

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1575/MUM/2025
(Assessment Year: 2012-2013)**

Marol Education Academy

1st Floor, Marol Education Academy,
Marol Maroshi Road, Andheri East,
Mumbai – 400059. Maharashtra.
[PAN:AAATM4564H]

..... **Appellant**

Vs

**Income Tax Officer Exemptions Ward
2(1), Mumbai**

Cumballa Hill, MTNL Tel. Exchange,
Pedder Road, Cumballa Hill, Mumbai –
400026. Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Vipul Shah
For the Respondent/Department : Smt. Kavita P. Kaushik

Date

Conclusion of hearing : 22.04.2025
Pronouncement of order : 28.05.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 10/01/2025, passed by the Additional/Joint Commissioner of Income Tax (Appeals) – 1, Gurugram [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 15/11/2017, passed under Section 143(3) read with Section 263 of the Act for the Assessment Year 2012-2013.

2. The Assessee has raised following grounds of appeal :

"1. *On the facts and circumstances of the case and in law the*

learned Commissioner of Income Tax (Appeals) ["CIT(A)"] erred in upholding disallowance of the claim of Depreciation of Rs.26,17,483/- without appreciating the facts and submissions of the Appellant that the capital assets, on which depreciation was claimed, were purchased out of corpus donation of the trust and not from the recurring income of the fund and the claim of depreciation was fully allowable.

2. *On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) ["CIT(A)"] erred in upholding disallowance of the claim of Depreciation of Rs.26,17,483/- without appreciating the facts that the learned Assessing Officer was not in possession of any details evidencing claim of depreciation was made from the asset acquired out of recurring income of the trust.*
3. *On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) ["CIT(A)"] erred in not appreciating a fact that the amended provisions of section 10(23C) were applicable w.e.f. 01.04.2015 and were not applicable in the year under review. On that count also the disallowance sustained is bad in law and should be deleted."*

3. The relevant facts in brief are that Assessee is a society and a public charitable trust. Vide order dated 15/11/2017 passed under Section 143(3) read with Section 263 of the Act claimed of depreciation of INR.26,17,483/- was disallowed by the Assessing Officer on the ground that the Assessee had claimed the cost of asset in respect of which depreciation was claimed as a application of income.
4. Being aggrieved, the Assessee carried the issue in appeal before the CIT(A). It was explained on behalf of the Assessee that the investments in the fixed assets in respect of which depreciation was claimed was made out of the corpus donations. Without prejudice to the aforesaid, by placing reliance upon the judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Rajasthan and Gujarati Charitable Foundation Poona (SC) (402) ITR 441 [2018], it was contended that the depreciation as claimed by the Assessee should have been allowed since Section 11(6) of the

Act was inserted by Finance (No.2) Act, 2014 w.e.f. Assessment Year 2015-2016. The provisions contained in Section 11(6) of the Act were prospective in nature and did not apply to Assessment Year 2012-2013 to which the present appeal pertained to. However, the aforesaid submissions were rejected by the CIT(A). Vide Order dated 10/01/2025, the CIT(A) dismissed the appeal holding as under:

"4.1 Ground of appeal No. 1 &2 are related to disallowance of claim of depreciation of Rs. 26,17,483/-.

4.1.1 It is seen from the para 3.2 of the order u/s 143(3) r.w.s. 263 of the Act that the assessing officer has stated that "it is clear that the assessee trust when purchase the capital assets claimed the purchase amount as application of fund towards object of the trust." The assessing officer has given clear finding regarding the claim of purchase amount of capital assets as expenditure in the year when the assets was purchased. In view of this, I concur with the finding of the assessing officer that allowing claim of depreciation on such asset in subsequent year will lead to claim of Page 18 of 20 AAATM4564H- MAROL EDUCATION ACADEMY A.Y. 2012-13 ITBA/APL/S/250/2024-25/1072088353(1) double deduction and the same is not allowable as per the law. Accordingly, the disallowance of the depreciation made by the assessing officer is upheld and these grounds of appeal are accordingly dismissed."

5. Being aggrieved, the Assessee has preferred the present appeal before the Tribunal on the grounds reproduced in Paragraph 2 above.
6. We have given thoughtful consideration to rival submissions and have perused the material on record.
7. The solitary issues that arise for consideration is that whether the Assessee is entitled to claim depreciation of INR.26,17,483/-. We note that during the appellate proceedings before the CIT(A), the Assessee has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Commissioner of Income Tax Vs. Rajasthan and Gujarati Charitable Foundation Poona** (Supra), the relevant extract of which reads as under:

"1. *These are the petitions and appeals filed by the Income Tax Department against the orders passed by various High Courts granting benefit of depreciation on the assets acquired by the respondents-assesseees. It is a matter of record that all the assesseees are charitable institutions registered under Section 12A of the Income Tax Act (hereinafter referred to as 'Act'). For this reason, in the previous year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under Section 11(1)(a) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under Section 32 of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assesseees had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the assessee. Though it appears that in most of these cases, the CIT (Appeals) had affirmed the view, but the ITAT reversed the same and the High Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department. From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'CIT v. Institute of Banking Personnel Selection (IBPS)'[2003] 131 Taxman 386. In the said judgment, the contention of the Department predicated on double benefit was turned down in the following manner:*

"3. *As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property. During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @ 2½% and they also claimed depreciation on furniture @ 5%. The question which arose before the Court for determination was: whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been*

treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income-tax Act makes provision in respect of computation of income of the Trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, section 28 of the Income-tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 34. In that matter also, a similar argument, as in the present case, was advanced on behalf of the revenue, namely, that depreciation can be allowed as deduction only under section 32 of the Income-tax Act and not under general principles. The Court rejected this argument. It was held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income-tax Act. The Court rejected the argument on behalf of the revenue that section 32 of the Income-tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income-tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. In view of the aforesatated judgment of the Bombay High Court, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department.

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax

(Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR 463. In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently, Question No. 2 is answered in the Affirmative i.e., in favour of the assessee and against the Department.

2. After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.
3. It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions v. CIT [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344'.
4. It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income-tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.
5. It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

6. *For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters. ” (Emphasis Supplied)*
8. By way of the above judgment the Hon'ble Supreme Court has settled the issue by holding that income of the charitable trust is required to be computed under Section 11 of the Act on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the charitable trust. It was further held by the Hon'ble Supreme Court that Section 11(6) of the Act was introduced by way of Finance (No.2) Act, 2014 w.e.f. Assessment Year 2015-2016 and the same was prospective in nature. Therefore, the case of the Assessee is squarely covered by the said judgment of the Hon'ble Supreme Court. Therefore, we overturn the decision of the CIT(A) and delete the disallowance of depreciation of INR.26,17,483/- made by the Assessing Officer. In view of the aforesaid, Ground No.2 and 3 raised by the Assessee are allowed, while Ground No.1 raised by the Assessee is dismissed as having been rendered infructuous.
9. In terms of the aforesaid, the appeal preferred by the Assessee is allowed.

Order pronounced on 28.05.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated :28.05.2025
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai