

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.966/DEL/2023
(Assessment Year : 2018-19)**

Arth Foundation,
1202 – B, D Mall,
Netaji Subhash Place,
Delhi – 110 034.

vs.

ITO, Ward Exemption 1 (1),
Delhi.

(PAN : AAETA9967A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Mansi Jain, CA
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 23.09.2024
Date of Order : 26.11.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal is filed by the assessee against the order of ld. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to 'ld. CIT(A)] dated 01.02.2023 for Assessment Year 2018-19.
2. Brief facts of the case are, assessee is registered under section 12A of the Income-tax Act, 1961 (in short 'the Act'). Assessee filed its return of income for Assessment Year 2018–19 on 29.10.2018, declaring a deficit of Rs.1,09,38,775/-. The case was selected for scrutiny for verification of gross receipts. Accordingly, notices under section 143 (2) and 142 (1) of the Act

were issued and served on the assessee. In response, the assessee submitted the relevant information through e-portal. After considering the submissions of the assessee, Assessing Officer observed that assessee claimed depreciation of Rs.60,38,837/- which is not allowable as deduction in view of express provisions of section 11 (6) of the Act. He also observed that vide letter dated 26.01.2021, the assessee has vehemently stated that depreciation is allowable in the case of trust as the concept of total income is not applicable in case of religious/charitable trust. In this regard, assessee has relied on the decision of Hon'ble High Court of Punjab and Haryana as well as Bombay. He further observed that the decisions relied by the assessee are prior to insertion of section 11 (6) of the Act with effect from 01.04.2015, accordingly he disallowed the claim of the depreciation.

3. Aggrieved with the above order, assessee preferred an appeal before National Faceless Appeal Centre (NFAC), Delhi and filed grounds of appeal and detailed submissions. However, ld. CIT(A) has issued notices on 29.06.2021 and 11.01.2023 and in response to the same, the assessee has not complied to the above notices as well as not filed any written submissions. Therefore, ld. CIT(A) proceeded to dispose the appeal based on the information available on record. The ld. CIT(A) sustained the additions made by the Assessing Officer.
4. Aggrieved with the above order, the assessee is in appeal before us raising grounds of appeal with the prayer that no proper opportunity was granted to the assessee, ld. CIT(A) confirmed the action of AO invoking the provisions of section 11(6) of the Act despite the fact that the above said section is not

applicable to the assessee and it was submitted that the assessee has not claimed the acquisition of fixed assets as application of fund therefore the assessee is eligible to claim depreciation.

5. At the time of hearing, Id. AR of the assessee submitted by bringing the income and expenditure account to our notice that assessee has claimed depreciation and also brought to notice depreciation chart wherein assessee has added majority of the fixed assets during 1st half of the year. Therefore, it clearly shows that the assessee has not claimed purchase of fixed assets as application of funds. Accordingly he prayed that the issue may be remitted back to the file of AO to appreciate proper facts on record.
6. On the other hand, Id. DR for the Revenue objected to the submissions of the Id. AR of the assessee and submitted that the assessee has not complied to various notices issued by Id. CIT(A). However he has no objection to remit this issue back to the file of AO.
7. Considered the rival submissions and material placed on record. We noticed that the assessee has claimed depreciation during the year and the Assessing Officer has disallowed the same by observing that the assessee is not eligible to claim depreciation by relying on section 11 (6) of the Act. We noticed that neither the assessing officer has asked whether the assessee has claimed the total cost of fixed assets as application of fund or not but proceeded to disallow the same merely observing that the assessee has claimed depreciation. We noticed that even the assessee has not made any submissions before the Id. CIT (A), therefore, the present issue needs proper verification at the lower level.

Accordingly, we deem it fit and proper to remit this issue back to the file of AO to verify the claim of the assessee. As per the provisions of section 11(6) of the Act, it is the choice of the assessee either to claim of fixed assets as application of funds or claim depreciation on the fixed assets on the basis of utilisation/period cost. We direct the Assessing Officer to verify the same as per law after giving proper opportunity of being heard to the assessee. We direct the assessee also to submit the relevant information before the AO.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 26th day of November, 2024.

**sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 26.11.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**