



आयकर अपीलीय न्यायाधिकरण, रायपुर न्यायपीठ, रायपुर में।

IN THE INCOME TAX APPELLATE TRIBUNAL,

RAIPUR BENCH, RAIPUR

(Through Virtual Court at Raipur)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER

AND

SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 240 & 267/RPR/2017

कर निर्धारण वर्ष / Assessment Year : 2013-2014 & 2014-2015

Miki Memorial Trust,

MGM Hospital, Vidhansabha Rd,

Saddu, Raipur – 493111 (C.G.)

PAN: AAATM 9323 L

.....अपीलार्थी / Appellant

बनाम / V/s

Asst. Commissioner of Income Tax-I,

Civil Lines Raipur- 4920001 (C.G.)

.....प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Shri Praveen Jain

Revenue by : Shri Sanjay Kumar

सुनवाई की तारीख / Date of conclusive Hearing : 07/03/2022 & 14/03/2022

घोषणा की तारीख / Date of Pronouncement : 29/04/2022

आदेश / ORDER

PER JAMLAPPA D BATTULL, AM;

The present appeal filed by the appellant assessee is assailed against the orders of the Commissioner of Income Tax- Appeal-I, Raipur [for short "CIT(A)"] dt. 30/06/2017 & 07/09/2017 passed u/s 250 of the Income-tax Act, 1961 [for short "the Act"], which in turn ascended from the orders of Asstt. Commissioner of Income Tax Circle-Raipur [for short "AO"] dt 23/03/2016 & 23/12/2016 passed u/s 143(3) of the Act, for assessment year [for short "AY"] 2013-2014 & 2014-2015 respectively.



2. The controversy under the present appeal lies in a narrow compass as to whether a claim of depreciation is allowable on the value of assets, the acquisition cost of which claimed as application u/s 11 of the Act.

3. Except the amount of impugned disallowance, since the issue urged in both these appeals are identical in nature, they are heard separately on the date mentioned herein before, and disposed of by a common order, as such the adjudication in lead case ITA No 240/RPR/2017 laid in succeeding paragraphs, shall mutatis mutandis apply to ITA No 267/RPR/2017.

4. Before advancing the matter on facts for adjudication, it is necessary to reproduce **grounds challenged** by the appellant assessee before Income Tax Appellate Tribunal [for short "Tribunal"] as;

In ITA No 240/RPR/2017

1. ***Ground 1: That on the facts and on the circumstances of the case the Ld. CIT(A) erred in sustaining disallowance of claim of depreciation of Rs,49,90,371/- made by Ld. AO. Disallowance is unjustified and uncalled for and may kindly be deleted."***

2. ***Ground 2: That on the facts and on the circumstances of the case the Ld. CIT(A) erred in sustaining disallowance of claim to carry forward of excess application of fund of Rs.1,99,43,652/- made by Ld. AO. Disallowance is unjustified and uncalled for, carry forward of excess application of fund may kindly be allowed."***

3. ***The assessee craves leave to add, urge, alter or withdraw any ground/s before or at the time of hearing of this appeal."***

(Emphasis Supplied)



In ITA No 267/RPR/2017

1. **Ground 1:** *That on the facts and on the circumstances of the case the Ld. CIT(A) erred in sustaining disallowance of claim of depreciation of Rs,48,95,608/- made by Ld. AO. Disallowance is unjustified and uncalled for and may kindly be deleted.”*
2. **Ground 2:** *That on the facts and on the circumstances of the case the Ld. CIT(A) erred in sustaining disallowance of claim to carry forward of excess application of fund of Rs.1,29,10,885/- made by Ld. AO. Disallowance is unjustified and uncalled for, carry forward of excess application of fund may kindly be allowed.”*
3. *The assessee craves leave to add, urge, alter or withdraw any ground/s before or at the time of hearing of this appeal.”*

(Emphasis Supplied)

5. Having laid the grounds assailed in the present case, succinctly the facts of the case are;

5.1 The assessee is a registered Charitable Trust / institution u/s 12AA of the Act, and engaged in running of “Eye Hospital and Research Centre” in the name & style of “MCM Eye Institute. The assessee trust filed its return of income [for short “ROI/ITR”] for AY 2013-2014 electronically on 27/09/2013 declaring total income of ₹NIL. The case of the assessee trust was selected for scrutiny under Computer Assisted Scrutiny Scheme [for short “CASS”] by service of statutory notice dt. 27/09/2014 u/s 143(2). On a change of incumbent, an intimation u/s 129 of the Act alongwith questionnaire was served on the assessee trust, in response to which, the authorised representative of the assessee [for short “AR”] filed written submissions



