HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D.B. Income Tax Appeal No. 337 / 2017

Commissioner of Income Tax (Exemptions), 3rd Floor, Kailash Heights, Lal Kothi, Tonk Road, Jaipur.

----Appellant

Versus

M/s Shyam Lal Panwar Anandi Devi Memorial Charitable Trust, 135, Ram Nagar Extension, New Sanganer Road, Sodala, Jaipur

----Respondent

Connected With

D.B. Income Tax Appeal No. 344 / 2017

Commissioner of Income Tax (Exemptions), 3rd Floor, Kailash Heights, Lal Kothi, Tonk Road, Jaipur.

----Appellant

Versus

M/s Shyam Lal Panwar Anandi Devi Memorial Charitable Trust, 135 Ram Nagar Extension, New Sanganer Road, Sodala, Jaipur.

----Respondent

D.B. Income Tax Appeal No. 338 / 2017

Commissioner of Income Tax (Exemptions), 3rd Floor, Kailash Heights, Lal Kothi, Tonk Road, Jaipur

----Appellant

Versus

M/s Shyam Lal Panwar Anandi Devi Memorial Charitable Trust, 135, Ram Nagar Extension, New Sanganer Road, Sodala, Jaipur

----Respondent

D.B. Income Tax Appeal No. 339 / 2017

Commissioner of Income Tax (Exemptions), 3rd Floor, Kailash Heights, Lal Kothi, Tonk Raod, Jaipur.

----Appellant

Versus

M/s Shyam Lal Panwar Anandi Devi Memorial Charitable Trust, 135, Ram Nagar Extension, New Sanganer Road, Sodala, Jaipur.

----Respondent

For Appellant(s) : Mr. Daksh Pareek for Mr. Sameer Jain

For Respondent(s) :

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VIJAY KUMAR VYAS

Judgment

02/01/2018

In these appeals common questions of law and facts are involved, hence, they are decided by this common judgment.

By way of these appeals, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has allowed the appeals of the department as well as the assessee for statistical purposes.

Counsel for the appellant framed the following substantial questions of law:-

In DBITA No. 337/2017 & 339/2017

"1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in allowing the appeal of the assessee by ignoring the fact that assessees like charitable for religious institutions are governed by almost the separate or independent provisions of Section 11, 12, 12A, 12AA & 13 and these provisions are independent code in itself in Chapter III of the Income Tax Act, 1961 and claim of depreciation u/s 32 comes under Chapter IV of the Act under the u/s 32 comes under Chapter IV of the Act under the head 'D' - Profit and Gains of Business or Profession and depreciation is allowed when capital assets are used for the purpose of business?

2. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in allowing the appeal of the assessee by ignoring the fact that in case of charitable or religious institutions,

the assessee is not eligible for any type of depreciation as the entire expenditure for the purchase of capital assets is allowed as a deduction and the same is treated as application of income u/s 11(1) and claiming depreciation on the same capital assets tantamount to double deduction and is not as per law as these capital assets are not used for the purpose of business or profession as provided u/s 32(1)?

3. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in holding that both depreciation and application of income are to be considered separately to determine the correct income without appreciating that the same tantamounts to double deduction which is not correct as per relevant provisions of the I. T. Act?

4. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in dismissing the appeal filed by the revenue on the issue of disallowance of depreciation placing reliance on their own decision without appreciating the fact that the Hon'ble Supreme Court in the case of Escorts Ltd. & another vs. Union of India (199 ITR 43), while dealing with the issue of allowance of expenditure on scientific research u/s 35(1)(iv)[corresponding to section 10(2)(xiv) of the IT Act, 1992] held that any expenditure of a capital nature (or incurred towards purchase of capital assets) on scientific research allowed as deduction u/s 35(1)(iv) cannot be allowed once again as deduction in the form of depreciation on such capital assets?"

In DBITA No. 338/2017 & 344/2017

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allowing the appeal of the assessee by ignoring the fact that in case of charitable or religious institutions, the assessee is not eligible for any type of depreciation as the entire expenditure for the purchase of capital assets is allowed as a deduction and the same is treated as application of income u/s 11(1) and claiming depreciation on the same capital assets tantamount to double deduction and is not as per law as these capital assets are not used for the purpose of business or profession as provided u/s 32(1)?

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5. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in deleting the interest charged on the outstanding balances of trust fund/income with specified persons u/s 13(3) of the IT Act, 1961 sustained by CIT(A)?"

The facts of the case are that the respondent-assessee is engaged in imparting education and educational activities and is currently educational institute by the name of Mahatma Jyoti Rao Phule. The respondent-assessee was granted education vide order dated 8.8.2014 with effect from 26.3.2014. Hence, the assessee claimed exemption u/s 10, 11 & 12 of the Act. However, the AO in re-assessment proceedings disallowed the claim of assessee's exemption u/s 11 and consequential issues related to tax on account of disallowance of benefit u/s 12AA and further deleted the claim of depreciation.

We have gone through the judgment of CIT(A) & ITAT. We are in complete agreement with the view taken by the Tribunal. No substantial questions of law arises.

Hence, the appeals stand dismissed.

(VIJAY KUMAR VYAS), J. (K.S. JHAVERI), J.

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