

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2809/Del/2014  
(Assessment Year: 2006-07)

ADIT(E), Inv Circle-II, New Delhi	Vs.	Raghuvanshi Charitable Trust, 105, Rakesh Deep Building, 11, Commercial Complex, Gulmohar Enclave, New Delhi PAN:AAATR0568G
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :	None
Revenue by:	None
Date of Hearing	03/04/2017
Date of pronouncement	03/04/2017

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is preferred by revenue against the order of the Id CIT(A)-XXI, New Delhi raising following two grounds of appeal :
  - "1. On the facts and in the circumstances of the case and in law, the Id CIT(A) has erred in allowing depreciation of Rs. 3402284/- ignoring the fact that where the capital expenditure has been treated to have been applied for the object of the trust, allowance of deduction on account of depreciation will amount to double deduction.
  2. On the facts and in the circumstances of the case and in law, the Id C(T)A has erred in directing to allow benefit of carry forward of deficit/ loss of Rs. 11104266/- ignoring the fact that there is no specific provisions u/s 11, 12 and 13 for allowing the carry forward or adjustment of deficit or loss."
2. Despite service of notice to the assessee through departmental representative, which was received on 17.02.2017 whereby the date of

hearing of 03.04.2017 was intimated to the assessee, none appeared before us. As the notice is served through revenue it would also now be impracticable to serve the notice once again to the assessee. Further, on the earlier date fixed for hearing on 12.01.2017 the assessee did not come forward to represent its case. Therefore, now it is impracticable to again serve the notice to the assessee and therefore, the appeal is decided on merits of the case in absence of any representation from the assessee.

3. On behalf of the revenue also none appeared.
4. The brief facts of the case is that the assessee is a charitable trust registered u/s 12A of the Income Tax Act, 1961 filed its return of income on 20.09.2010 declaring nil income. The assessee also filed audit report dated 18.09.2010. the assessee is running a school and has claimed depreciation on capital asset and further, when the additions were made to the fixed assets it also claimed it as application of income. Therefore, according to the Id Assessing Officer it amounted to double deduction and hence, disallowed depreciation of Rs. 3402284/-. Therefore, assessment u/s 143(3) of the Act was framed on 31.12.2012 wherein, deficit of Rs. 7701982/- was determined and Id Assessing Officer did not allow the same to be carried forward. The assessee aggrieved with the assessment order preferred appeal before the Id CIT(A), who deleted the disallowance of depreciation relying upon various judicial precedents. With respect to disallowance of carry forward of deficit, he relying upon the case of the assessee for Assessment Year 2002-03 decided by the coordinate bench and further, the order of the Hon'ble High Court not admitting the appeal of the revenue on that issue, allowed the deficit to be carried forward. Revenue aggrieved by the order of Id CIT(A), preferred appeal before us.
5. On the first ground of appeal the Id CIT(A) has allowed the depreciation claim of the assessee relying on the decision of Hon'ble Bombay High Court in 264 ITR 110 and Hon'ble Punjab and Haryana High Court in 330 ITR 16 and Hon'ble Delhi High Court in DIT Vs.Viswa Jagruti Mission ITA No.

140/2012. The case of the assessee further gets support from the insertion of section 11(6) w.e.f. 01.04.2015 by Finance (No.2) Act, 2014 which now prohibits the claim of the depreciation in respect of assets acquisition of which has been claimed as an application of income. The case of the assessee is pertaining to AY 2010-11 to which the above provision do not apply. In view of this ground No. 1 of the appeal of the revenue is dismissed.

6. Ground No. 2 of the appeal of the revenue is against the refusal to carry forward deficit of Rs. 7701982/-. The Id CIT(A) has allowed the claim of the assessee based on the decision of the coordinate bench in the assessee's own case for AY 2002-03 in ITA No. 217/Del/2006 dated 11.01.2007 which has been upheld by the Hon'ble High Court vide order dated 27.07.2010 in ITA No. 1075/2008. In view of this we do not find any infirmity in the order of the Id CIT(A) in allowing carry forward of the deficit. In the result ground No. 2 of the appeal of the revenue is also dismissed.
7. In the result the appeal of the revenue is dismissed.

**The order is pronounced on 03<sup>rd</sup> April, 2017.**

**-Sd/-**

**(H.S.SIDHU)  
JUDICIAL MEMBER**

**-Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated: 03/04/2017  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi