

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH
(Conducted Through Virtual Court)
Before: **Shri P.M. Jagtap, Vice President**
And **Shri Siddhartha Nautiyal, Judicial Member**

ITA No. 943/Ahd/2019
Assessment Year 2010-11

Sports Authority of Gujarat, Block No. 14, 3 rd Floor, Dr. Jivraj Mehta Bhawan, Gandhinagar-382010 PAN: AAATS7106F (Appellant)	Vs	DCIT, (Exemption) (HQ), Ahmedabad (Respondent)
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Assessee by: Shri Suresh Gandhi, A.R.
Revenue by: Shri Anshu Prakash, CIT-D.R.

Date of hearing : 15-02-2022
Date of pronouncement : 28-02-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-9, Ahmedabad in Appeal no. CIT(A)-9/10325/DCIT(E)(HQ)/17-18 vide order dated 04/03/2019 passed for the assessment year 2010-11.

2. The assessee has raised following grounds of appeal:-

“1. The Id. CIT(A) has erred in law as well as on facts in upholding the status of the appellant as AOP as against the status of Trust claimed in return of income filed. In view of the facts and submissions, the status of the appellant is required to be considered as Trust and thereby the exemption u/s. 11 and 12 of the I. T. Act, 1961 is required to be allowed.

2. The Id. CIT(A) has erred in law as well as on facts in confirming the action of the AO to treat the interest income of Rs.1,15,71,995/- as "Income from Other Sources" instead of 'Business Income' claimed by the appellant in the return of income filed, without proper consideration and appreciation of the facts of the case. In view of the facts and submissions filed, the impugned interest income is required to be treated as business income.

3. The Id. CIT(A) has erred in law as well as on facts in denying the claim of depreciation of Rs.1,15,65,042/- as per return of income filed during the course of assessment proceedings without proper appreciation of the facts of the case and legal position. In view of the facts and submissions filed, the claim of depreciation of Rs.1,15,65,042/- requires to be allowed.”

3. The brief facts of the case are that the assessee, Sports Authority of Gujarat, is a society registered under the Society Registration Act, 1960 with the object to augment and promote sports in the State of Gujarat. The Society is funded by the Government of Gujarat by way of grant provided by the Ministry of Sports and Cultural activities of the Government of Gujarat to carry out various sports related activities. For the captioned year the assessee filed return of income declaring total income of Rs. 6960/- on 13-10-2017. A notice u/s. 143(2) of the Act was issued on 20-11-2017 initiating assessment proceedings. During the course of assessment, the Id. Assessing Officer noticed that the assessee had earned interest income of Rs. 1,15,71,995/- from investment made by it. The assessee also claimed depreciation of Rs. 1,15,65,042/- against interest income. Therefore, income of Rs. 6953/- was declared under the head “income from business and profession”. During the course of assessment proceedings, the assessee admitted that the Society got its registration u/s. 12AA of the Act only on

06-09-2015 w.e.f. A.Y. 2015-16. Therefore, the Society is not eligible for exemption u/s. 12AA of the Act for the year under consideration i.e. A.Y. 2010-11. The Assessing Officer on perusal of the objectives listed in memorandum of objectives filed by the assessee noted that none of objectives speaks of any business or profession or even any ancillary business to the said sporting activities. The Assessing Officer noted that the interest income has been earned by the Society out of investment of surplus grants in GSFC Ltd. The ld. Assessing Officer asked the assessee as to why the claim of depreciation out of interest income is allowable against this interest income.

3.1 In response, the assessee submitted that the assessee receives grants from Government in one go (lump sum) and the utilization takes place in installments and therefore there is surplus fund which is used to create fixed deposits on which interest income is earned. The interest income so earned is subsequently utilized for the purpose of objects of society only and therefore, interest income so earned on fixed deposits exclusively falls under the purview of business of the assessee and hence has been rightly treated as business income of the assessee. The assessee placed reliance on the case of **DDIT vs. Samsung Engineering Ltd. (ITAT Mumbai)** wherein the Mumbai Bench held that interest income earned on fixed deposits made for the purpose of business should be considered as business income and not as income from other sources. The assessee further placed reliance in the case of **Rakesh Singh vs. ACIT (ITAT Bangalore)** wherein the Bangalore Bench held that the Assessing Officer was duty bound to grant depreciation allowance, whether the same is claimed by the assessee or not, provided, the

conditions mentioned u/s. 32 of the Act are satisfied. The Assessing Officer rejected the assessee's claim for treating interest income as business income and consequentially disallowed depreciation claimed against the same.

3.2 The Id. Assessing Officer observed that the assessee is not a commercial organization but is a sports authority formed with the objective to promote sports policies and sports activities in the State of Gujarat. After spending funds for sports activities, the unspent funds are parked with GFSC on which interest income is earned. The said interest income so earned is then utilized for promotion of sports. Therefore, from facts, it is observed that none of the activity can be termed as business or professional activity. The Id. Assessing Officer further held that on plain reading section 57(ii), it is clear that the depreciation u/s. 32(1) or 32(2) of the Act is allowable in case if any income is assessable under this head only if it is from letting on hire of any machinery, plants and furniture etc., but in the instant case, income is earned from interest on investment of surplus fund and accordingly if the interest income is assessable under the head "income from other sources", depreciation u/s. 32(1) or (2) is not allowable. The Id. Assessing Officer further noted that on perusal of income expenditure account no claim of depreciation was made therein. The claim has been made in the statement of total income in the return of income. Therefore, the claim of depreciation out of interest income is only an afterthought to escape from tax liability. Accordingly, the claim of depreciation to the tune of Rs. 1,15,65,042/- was disallowed by the Assessing Officer.

4. In the appeal before the Id. CIT(A) -9 Ahmedabad, the assessee raised similar arguments to the effect that interest income earned on fixed deposits made for the purpose of business should be considered as business income and not as income from other sources and accordingly depreciation should be allowed on the same. The Id. CIT(A) rejected the assessee's claim while observing that the case of Samsung Engineering Ltd. on which reliance has been placed by the assessee is distinguishable on facts since in that case, the surplus funds were deposited in the form of fixed deposits so as to obtain the letters of credit and performance bonds at the instances of bankers who insisted on keeping the margin money with the bankers. In the instant case, the assessee had made deposits with GSFC (a Govt. undertaking) with the prime object to earn interest on the surplus funds lying with the assessee. Considering these facts, the Id. CIT(A) confirmed the Assessing Officer's action to treat the interest income of Rs. 1,15,71,995/- as income from other sources. In respect of assessee's claim of depreciation of Rs. 1,15,65,042/-, the Id. CIT(A) held that the claim of depreciation was not routed through the profit and loss account but was separately claimed in the statement of total income. Since the interest income itself has been held to "income from other sources", the claim of depreciation which is governed by the provisions of section 32 of the Act while computing the income falling u/s. 28 of the Act, cannot be granted u/s. 57(ii) of the Act when the income is not derived as rent on plant and machinery, furniture etc. Thus, considering the fact that there was no business income and the assessee earned only interest income which was treated as "income from other sources", no depreciation is allowable. Accordingly, the Id. CIT(A) upheld the action of the Assessing Officer and dismissed the assessee's appeal.

Ground Number 1: Status of the appellant as AOP as against the status of Trust

5. Before us, the ld. Authorized Representative of the assessee submitted that ground no. 1 is not being pressed. Accordingly, ground no. 1 is dismissed as not pressed.

Ground Number 2: Whether interest income of Rs.1,15,71,995/- qualifies as "Income from Other Sources" or 'Income from Business or Profession"

6. With regard to ground no. 2, the assessee submitted before us that the ld. CIT(A) has erred in law and in fact in treating interest income of Rs. 1,15,71,995/- as “income from other sources” instead of “business income”. The assessee submitted that the excess grant received from State of Gujarat for its various objects to encourage, promote and develop sports activities in games are kept as deposits on which the assessee earns/receives interest income which is subsequently utilized for the purpose of its objects only. Hence, the interest income earned on such deposits exclusively falls under the purview of objects i.e. business of the appellant and accordingly, interest income has been rightly treated as business income in the return of income filed for A.Y. 2010-11

The Ld. DR relied primarily on the order of Ld. CIT(Appeals)

6.1 The issue for consideration before us is whether the assessee in the instant case can be said to be carrying on business activities for his income to qualify as “income from business and profession” or whether the interest earned from surplus funds qualifies as “income from other sources”.

6.2 The assessee is a society registered under the under the Society Registration Act, 1960 with the object to augment and promote sports in the State of Gujarat. From a perusal of the Memorandum of Objectives filed by the AR of the assessee before the Ld. AO, he observed that the assessee society has been created by the Gujarat Government to promote sport in the State of Gujarat (clause 2 of the said Memorandum). The Ld. AO noted that there are 25 Objectives listed in the said Clause 2 but none of the objectives is about carrying out any business or profession or even ancillary business to the said sporting activity. The Society is funded by the Government of Gujarat by way of grant provided by the Ministry of Sports and Cultural activities of the Government of Gujarat to carry out various sports related activities. The interest income is earned out of deposit of surplus funds in GFSC Limited. During the course of arguments before us, the Ld. AR of the assessee has not brought forth any arguments or placed any material to contest or disprove the above factual finding of fact recorded by the Ld. AO. The only argument put forth by the Ld. AR of the assessee is that interest income so earned has been utilized solely for the purpose for which the society has been formed i.e. promotion of sporting activity and hence the same qualifies as “income from business or profession”.

6.3 In order for us to decide whether in the instant set of facts, a view may be taken that the interest income so earned from deposit of surplus funds may qualify as “income from business or profession”, it may be useful to analyze some Rulings which would throw useful light on the subject.

6.4 In the case of **Director of Income-tax, (Exemptions) v. Gujarat Cricket Association [2020] 120 taxmann.com 50 (Gujarat)**, the Gujarat High Court held that where the driving force of assessee-State cricket association was not the desire to earn profit but object was to promote game of cricket and nurture best of talent, merely because it put up tickets of international cricket matches for sale and earned some profit out of same and said profit was used in activities of promotion of game, the assessee, **could not be termed to be carrying out commercial activities in nature of trade commerce or business** and therefore would not lose its character of having been established for a charitable purpose. The Gujarat High Court observed as below:

*It is not in dispute that the Associations have not distributed any profits outside the organization. The profits, if any, are ploughed back into the very activities of promotion and development of the sport of cricket and, **therefore, the assesseees cannot be termed to be carrying out commercial activities in the nature of trade, commerce or business.***

6.5 In the case of **Bombay Presidency Golf Club Ltd.v ITO[2016] 69 taxmann.com 208 (Mumbai - Trib.)**, the Mumbai Tribunal held that the act of deposit of money in scheduled banks complying with specific provisions

of section 11(5) and **receipt of interest thereon is not an activity in nature of trade, commerce or business**. The Mumbai Tribunal made the following note-worthy observations:

*Several decisions have considered and interpreted the scope, purpose and limits of the proviso to Section 2(15). In GSI India's case (supra), the term trade, commerce or business was interpreted, and in that case even though the assessee was charging a fee having regard to the economic status of the beneficiaries, it was held that it was necessary for the operation and running expenses and the sustenance of charitable activities, that a fee could be charged. **In the case of the assessee on the other hand, there is no fee whatsoever and in fact, it is passive income not involving any activity whatsoever. Therefore, the AO was not correct in holding that act of deposit of money in schedule bank account and receipt of interest thereon is an activity in the nature of trade, commerce or business.***

6.6 In the case of **Institute of Chartered Accountants of India v. Director General of Income-tax (Exemptions), Delhi [2013] 35 taxmann.com 140 (Delhi)**, the Delhi High Court held that where dominant objective of ICAI was to regulate profession of Chartered Accountancy in India, it was a charitable institution and conducting coaching classes and campus placements for a fee could not be held as business as per section 2(15). The Delhi High Court made the following observations:

*After going through the provisions of the ICAI Act and the Regulations framed therein as well as various activities carried on by the petitioner, **we are of the view that the petitioner institute does not carry on any business, trade or commerce.** The activity of imparting education in the field of accountancy and conducting courses both at pre-qualification as well as post-qualification level are activities in furtherance of the objects for which the petitioner has been constituted. **Activities of providing coaching classes or undertaking campus placement interviews for a fee are in relation to the main object of the petitioner which as stated earlier cannot be held to be trade, business or commerce. Accordingly, even though fees are charged by the petitioner institute for providing coaching classes and for holding interviews with respect to campus placement, the said activities cannot be stated to be rendering service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which as held earlier are not trade, commerce or business.***

6.7 In the case of **ICAI v. DGIT(E) [2012] 347 ITR 99/[2011] 202 Taxman 1/13 taxmann.com 175 (Delhi)**, the Hon'ble Delhi High Court held that while construing the term business for the purpose of Section 2(15) of the Act the object and purpose of the Section must be kept in mind and a broad and extended definition of business would not be applicable for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act. The relevant extract of the said judgment is as under:-

*Section 2 (15) defines the term "charitable purpose". Therefore, while construing the term "business" for the said section, the object and purpose of the section has to be kept in mind. We do not think that a very broad and extended definition of the term "business" is intended for the purpose of interpreting and applying the first proviso to section 2 (15) of the Act to include any transaction for a fee or money. An activity would be considered "business" if it is undertaken with a profit motive. **There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business. The expressions "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organization is charitable any incidental activity for furtherance of the object would not fall within the expressions "business", "trade" or "commerce".***

6.8 In the case of **Tamil Nadu Cricket Association v. DIT (Exemption) [2014] 360 ITR 633/221 Taxman 275/[2013] 40 taxmann.com 250 (Mad.)**, the assessee, a Cricket Association, receiving income from holding of matches and was receiving sums therefrom, was denied exemption on the ground that it was engaged in the activities in the nature of trade or commerce or business. The Hon'ble High Court reversed the order holding that substantial/regular surplus cannot taint receipts as arising from business/commerce. By the volume of receipt one cannot draw inference that the activity is commercial.

