

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

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA Nos.801 and 802/Bang/2024
Assessment Years : 2015-16, 2016-17

M/s. Abhinava Bharathi Shikshana Trust R, Behind D C Office, Mandya, Mandya – 571 401. PAN : AAFTA 1660 F	Vs.	ITO (Exemptions), Ward – 1, Mysore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Harsha J, Advocate
Revenue by	:	Shri. Ganesh R. Gale, Standing Counsel for Department.

Date of hearing	:	29.08.2024
Date of Pronouncement	:	30.08.2024

ORDER

Per George George K, Vice President:

These appeals at the instance of the assessee are directed against two Orders of Addl/JCIT(A), passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Years are 2015-16 and 2016-17.

2. Common issues are raised in this appeal; hence, they were heard together and disposed off through this consolidated order.

3. Assessee in both the appeals had raised six grounds. However, during the course of hearing, the learned AR had specifically raised the contentions only with regard to ground No.5. Ground No.5 relates to the issue of denial of claim of depreciation of Rs.16,55,420/- and Rs.19,50,992/- for Assessment Years 2015-16

and 2016-17 respectively. For ready reference, ground No.5 for Assessment Year 2015-16 is extracted as under :

“5. The Learned Commissioner of Income-tax (Appeals) erred in law stating that the Appellant was ineligible to claim depreciation of Rs. 16,65,420/- as it failed to obtain new registration u/s 11 of the Act despite the fact that depreciation is allowable u/s 32 of the Act while computing business income.”

4. Brief facts of the case are as follows:

Assessee is a AOP (Trust). Assessee's claim for depreciation for Assessment Years 2015-16 and 2016-17 was disallowed in intimations passed under section 143(1) of the Act.

5. Aggrieved by the said intimations passed for Assessment Years 2015-16 and 2016-17, assessee preferred appeals before the First Appellate Authority (FAA). The CIT(A), as regards this issue, confirmed the disallowance of depreciation. The relevant finding of the CIT(A) for Assessment Year 2015-16 reads as follows:

“It is quite clear from the highlighted part of the section that to be eligible to claim exemption u/s 11 the appellant should possess a valid registration certificate otherwise it shall not be entitled to exemption under the respective clauses. In the appellant's case since the appellant changed its constitution and assumed status of trust from society, the identity of the appellant has changed altogether and therefore the previous registration certificate does not apply to it. Since, the appellant does not have a new registration certificate, it is not entitled to any exemption u/s 11. Also, it is pertinent to mention here that the society/trust having registration u/s. 12A is not entitled for deduction of depreciation on the assets as the purchase of the asset is itself treated as application of funds and therefore there is no question of further allowance of depreciation. Moreover, the appellant has claimed that though it has changed its constitution, everything else remains same. This indicates that the purchase of assets on which the depreciation

has been claimed during the year under consideration has been claimed & allowed as application of funds in earlier years. Hence further allowances of depreciation is not allowable. Therefore, the adjustment of Rs.16,65,420/- made by the CPC to this effect is valid and stands confirmed.”

6. Aggrieved by the said Orders of Addl/JCIT passed under section 250 of the Act for Assessment Years 2015-16 and 2016-17, assessee has filed the present appeals before the Tribunal. Assessee has filed a Paper Book for each of the Assessment Years enclosing therein the written submissions filed before the CIT(A), the return of income along with computation of income, the intimation issued under section 143(3) of the Act, etc. The learned AR submitted that the question whether the cost of assets on which the depreciation is claimed has been claimed as application of income at the time of purchase, needs examination by the AO and requested that the matter may be restored to the files of the AO.

7. The learned Standing Counsel supported the Order of the CIT(A).

8. I have heard the rival submissions and perused the material on record. The depreciation claimed by the assessee for Assessment Years 2015-16 and 2016-17 was denied for the reason that the cost of assets on which the depreciation has been claimed during the year under consideration was allowed as application of funds in the earlier years. This fact needs to be examined by the AO i.e., whether assessee had claimed cost of asset as application of income in years in which assets were acquired and same was allowed. For examination of this issue, the matter is restored to the files of the AO for Assessment Years 2015-16 and 2016-17. It is ordered accordingly.

9. In the result, appeals filed by the assessee are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)

Vice President

Bangalore.

Dated: 30.08.2024.

/NS/*

Copy to:

- | | |
|---------------|-------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.