accompanying evidential documents inter alia Copy of Bye-laws, note on activities, certificate of no change in object vis-à-vis constitution of the trust etc. After examining the submissions and causing test check of books of account produced by the assessee trust, the Ld. AO called upon the assessee to justify the claim of depreciation, in response thereto, the assessee trust in reliance of judicial precedents submitted before Ld. AO that, the Trust albeit not engaged in any commercial activities but claim of depreciation is made in computing the surplus applying the normal commercial principle, hence it is deserves to be allowed. The Ld. AO however rebutting the contention of the Trust, placing robust reliance on the decision of Hon'ble Kerala High Court in the case of "**Lessie Medical Institution Vs CIT**" reported at 348 ITR 344 (Kel) dislodged the claim for entitlement of depreciation holding it to be a double deduction, as the entire cost / value of assets on a previous occasion claimed & allowed as application of income in the hands of the assessee, and it is apt to reproduce the relevant part of the para 5 from the order of assessment for brevity;

"It would be worthwhile to mention here that, in the case of Lessie Medical Institution Vs Commissioner of Income Tax reported in 348 ITR 344 Kerala (2012), the Hon'ble Court has decided the matter in favour of the revenue. In the case of Lessie Medical Institutions (Supra), which is a long judgement, passed by the divisional bench of Hon'ble Kerala High Court dealt the issue of double deduction in detail taking into consideration of almost all the judgements on this issue. In this case Hon'ble Kerala High Court have categorically decided that depreciation cannot be allowed when the full cost has been treated as application in any year. The Hon'ble High Court also



observed that the other judgments were made per incuriam they did not consider the judgement of the apex court in the case of Escorts Ltd. (J.K. Synthetics Ltd.) Vs. Union of India 199 ITR 43 (SC)[1993]”

5.2 To buttress the action of disallowance of depreciation, the Ld. AO also articulated the applicability of newly inserted provision of subsection 6 to section 11 of the Act by the Finance Act, 2014 with a strong conviction that, through the provision of section 11(6) is effective from AY 2015-2016, it is indeed enacted as clarificatory in nature to restrain opening of concluded assessments, and holding so has finally culminated the assessment with a disallowance of depreciation and assessed total income of the assessee trust at ₹NIL after giving effect to the provisions of section 11 and 12 of the Act.

5.3 The appellant aggrieved with the order of Ld. AO moved an appeal before Ld. CIT(A) challenging the rejection of claim of depreciation by Ld. AO. Ld. During the course of first appellate proceedings the assessee trust reiterated its equi submission as it was laid before original assessment proceedings and challenged the impugned disallowance. The Ld. CIT(A) acknowledging the submission of the assessee trust, prima facie opined that, charitable trust being a non-commercial establishment should resort to prepare only **Receipt and Payment Account** to avoid any claim for notional expenditure like depreciation, which is otherwise available for commercial entity to arrive at taxable profit. Ld. CIT(A) further was of the view that, depreciation being a charge against the profit is only allowed in computing the income under the provisions of chapter IV-D and such allowance cannot be permitted in computing income u/s 11 to 13 of the Act. Consequently the



Ld. CIT(A) echoed with the view of his subordinate in holding that, when the full and entire cost of asset is allowed as application of income while computing the income u/s 11 of the Act, further allowance of depreciation on the value of such assets, would amount to double deduction which is *contra legem*, and therefore confirmed the disallowance concurrently placing reliance on equi judicial precedents including the decision of Hon'ble Karnataka High Court in the case of "Lissie Medical Institution Vs CIT" reported in 348 ITR 344 (Kar).

5.4 Aggrieved by the order of tax authorities below, the appellant trust is in appeal before us with the grounds of appeal laid in foregoing para 4.

6. After hearing the rival contentions of both the parties; perused material placed on records and duly considered the facts of the case in the lights of settled legal position and case laws relied upon both the parties to the appeal.

7. When the appeals is taken up in the course of virtual hearing, at the outset the Ld. AR adverting to the grounds of appeal filed, stated that, ground number 2 (of both the appeals) being consequential, is not pressed for adjudication, ergo the solitary ground of impugned disallowance stands for adjudication.

8. During the course of adjudication, the Ld. AR in support of claim for depreciation, made twofold submission, one; as to the income of the trust although liable to be computed in accordance with the provisions of section 11 to 13 of the Act, however before giving effect to the provisions of section 11 of



the Act, income must first needs to be computed applying the commercial principle and in doing so, the claim of depreciation is must and secondly; the provision of newly inserted section 11(6) although is clarificatory in nature, but it is applicable from the AY 2015-2016, and to reinforcement the contention, the Ld. AR heavily relied on the decision of Hon'ble Apex Court in "CIT Vs Rajasthan & Gujarati Charitable Foundation" reported in 402 ITR 441 (SC). Adverting to the aforesaid judicial precedent, it is submitted that, the Hon'ble Lordship have therein held that, the claim of depreciation is allowable to charitable trust even if the entire expenditure incurred for acquisition of capital asset has been treated as application of income. *Au contraire*, the learned departmental representative [for short "DR"] without rebutting the facts claimed by the appellant, supported the order of lower tax authorities and our drawn attention to the decision of Lessie Medical Institution (Supra).

9. In our considered view, the issue is no more *res integra*, the Hon'ble Supreme Court in the case of "CIT Vs Rajasthan and Gujarati Charitable Foundation Poona" reported at 402 ITR 441 (SC) as settled the issue in favour of assessee, wherein the Hon'ble Lordships while answering the question on the subject matter have categorically held that;

"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. Framjee Cawasjee 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."

10. *Ad litem*, The Ld. AO while carrying out the disallowance of depreciation found to have also relied on decision of Hon'ble Apex Court in "Escorts Ltd. Vs UOI" (supra), however it shall be mindful to make a mention that, the question before the Hon'ble Supreme Court in the matter of "Escorts Ltd Vs UOI" (supra) was related to dual claims of the assessee u/s 35 of the Act in relation to an item of same asset for weighted deduction and the secondly claim for depreciation. Thus, two benefits were claimed in respect of the very same asset, *per contra* the issue before us is entirely different and a distinct position in the present appeal is that, it involves a claim for exemption in respect of income earned from property held for charitable or religious purposes, consequently the views of Ld. AO to the given facts and circumstance being are *contra legem*, hence deserves reversal. Our view has been fortified by the



plethora of judicial pronouncement of various High Courts, such as the Hon'ble Bombay High Court in the case of "CIT Vs Munisuvrat Jain (1994 Tax Law Reporter 1084) and "DIT (Exemption) Vs Framjee Cawasjee Institute" (109 CTR 463); Hon'ble Karnataka High Court in "CIT Vs Society of the Sisters of St. Anne" (146 ITR 28); Hon'ble Madhya Pradesh High Court in "CIT Vs Raipur Pallottine Society" (180 ITR 579); Hon'ble Gujarat High Court in "CIT Vs Sheth Manilal Ranchhoddas Vishram Bhavan Trust" (198 ITR 598); Hon'ble Punjab and Haryana High court in "CIT Vs Market Committee Pipli" (330 ITR 16) and "CIT Vs Tiny Tots Education Society" (330 ITR 21); Hon'ble Madhya Pradesh High Court in "CIT Vs Devi Sakuntala Tharal Charitable Foundation" (358 ITR 452) and of Hon'ble Calcutta High Court in "CIT Vs. Silluguri Regulated Market Committee" (366 ITR 51). In addition, the decision of Hon'ble Delhi High Court in "DIT Vs Vishwa Jagriti Mission" 262 CTR 558 and the Hon'ble Karnataka High Court in "DIT (Exemption) Vs Al-Ameen Charitable Fund Trust" (supra) have accepted the claim of the assessee distinguishing both the judgment of the Supreme Court in Escorts as well as that of the Kerala High Court.

11. Before we depart, insofar as the allowability of depreciation on assets where the full value of assets was on the previous occasion claimed as 'application of income', we are mindful to elucidate that, even in the present case, the assessee had claimed the cost of asset as application of income u/s 11 of the Act in any of the previous year or years up to AY 2014-15 and is allowed in the light of judicial precedents, the claim of depreciation thereagainst for the year under consideration is not hit by the amended provision of section 11(6) of the Act, as the amended provision of section 11(6)



de future prospective in nature and effective from AY 2015-2016 as held by Hon'ble Karnataka High Court in the case of "DIT V/s Al-Ameen Charitable Fund Trust" reported at 383 ITR 517 (Kar). Ergo, in the light of judicial precedents stated herein above hold that, the appellant trust is eligible for depreciation up to the AY 2014-2015, consequently we direct the Ld. AO to delete the disallowance of depreciation.

12. Resultantly, the both the appeals of the assessee is allowed in above terms.

Order pronounced in the open court on this Friday 29th day of April, 2022.

-S/d-

RAVISH SOOD
JUDICIAL MEMBER

-S/d-

JAMLAPPA D BATTULL
ACCOUNTANT MEMBER

रायपुर/ RAIPUR; दिनांक / Dated : 29th day of April, 2022

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals), Raipur/Bilaspur(C.G.)
4. The Pr. CIT, Raipur(C.G.)
5. विभागीयप्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,
निजीसचिव / Private Secretary
आयकर अपीलीय न्यायाधिकरण, रायपुर