

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3613/Mum/2024
Assessment Year: 2016 -2017

Pravin Kumar Income Tax Officer, Exemptions - 2 (3), Mumbai	Vs	Sadhu Vaswani Mission Bombay 13, Gitanjali Behind Radio Club Colaba Mumbai - 400005 [PAN: AACTS1706P]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	None
Revenue by :	Shri Ajay Kumar Singh, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 16/09/2024
घोषणा की तारीख/**Date of Pronouncement** : 19/09/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the revenue is preferred against the order dated 16/05/2024 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2016-17.

2. The grievance of the revenue reads as under:-

"1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief when the assessee is aware that the fund are not utilized as per the provisions of section 11(1)(a) [being 85% and in order to accumulate the same with a particular purpose earmarked for that object only was required by law w.e.f 01.04.2016 to file the Form 10 as necessary compliance in order to claim benefits of section 11 (2) of the Act ?

2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was justified in allowing the claim of depreciation to the assessee without appreciating the fact that no supporting evidences has been provided to prove that the cost of such assets has been claimed as application of income for the year?"

3. "Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was justified in allowing the claim of depreciation to the assessee without appreciating the fact that as per Section 11(6) of the Income-tax Act, 1961, the acquisition of any asset has been claimed as an application of income in any previous year, no deduction or allowance for depreciation in respect to that asset would be allowable?"

3. None appeared on behalf of the assessee in spite of notices. We decide to proceed *ex-parte*.

4. The Id. D/R was heard at length. Case records carefully perused.

5. Briefly stated, the facts of the case are that the assessee filed its return of income on 24/09/2016 along with income and expenditure account, balance sheet and audit report in Form 10B declaring total income at Rs. Nil. The assessee is a Trust registered as Charitable organization with DIT(Exemption), Mumbai u/s 12A of the Act and also with the Charity Commissioner, Mumbai. The assessee had claimed exemption u/s 11 of the Act.

5.1. The return of income was selected for scrutiny and accordingly statutory notices were issued and served upon the assessee. While scrutinizing the return of income, the AO noticed that the assessee has claimed an amount of Rs.72,17,907/- accumulated u/s 11(2) of the Act. As per Form No. 10, the purpose for accumulation is medical relief, relief to the poor and needy, education relief or other objects of the trust. The assessee was asked to showcause to explain in absence of specific purpose, why not the accumulation/setting apart of claim u/s 11(2) be disallowed. On receiving no plausible reply, the AO disallowed the accumulation claimed u/s 11(2) of the Act amounting to Rs.72,71,907/-.

5.2. Proceeding further, the AO noticed that the assessee has claimed depreciation of Rs. 92,91,361/-. The AO found that the assessee has also

claimed capital expenditure as application of funds and was of the opinion that by claiming depreciation, the assessee has claimed double deduction. The AO accordingly disallowed Rs.92,91,361/-.

6. The assessee carried the matter before the Id. CIT(A) and reiterated its claim of exemption. Before Id. CIT(A), the assessee furnished the amended constitution of the trust, furnished again the copy of Form No. 10. After considering the facts and submissions and perusing the material available on record, the Id. CIT(A) found that the assessee has accumulated funds for Medical Relief, Education Relief, Relief of Poor and Needy and Feeding of Birds and Animals and has found that purpose specified in Form No. 10 is in accordance with the main objectives of the Trust. The Id. CIT(A) was convinced that the purposes specified in Form No. 10 are in line with the objects of the Trust. The Id. CIT(A) was of the firm belief that once the assessee has accumulated income with a specific purpose and such purpose is specified in the main objects of the Trust, then the AO cannot deny such accumulation of income merely for the reason that purpose specified in Form No. 10 is vague and general in nature. The claim of exemption was accordingly allowed.

7. We have given a thoughtful consideration to the factual findings of the Id. CIT(A). We find that the Id. CIT(A), after analyzing the facts with the objects of the Trust, came to the conclusion that the purposes specified in Form No. 10 is neither vague nor general. We, therefore, do not find any reason to interfere with the findings of the Id. CIT(A). This Ground is accordingly dismissed.

8. The other ground relates to the claim of depreciation of Rs.92,91,361/-. The Id. CIT(A) found that in the computation of total taxable income and the income and expenditure account, out of the total claim of depreciation of Rs.92,91,361/-, the assessee has *suo moto* added back Rs.48,22,728/-, since the same pertains to the assets acquired and such acquisition has been allowed as application of funds. The Id. CIT(A) was convinced that the amendment brought *w.e.f.* 01/04/2015 has been taken care of by the assessee while *suo moto* disallowing the depreciation. Therefore, there was no need to further disallow the claim of depreciation.

9. We are of the considered view that post amendment, if there is an addition to assets from FY 2014-15 and the addition has been allowed as application of income then, claim of depreciation on such asset shall not be allowed as a deduction and since the assessee has *suo moto* disallowed the depreciation of Rs.48,22,728/-, while filing the return of income, we do not find any reason to interfere with the findings of the Id. CIT(A). This Ground is also dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 19th September, 2024 at Mumbai.

Sd/-

(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 19/09/2024

S.S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai