consideration was completely erroneous, as

the said issue stood in favour of the assessee/cross objector as per the first appellate orders passed by the appellate authority in the appeal of the earlier years as also from the stage of Hon'ble High Court in Income tax Appeal No. 223 of the AY. 2007-08, the Id. CIT(A) appeal was completely justified in deleting the said addition in his order dated 30.10.2019 passed under section 250 of the Act by following the law of binding precedent.

2. BECAUSE in view of the amendment brought by Finance (No.2) Act, 2014 with effect from 01.01.2015 by way insertion of sub-section (6) in Section 11 the said amendment is from prospective effect, the Id. CIT(A) appeal was completely justified in allowing relief of Rs.8,48,32,796/- as has been erroneously disallowed by the Id. Assessing Officer in the assessment order passed by him under Section 143(3) of the Act.

3. BECAUSE the erroneous disallowance of donations of Rs.95,191/- made by the Id. Assessing Officer which has been claimed by the assessee/cross objector during the year as has been given/ utilized by paying to various persons/ organizations/sport societies which are involved in carrying charitable activities has rightly been allowed by the Id. CIT(A) as the said issue has already been decided in favour of the assessee/cross objector in earlier years by the appellate authorities following the binding precedent of law and there being no change in the facts and circumstances during the year.

4. BECAUSE the amount paid by the assessee/cross objector to various persons/ societies during the year were towards the charitable objects for which the assessee society had come into existence and on this fact too there was no error in the order passed by the Id. CIT(A) in deleting the addition of Rs.95,191/- so much made by the Id. Assessing Officer.”

7. Since the matter of controversy has been adjudicated while deciding the revenue appeal in ITA. No.09/LKW/2020 for the A.Y. 2014-15, therefore, in the said circumstances, the matter of controversy raised in the present cross-objection has become infructuous, hence, is not required to be adjudicated and has dismissed.

8. In the result, the appeal of the revenue is dismissed and cross objection of the assessee is dismissed.

Order pronounced in the open Court on 29/08/2024.

Sd/-

[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-

[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED:29/08/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard File

By order

//True Copy//

Assistant Registrar