

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER  
[Through Video Conferencing]**

ITA No.645/Del./2017  
Assessment Year: 2012-13

DCIT (Exemption), Circle-2(1), New Delhi	<b>Vs.</b>	Nav Nirman Sewa Samiti, BN-9(East), Shalimar Bagh, Delhi
<b>PAN :AAAAN6370R</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Ms. Pramita M. Biswas, CIT(DR)
Respondent by	None

Date of hearing	13.04.2021
Date of pronouncement	11.05.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the Revenue is directed against order dated 25/11/2016 passed by the Learned CIT(Appeals)-40, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13 raising following grounds:

1. *On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law in allowing the claim of carry forward of losses disregarding the fact that set-off and carry forward of losses are*

*dealt with by the provisions of section 70 to 74 of the Income Tax Act.*

2. *On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law and fact that allowing depreciation of fixed assets is tantamount double deduction as the expenditure on fixed assets is already allowed.*
3. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.*

**2.** Briefly stated facts of the case are that the assessee society is registered under section 12A of the Income-tax Act, 1961 (in short 'the Act') with effect from 16/10/2008. The aims and objects of the society include develop and prescribe for a wide spectrum of courses of study for purpose of general vocational and continuing education. For the year under consideration, the assessee filed return of income on 30/09/2012 declaring nil income. The return of income filed by the assessee was selected for scrutiny assessment. The scrutiny assessment under section 143(3) of the Act was completed on 26/03/2015, wherein, depreciation of ₹ 2,59,19,069/- and carry forward of the deficit of ₹ 22,14,49,902/- was declined to the assessee by the Assessing Officer. The assessee preferred appeal before the Ld. CIT(A), who allowed both above claim of the assessee following judicial precedents. Aggrieved, with the finding of the Ld. CIT(A), the Revenue is in appeal before the Income Tax Appellate Tribunal [in short 'the Tribunal'] raising the grounds as reproduced above.

**3.** Before us, none appeared on behalf of the assessee.

**4.** We have heard submission of the learned Departmental Representative and perused the relevant material on record.

Regarding the ground No. 1 of the appeal, the finding of the Ld. CIT(A) is reproduced as under:

*“4.1 Ground no. 1 of the appeal challenges the disallowance of claim of depreciation amounting to Rs. 2,59,19,069/-.*

*4.1.1 I have considered the order of the Assessing Officer and the submissions of the appellant. Provisions relating to allowability of depreciation under the Income-tax Act and provisions governing income from property held for charitable or religious purposes have also been referred.*

*4.1.2 Depreciation is an allowance for reduction in the value of assets arising out of the wear and tear of a capital asset due to the asset being put to use and passage of time. Depreciation is allowed under the Income-tax Act while computing income under the head "Profits and gains of business or profession" subject to fulfillment of two basic conditions:*

- (i) The assessee owns the asset; and*
- (ii) The asset is put to use for the purpose of business or profession.*

*4.1.3 Charitable trusts or institutions are governed by the provisions of sections 11, 12, 12A, 12AA and 13 under Chapter III of the Income-tax Act. These sections constitute a complete code governing the grant, cancellation or withdrawal of registration, providing exemption of income and also conditions subject to which a charitable trust or institution is required to function in order to be eligible for exemption. Section 11(l)(a) provides for exemption to the extent income derived from the property held under trust is applied for charitable purposes. Subject to fulfillment of conditions laid down in section 11, exemption is available in respect of income irrespective of whether the expenditure incurred is revenue or capital in nature. Hence, exemption is available even when the income is applied for acquiring a capital asset. In view of this, charitable institutions were not eligible for depreciation.*

*4.1.4 This view has been clarified in Para 7.5 of the Explanatory Notes to the provisions of the Finance (No. 2) Act, 2014 issued vide Circular No. 1/2015 dated 21st January, 2015. Section 11 was amended by the Finance (No. 2) Act, 2014 whereby a new sub-section' has been inserted which provides that under section 11, income for the purposes of its application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been*

claimed as an application of income under section 11 in the same or any other previous year. Para 7.5 of the said Explanatory Notes is reproduced as under:

*"7.5 The second issue which had arisen was that the existing scheme of section 11 as well as section 10(23C) of the Income-tax Act provided exemption in respect of income when it is applied to acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. was being claimed and such amount of notional deduction was not being applied for charitable purpose. As a result, double benefit was being claimed by the trusts and institutions. Therefore, these provisions were required to be rationalized to ensure that double benefit is not claimed and such notional amount does not get excluded from the condition of application of income for charitable purpose."*

4.1.5 There are many conflicting judgments of various Hon'ble High Courts, including of the jurisdictional High Court, both in favour and against allowability of depreciation. The Hon'ble Delhi High Court, in the case of *Director of Income Tax (Exemption) vs. Charanjiv Charitable Trust* [2014] 267 CTR 305, have held that if the cost of the asset has been allowed as deduction by way of application of income, then depreciation on the same asset cannot be allowed in computation of income of the trust (Para 30). However, in a subsequent decision, the Hon'ble Delhi High Court, in the case of *DIT(Exemption) vs. Indraprastha Cancer Society* in IT A No. 240, 348, 406, 463 & 464/2014 vide the order dated 18.11.2014, have held that the assessee is eligible for depreciation in the case of charitable or religious institution also.

4.1.6 A bare reading of the provisions relating to income from property held for charitable purposes shows that depreciation per se was not allowed as a deduction in the case of charitable or religious institutions. This issue has been laid to rest by amendment to section 11 by the Finance (No. 2) Act, 2014 which is effective from the assessment year 2015-16 and subsequent years. However, relying on the latest decision of the Hon'ble Delhi High Court in the matter of *DIT (Exemption) vs. Indraprastha Cancer Society* (supra), the claim of depreciation of the appellant is allowed. Ground of Appeal No. 1 hence, allowed."

**4.1** We find that the Ld. CIT(A) following the decision of the Hon'ble Jurisdictional High Court in the case of **DIT (Exemption) Vs Indraprastha Cancer Society (supra)**, has allowed the claim

of the assessee of the depreciation, despite claiming by assessee of capital expenditure corresponding to the depreciation as application of funds for charitable purposes while calculating excess of income over expenditure in terms of section 11 of the Act. We may also like to mention that Hon'ble Supreme Court in the case of **Rajasthan and Gujarati Charitable Foundation Poona reported in 402 ITR 441(SC)** has allowed benefit of the depreciation while claiming exemption under section 11 of the Act. The relevant finding of the Hon'ble Supreme Court is reproduced 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 'Commissioner of Income Tax v. Institute of Banking Personnel Selection (IBPS)' [(2003) 131 Taxman 386 (Bombay)]. 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 aforesaid 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. FramjeeCawasjee 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."

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.

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. Commissioner of Income Tax*'.

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.

*It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.”*

**4.2** In view of the above, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute in following the decision of the Hon'ble Jurisdictional High Court, and accordingly, we uphold the same. The ground of the appeal of the Revenue is accordingly dismissed.

**5.** Regarding second ground, the finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

*“4.2.1 I have considered the order of the Assessing Officer and submissions of the appellant. Assessing Officer has denied carry forward of deficit but has not cited any reasons for this decision. Charitable trusts or institutions are governed by the provisions of sections 11, 12, 12A, 12AA and 13 under Chapter III of the Income-tax Act. These sections constitute a complete code governing the grant, cancellation or withdrawal of registration, providing exemption of income and also conditions subject to which a charitable trust or institution is required to function in order to be eligible for exemption. In these sections, there is no provision for adjustment of brought forward loss or carry forward of loss of current year to be adjusted against the income of subsequent year. However, various Hon'ble High Court have taken a view that income is to be computed in accordance with commercial principles and as such adjustment of brought forward loss/deficit and carry forward loss/deficit is to be allowed. Such decisions, some of which have also been relied upon by the appellant, are as under:*

- i. CIT vs. Maharana of Mewar Charitable Foundation, 164 ITR 439 (Raj) 1987.*
- ii. CIT vs. Shri Plot Swetamaber Murti Pujak Jain Mandal, 211 ITR 293 (Guj) 1995.*
- iii. CIT vs. Matrisewa Trust, 242 ITR 20 (Mad) 2000*
- iv. Govindu Naicker Estate vs. ADIT, 248 ITR 110 (Bom) 2003.*
- v. CIT vs. Institute of Banking, 264 ITR 110 (Bom) 2003.*
- vi. DIT vs. Raghuvanslii Charitable Trust, 197 Taxmann.com 170 (Delhi) 2011*
- vii CIT vs. Gujarat Samaj, 349 ITR 559 (MP) 2012”*



**5.1** We find that Ld. CIT(A) while arriving at his finding, has followed decision of the Hon'ble Jurisdictional High Court in the case of **DIT Vs Raghuvanshi Charitable Trust** (supra), which is a binding precedent. In our opinion, there is no error in the order of Ld. CIT(A) on the issue in dispute, and accordingly, we uphold the same. The ground of the appeal of the Revenue is accordingly dismissed.

6. In the result, the appeal filed by the Revenue is dismissed.

*Order pronounced in the open court on 11<sup>th</sup> May, 2021*

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> May, 2021.

RK/- (DTS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi