आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'

BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No.1806/Ahd/2016**
*निर्धारण वर्ष***Asstt. Year: 2013-2014**

ITO, Ward-3(2)(7) Ahmedabad.	Vs.	M/s.Indo German Tool Room Plot No.5003, Phase-IV GIDC Mehmadabad Road Vatva, Ahmedabad 382445. PAN : AAAAJI 0033 P

अपीलार्थी/ (Appellant)		*प्रत्यर्थी/* (Respondent)

Revenue by	:	Shri Mudit Nagpal, Sr.DR
Assessee by	:	Shri Chirag R. Shah, AR

*सुनवाई की तारीख/*Date of Hearing : 07/03/2018
*घोषणा की तारीख /*Date of Pronouncement: 14/05/2018

*आदेश/***O R D E R**

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of ld.CIT(A)-3, Ahmedabad dated 9.5.2016 passed for the Asstt.Year 2013-14.

2. Sole grievance of the Revenue is that the ld.CIT(A) has erred in deleting disallowance of depreciation of Rs.2,71,29,827/- on factory building, machinery and furniture & fixtures made by the AO with the aid of *Explanation 10* to section 43(1) of the Income Tax Act.

3. Brief facts of the case as emerge out from orders of the Revenue authorities are that the assessee is a Government institution registered under the Societies Registration Act. It was formed for undertaking promotional activities for development of Micro, Small and Medium Industries and training facilities to students through self employment courses. Its promoters are Government of India, German Government and Government of Gujarat and managed by a Governing Council, chaired by Additional secretary and Development Commissioner (MSME), Ministry of MSME, Government of India. For setting up and running of this organization funds were provided by the promoters towards capital/corpus.

4. Assessee filed its return of income for the assessment year 2013-14 on 2.9.2013 declaring loss of Rs.10,77,539/-. After processing the return under section 143(1), the case of the assessee was selected for scrutiny assessment. Consequently, notice under section 143(2) was issued and served upon the assessee on 9.9.2013. Thereafter due to change of incumbent AO, a notice under section 142(1) r.w.s. 129 of the Act was issued on 15.9.2015 and served upon the assessee. During the assessment proceedings, it was noticed by the AO that the assessee has debited a sum of Rs.2,71,29,827/- in its profit & loss account towards depreciation on leasehold building, plant and machinery and furniture and fixtures. This claim according to the AO was not in order, since building and infrastructure were provided by the promoter-government. The AO accordingly show caused the assessee to explain entitlement of claim of depreciation. The assessee explained that all the three promoter-governments contributed fund towards its capital. As per the accounting

principle, to reflect true and fair picture of business and activities of the Organisation, it is necessary that all receipts including the contribution from the promoters were to be reflected as income receipt and deduct therefrom all expenses incurred by the assessee including depreciation. Assessee contended that similar claim of depreciation was allowed by the ld.CIT(A) in the assessment years 2007-08 and 2008-09. Explanation of the assessee was not found favour from the AO. The ld.AO maintained his stand that since fixed assets were purchased out of contribution of capital by the promoters, cost of the assets to the assessee remained NIL, and no depreciation can be allowable on such assets. In other words, according to the AO, as the assessee has not incurred a single pie towards purchase cost of the assets, therefore, cost of assets being at NIL, assessee is not entitled for depreciation. He accordingly disallowed claim of the assessee.

5. Aggrieved assessee preferred appeal before the First Appellate Authority, who after considering constitution of the assessee-organisation and nature of contribution of promoters towards its capital, allowed the claim of the assessee. While allowing the claim of the assessee, the ld.CIT(A) also relied upon his own orders for earlier assessment years as well as decision of the ITAT Indore Bench in the case of assessee another unit at Madhya Pradesh, where similar claim was allowed to the assessee. Aggrieved by the action of the ld.CIT(A) in deleting the disallowance, the Revenue is before us.

6. The ld.DR relied upon the order of the AO, while, the ld.counsel for the assessee supported the order of the ld.CIT(A). The ld.counsel for the assessee further submitted that similar

claim of the assessee was allowed in earlier years, and particularly, the Tribunal in assessee's own case in ITA No.78 and 79/Ahd/2014 in the assessment years 2007-08 and 2008-09 allowed the claim of depreciation to the assessee. The ld.counsel also drew our attention towards audited accounts of the assessee contained in the paper book, particularly page no.6 where in schedule-1, under "Corpus/Capital Fund" contribution from three promoters viz. Govt. of India, Government of Federal Republic of Germany and Govt. of Gujarat have been shown.

7. We have duly considered rival contentions and gone through the record carefully. Facts with regard to constitution and activities of the assessee-society are not in dispute. Dispute is with regard to treatment of contribution made by the promoters of the assessee. It is the case of the Revenue that the assets purchased/acquired by the assessee were out of contribution made by the promoters, which are in the nature of subsidy. Therefore, such assets do not qualify for entitlement of depreciation, because cost has been met by the promoters in the form of subsidy. Whereas, the contention of the assessee is that the funds contributed by the promoters are towards capital/corpus funds and object of such contribution was to set up unit or expand its existing set up, and therefore, amounts utilized for acquiring assets in furtherance of its objects cannot be reduced from the cost of assets for the purpose of granting depreciation. We find that similar issue in assessee's own case for the assessment year 2007-08 and 2008-2009 came up before the Coordinate Bench Tribunal in ITA No.78 and 79/Ahd/2014 [wherein one of us is a party (JM)] has decided against the Revenue and in favour of the assessee by holding that the subsidy or grant amount could not be

reduced from the cost of the capital asset. Tribunal has also observed that the ld.AO has failed to construe true nature of the contribution of fund made by the promoters and its intent and purpose for which such funds have been uitlised by the assessee. We find that here is the case where three governments coming together and doing business by themselves by constituting a society. Its main objects related to providing technical, advisory and consultancy services for small and medium scale industries across the State of Gujarat, besides for improving skills and knowledge of the personnel of the tool room. To achieve these objects, promoters provide fund in form of grant towards capital fund. To our mind, such contribution in the form of grant could not be considered as a payment directly or indirectly to meet any portion of the actual cost and, thus, does not fall within the ambit of the *Explanation* 10 to section 43 (1). The ld.CIT(A) has considered this aspect logically and arrived at a right conclusion. Therefore, following the order of the Tribunal in assessee's own case cited supra, we find no merit in appeal of the Revenue. We confirm the order of the ld.CIT(A) and dismiss grounds of appeal of Revenue.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 14th May, 2018.

Sd/-	Sd/-
(PRAMOD KUMAR)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Ahmedabad; Dated 14/05/2018