

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 2714/Mum/2023**

(Assessment Year: 2016-17)

Sangit Kala Kendra,  
1<sup>st</sup> Floor, 159 Industry House  
Padmabhushan H.T Parekh  
Marg,  
Marine Lines  
Mumbai 400 020

Vs.

The Income Tax Officer  
Exemption 2 (3) Mumbai  
3<sup>rd</sup> and 4<sup>th</sup> Floor,  
Pratishtha Bhawan,  
Church Gate,  
Maharshi Karve Road,  
Dhobi Talao,  
New Marine Lines  
Mumbai 400 020

**(Appellant)**

**(Respondent)**

**PAN No. AAATS1345J**

**Assessee by** : Shri Sunil Hirawat, AR  
**Revenue by** : Shri Dr. Kishor Dhule, CIT DR

**Date of hearing:** 04.12.2023

**Date of pronouncement :** 05.12.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Sangeet kala Kendra, a charitable trust against appellate order passed by the National faceless appeal Centre, New Delhi (the learned CIT – A) for assessment year 2016 – 17 on 14/6/2023, wherein appeal filed by the assessee against the assessment order passed by The Income Tax Officer, exemptions (2) (3), Mumbai, (the learned AO) dated 12/12/2018 is partly allowed.

02. Assessee is aggrieved with that order and is in appeal before us raising following grounds: -

*"1. On facts and in law, the learned Commissioner (Appeals) had erred in confirming the addition of ₹10,13,632/- being the claim of depreciation. Under the facts and circumstances of the matter, he ought not to have confirmed the said addition of ₹10,13,632/-*

1. Thus, only issue in this appeal is whether the assessee is entitled to the depreciation on assets acquired by the charitable trust, cost of which was not claimed as an application of income.
2. Brief facts of the case shows that assessee is a charitable trust, filed its return of income claiming exemption under section 11, 12 and 13 of the income tax Act as applicable to a charitable trust on 12/10/2016 along with the income and expenditure account, balance sheet and audit report in form number 10 B declaring a total income of Rs. 2,47,110/-.
3. The assessee trust is registered under section 12 A of the income tax act.
4. The return of income of the assessee was picked up for scrutiny and necessary notice under section 143 (2) was issued and served on the assessee.
5. On the issue in dispute, during assessment proceedings, the learned assessing officer noted that

assessee trust has claimed depreciation of ₹ 1,013,632, according to him it is double deduction claimed by the assessee. Assessee explained that there is no question of double deduction. It stated that assessee has acquired a premises training center in financial year 1-4- 2013 to 31/3/2014 amounting to ₹ 28,985,500/-. It has used the earlier accumulated income of ₹ 17,469,368/- and on the balance sum of ₹ 11,516,132 it is claimed depreciation thereon. The first depreciation claim was made in financial year 2013 – 14, for assessment year 14 – 15, subsequently for assessment year 2015 – 16. In assessment order under section 143 (3) of the Act, this depreciation was allowed. For this year, the assessee has claimed depreciation on such assets, which is proposed to be disallowed. It is the claim of the assessee that the assessee has not claimed application of income by acquiring the fixed **assets to the extent of ₹ 11,516,132/-** on which subsequently the depreciation has been claimed. Assessee has reduced the cost of the assets to the extent, earlier accumulated income is used.

6. The Ao was of the view that assessee trust has claimed depreciation and capital expenditure in the form of addition to the fixed assets in computation of income as application of total income and therefore it amounts to double deduction. Consequently, the

assessment order was passed under section 143 (3) of the act on 12/12/2018 determining total income of the assessee at ₹ 4,929,450/- wherein the depreciation of ₹ 1,013,632/- was added.

7. Aggrieved by the assessment order assessee preferred an appeal before the learned CIT - A wherein the order of the learned assessing officer was confirmed and depreciation of ₹ 1,030,632/- claimed by the assessee was disallowed.
8. Before us, the assessee has submitted a paper book containing eight pages. The learned authorized representative submitted that assessee has not claimed depreciation on the cost of acquisition of the asset, which is funded by the accumulated income of earlier years. On the balance sum of the assets, the assessee has not claimed the same as an application of income but has claimed the depreciation thereon. Hence, there is no double deduction claimed by the assessee. Therefore, the claim of the assessee is in accordance with the law.
9. The learned departmental representative vehemently supported the order of the learned lower authorities.
10. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that assessee is a charitable trust eligible for exemption under section 11, 12 and 13 of the income tax act as it is registered under section 12 A of the

income tax act. Undoubtedly, the issue is that for assessment year 2016 – 17 there cannot be double deduction allowed to the assessee if the assessee claims the acquisition of the asset as application of the income as well as claims the depreciation on the same amount. However, that is not the case before us. The case before us is that for assessment year 2014 – 15 the assessee has acquired the training centre at the **cost of ₹ 28,985,500/-**. Assessee has reduced the **cost of acquisition by ₹ 17,469,368/-** which is part of the accumulation made by the assessee by filing an application in earlier years. Therefore, on the balance **amount of ₹ 11,516,132/-** the assessee has an option either to claim the full amount as application of income or to claim depreciation thereon. Naturally assessee cannot claim both after the amendment to the provisions of section 11 by inserting section 11 (6) of the act. In this case, assessee has claimed depreciation on this sum for first time in the financial year ended on 31/3/2014, subsequently on 31/3/2015 and in 31/3/2016 i.e. Impugned assessment year. In the earlier assessment years, the depreciation has been allowed to the assessee by framing an assessment order under section 143 (3) of the act. Thus, it is apparent that assessee has not claimed it as application of income to the extent of Rs 1,15,16,132/-. Assessee has claimed depreciation on



the same. Further claim of application out of earlier accumulated income of Rs 1,74,69,368/- , on this assessee has not claimed any depreciation. Thus, it is clear that on portion of income, which is shown as application of income, assessee has not claimed any depreciation. Further, on portion of balance cost of assets, assessee has not claimed application of the income, but claimed depreciation. Therefore, there is no double deduction claimed by the assessee. Hence, we allow solitary ground of appeal and direct the Id AO to delete disallowance of depreciation. Therefore, the solitary ground preferred by the assessee is allowed.

03. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 5.12.2023.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 5.12. 2023

*Dragon*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai