

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : “C”, BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.872(Bang)/2019
(Assessment Year : 2015-16)**

M/s Shivapur Shikshana Samiti,
Palace Road, Sandur-583 119
Bellary
PANNo.AAAAS6788A

Appellant

Vs

The Income Tax Officer (Exemptions)
Ward-1,
Gulbarga

Respondent

And

**ITA No.915(B)/2019
(Assessment year 2015-16)
(By Revenue)**

**Appellant by : Shri B.S.Balachandran, Advocate
Revenue by : Shri Karuppusamy, S.R. Addl.CIT**

Date of hearing : 19-12-2019

Date of pronouncement : 08-01-2020

O R D E R

PER SHRI B.R.BASKARAN, ACCOUNTANT MEMBER :

These are cross appeals directed against the order dated 20-02-2019 passed by the Id.CIT(A), Kalaburagi and they relate to assessment year 2015-16.

2. The revenue is in appeal challenging the decision of the Id.CIT(A) in granting exemption u/s11(1)(d) of the IT Act, in respect of

donation of Rs.2.00 Crores received from M/s The Sandur Manganese & Iron Ore Ltd.,(SMIORE Ltd.,)

2.1 The assessee is in appeal challenging the order of ld.CIT(A) in confirming the disallowance of depreciation claimed by the assessee.

3. The assessee is a charitable institution running educational institutions. During the year under consideration, assessee has received a donation of Rs.2.00 Crores from M/s SMIORE Ltd. as corpus donation and accordingly, claimed exemption u/s11(1)(d) of the IT Act, 1961. The AO noticed that the donor has not given any direction stating that the same was forming part of corpus fund. Accordingly, the AO rejected claim of exemption u/s 11(1)(d) of the IT Act. The ld. CIT(A) however, accepted the contention of the assessee that the said amount was towards the corpus fund. Accordingly, the ld.CIT(A) deleted the addition made by the AO. Hence, the revenue is in appeal challenging the said decision.

4. At the time of hearing, ld.AR furnished copy of confirmation letter received from M/s SMIORE Ltd. wherein they stated that the impugned amount of R.2.00 Cores was donation given towards corpus fund of the assessee. Ld.AR also moved a petition requesting for confirmation of the above said letter as additional evidence. The ld.AR further submitted that the above said amount was used by the assessee for purchase of land and construction of buildings hence, the AO was not right in treating the same as normal donation.

5. We heard the parties on this issue and perused the records. Since the assessee has filed additional evidence in the form of letter obtained from the donor and since it requires examination at the end of AO, we set aside the order passed by the ld.CIT(A) on this issue and restore the same to the file of AO for examining the issue afresh by duly considering the additional evidence furnished by the assessee.

6. Next issue relates to disallowance of claim of depreciation. The AO noticed that the assessee has claimed a sum of Rs.96.18 lakhs as depreciation on fixed assets. The AO further noticed that a new section 11(6) has been inserted with effect from 01-04-2015 which disentitles the assessee from claiming depreciation on the fixed assets which has been claimed as an application of income in any of the years. Accordingly, the AO disallowed the claim of depreciation cited above.

7. Before the ld.CIT(A), the assessee submitted that it has not claimed cost of fixed assets in the application of income, in any of the years. Accordingly, it was submitted that the provisions of sec.11(6) of the IT Act, are not applicable and depreciation claimed by the assessee should be allowed. Hence, the ld.CIT(A) called for a remand report from the AO. In the remand proceedings, the assessee submitted relevant details from assessment year 2009-10 onwards. Since the assessee did not submit the details pertaining to earlier years, the AO expressed his view in the remand report that the disallowance of depreciation was justified. Hence, the ld.CIT(A) confirmed the disallowance.

8. Aggrieved, the assessee has filed this appeal challenging the aforesaid decision of the ld.CIT(A).

9. We heard the parties on the issue and perused the records. The copies of the return of income filed by the assessee from assessment year 2009-10 shows that the assessee has not claimed cost of fixed assets as application of income. According to the assessee, it has never claimed cost of fixed assets as application of income in any of the years. The provisions of section 11(6) would apply only in respect of these assets which have been claimed as application of income. We notice that the assessee has proved its submission

from assessment year 2009-10 onwards. However, the AO has taken the view that the assessee has not furnished details of earlier years and accordingly, rejected the submission made by the assessee. However, it is a fact that the AO has not brought on record any material to disprove the contention of the assessee. On the contrary, the assessee has furnished copies of returns of income from 2009-10 onwards in support of its submission. Under the said facts, we are of the view, that there is no reason to suspect the submission made by the assessee in this regard. Accordingly, we are of the view, that the provisions of section 11(6) will not apply in the hands of the assessee, since the assessee has not claimed cost of fixed assets as application of income. Accordingly, we set aside the order passed by the Id.CIT(A) on this issue and direct the AO to delete the disallowance.

10. In the result, the appeal filed by the assessee is allowed and the appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open Court on 08-01-2020

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 08-01-2020

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR
- 6.ITO (TDS)
- 7.Guard File

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

By Order
Asst.Registrar