6.9 In the case of **Dahisar Sports Foundation v. ITO [2017] 87 taxmann.com 313 (Mumbai)**, the ITAT Mumbai held that where main object or purpose of assessee charitable trust was promotion of sports and games, merely because trust collected certain charges from coaching camps meant for promotion of sports and games only could not alter its character of being charitable.

6.10 In **Director of Income-tax (Exemptions), Mumbai v. Shree Nashik Panchvati Panjrapole [2017] 81 taxmann.com 375 (Bombay)**, the Bombay High Court held that where dominant activity carried out by assessee-trust for over 130 years was to take care of old, sick and disabled cows, incidental activity of selling milk which might result in receipt of money, by itself, would not make it trade, commerce or business under section 2(15)

6.11 In the case of **CIT v. Sri Magunta Raghava Reddy Charitable Trust Profit [2016] 72 taxmann.com 214 (Madras)**, the Madras High Court held that income from sale of land owned by assessee, an educational trust, could not be treated as business income and was eligible for exemption under section 11 read with section 2(15) as activity of sale of land was incidental to objects of trust and said profit had been applied for objects of trust.

6.13 A perusal of the above case laws and facts of the instant case lead us to conclude that it cannot be inferred that the interest income earned on deposit of surplus funds kept with GSFC Limited would qualify as “income

from business or profession”. The assessee is admittedly not engaged in any business activity. The dominant/ sole object of the assessee is promotion of sports in the State of Gujarat. The Ld. AR of the assessee has not brought forth any argument or material to support his contention that he is engaged in any activity, the income from which may qualify as business income. The earning of interest on surplus funds kept with GSFC Limited is incidental to its dominant objective i.e. to encourage sports in the State of Gujarat, which we have concluded itself cannot qualify as a business activity. Therefore, in our considered view, interest income earned from surplus fund cannot qualify as “income from business and profession”.

In the result, Ground Number 2 of the assessee’s appeal is dismissed.

Ground Number 3: Claim of depreciation of Rs.1,15,65,042/- against Interest Income

7. This ground of the assessee relates to the claim of deduction on depreciation against income from interest which according to the assessee qualifies as income from business or profession. Having held that the income from interest qualifies as “income from other sources” in the preceding paragraphs, the issue for consideration before us is whether the assessee can claim depreciation against such interest income being “income from other sources”.

7.1 In view our view, language of section 57(ii) of the Act is clear and unambiguous so far as allowability of claim of depreciation in respect of

income earned under the head “income from other sources” is concerned. Section 57(ii) of the Act provides that depreciation u/s. 32(1) or 32(2) is allowable in case any income is assessable under this head only if it is income from letting on hire of any machinery, plant or furniture. However, in the instant case, since income received is from interest on investment of surplus fund and since the same is assessable under the head “income from other sources”, in our view, depreciation u/s. 32 of the Act is not allowable to the assessee. With respect to the contention of the assessee that in view of the decision of Rakesh Singh Vs. ACIT, ITAT Bangalore wherein the Hon’ble Bangalore Bench had held that the Assessing Officer was duty bound to grant depreciation allowance, whether the same is claimed by the assessee or not, in our view, the aforesaid decision in the case of Rakesh Singh vs. ACIT is not applicable to the assessee’s set of facts. This aspect was earlier correctly noted by the Id. CIT(A) in his order who held that in the case of Rakesh Singh (supra) there was positive income under the head “profits and gains on business or profession” and depreciation was claimed on the motor cars which were used for the purpose of business of the assessee and on fulfilling the conditions as laid down in section 32 of the Act. However, as noted above, the assessee in the present set of facts is not earning any business income and has earned only interest income which is assessable as “income from other sources”. Accordingly, in our view, depreciation as claimed by the assessee cannot be allowed. We accordingly uphold the order of Ld. CIT(A) and dismiss the appeal of the assessee in respect of ground no. 3.

In the result, Ground Number 3 of the assessee’s appeal is dismissed.

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

Order pronounced in the open court on 28-02-2022

Sd/-

(P.M. JAGTAP)
VICE PRESIDENT

Ahmedabad : Dated 28/02/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद