IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

Before Shri Shailendra Kumar Yadav, Judicial Member
and Shri R.K. Panda, Accountant Member

ITA No. 1753/PN/2013
(Asstt.Year : 2010-11)

ITO-Ward-10(1), Pune .. Appellant

Vs.

Society of Saint Ursula,
Akurdi, Pune – 411044
PAN No. AAAAS 4291C .. Respondent

Assessee by	:	Shri C.H. Naniwadekar
Revenue by	:	Shri P.S. Naik
Date of Hearing	:	03-09-2014
Date of Pronouncement	:	04-09-2014

ORDER

Per R.K. Panda, AM :

This appeal filed by the Revenue is directed against the order dated 14-06-2013 of the CIT(A)-V, Pune relating to A.Y. 2010-11.

2. Facts of the case, in brief, are that the assessee is a trust known as Society of Saint Ursula formed in 1963 as a public charitable trust and the objects of the trust are claimed to be educational and medical. The trust is also registered as a Public Charitable Trust under the Bombay Public Trust Act. (BPT), 1950. The Charity Commissioner has granted registration under BPT Act vide registration No.F266, Poona on 27-05-1963. The trust is also registered under the Society Registration Act. The management and administration of the trust are run by sisters who are members of the society. They work as teachers in the school and also look after administrative and other work. It is claimed that no

remuneration or salary is paid for the services rendered to the trust. From the order of CIT(A) it is seen that the trust is running the following schools :

(1) Saint Ursula School, Nigdi
(2) Kamalnayan Bajaj School, Chinchwad
(3) Stella Maris School, Vadgaon Sheri
(4) Saint Ursula School, Varawade, Dist : Singhudurga
(5) St. Theresa School, Hidkal Dam

2.1 During the course of assessment proceedings the Assessing Officer noted that the assessee trust has spent Rs.19,885/- on medical expenses for the members of the trust. On being questioned by the Assessing Officer, it was submitted that the concerned sisters had devoted their life time in the services of trust without charging any salary and therefore it was but natural for the trust to take care of the medical needs of the sisters. It was also submitted that the sisters are trustees for the name sake only as they manage the administration and other affairs of the trust and they have no personal ambition. Even they do not have any bank A/c. However, the submissions were not accepted by the Assessing Officer and he came to the conclusion that there was violation of provisions of sec.13(1)(c) of the I.T. Act on this account by holding as under :

> "In the above cited case, Nuns were paid salaries and thereafter they made over to the society.
>
> Expenses were not out of donation given to the Trust by the donors other than the monies made over to the society by the Nuns. In the present case, the assessee Trust has diverted funds out of Foreign Donations, even though such funds are meant neither for corpus nor earmarked.
>
> Nuns were only members of the Trust and not the Trustees of the Trust whereas in the present case, sister Susane and Sr. Rekha are trustees of the Trust.
>
> Therefore, the facts of the case are totally different from that of the assessee's case."

2.2 The Assessing Officer similarly noted that the trust has claimed depreciation of Rs.14,95,869/- and Rs.34,32,535/- respectively on movable and immovable assets in Income and Expenditure account as well as computation of total income. In support of this claim the trust has placed reliance on DIT(Exemption) Vs. Framjee Cawsjee Institute reported in 109 CTR 463 and CIT Vs. Society of Sisters of St. Annes reported in 146 ITR 28 (kar.).

3. However, the Assessing Officer did not accept the above contention of the assessee on the ground that the trust has claimed expenditure on acquisition of such capital assets as application of income, therefore, it is claiming double deduction. Relying on the decision of Hon'ble Supreme Court in the case of Escorts Ltd. and Others Vs. UOI reported in 193 ITR 43 (SC) he rejected such claim of the assessee. He noted that the assessee has not applied 85% of its total income and no declaration in requisite Form No.10 has been filed in support of this amount. Therefore, an amount of Rs.49,28,404/- ceases to remain invested or deposited under the modes as required u/s.11(5) of the I.T. Act. He, therefore, treated Rs. 49,28,404/- as income of the trust in view of the provisions of section 11(3)(b) of the I.T. Act. The Assessing Officer thus determined the total income of the assessee at Rs.3,83,37,100/-.

4. In appeal the Ld.CIT(A) held that there was no violation of the provisions of section 13(1)(c) of the I.T. Act on account of medical expenses of Rs.19,885/- incurred for Sisters Susane and Rekha. While doing so, he observed that the sisters had served the trust without

charging any salary. The very fact that the concerned sisters have served the trust without charging any salary proves that they were not having any monetary interest in the trust. Since they had devoted their entire life in the services of the trust it was but natural and even the responsibility of the trust to take care of their medical needs. He observed that the amount of Rs.19,885/- is too insignificant to be considered as a benefit to the trustees on the facts and circumstances of the case. Therefore, the Assessing Officer was not justified in coming to the conclusion that there was violation of the provisions of section 13(1)(c) of the I.T. Act.

5. So far as the denial of depreciation of Rs.49,28,404/- he directed the Assessing Officer to allow the claim of depreciation in view of the decision of the Hon'ble Bombay High Court in the case of DIT (Exemption) Vs. Framjee Cawsjee Institute reported in 109 CTR 463 (Bom).

6. Aggrieved with such order of the CIT(A) the Revenue is in appeal before us with the following grounds :

> "1. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in allowing the claim of depreciation of Rs. 49,28,404/- when the assets on which deprecation was claimed were acquired out of application of income and allowing of depreciation would amount to double deduction.
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> 2. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in not appreciating the fact that the amount of depreciation of Rs.49,28,404/-is even otherwise not allowable to the assessee, as it has failed to apply 85% of its total income including the amount of depreciation available to that extent for the specified purpose and, therefore, the amount is required to be treated as income as per the provisions of Sec. 11 (3) of the Act.
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> 3. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in allowing deduction u/s. 11 even when there was violation of provisions of sec. 13(1)(c), which states that if any part of income is used or applied for the benefit of any person specified u/s. 13(3), provision of sec 11 would not apply.

> 4. The appellant craves leave to add, amend or alter any of the above grounds of appeal."

7. We have considered the rival arguments made by both the sides. The Ld. Counsel for the assessee at the outset filed the copies of the orders of the Tribunal in assessee's own case for A.Y. 2008-09 vide ITA No.1540/PN/2012 order dated 31-12-2013 and submitted that both the grounds have been decided by the Tribunal in favour of the assessee. He submitted that following the said order, the Tribunal in ITA No.2445/PN/2012 order dated 28-01-2014 for A.Y. 2009-10 has dismissed the appeal filed by the Revenue. The Ld. Departmental Representative while supporting the order of the Assessing Officer fairly conceded that the issues have been decided in favour of the assessee by the Tribunal.

8. After hearing both the sides, we find both the issues raised by the Revenue in the grounds of appeal have been decided in favour of the assessee by the Tribunal in assessee's own case for the immediately preceding assessment year. We find the Tribunal in assessee's own case for A.Y. 2009-10 order dated 28-01-2014 following the order for A.Y. 2008-09 has decided both the issues by observing as under :

> "7. We have considered the rival arguments made by both the sides. The Ld. Counsel for the assessee at the outset filed a copy of the order of the Tribunal in assessee's own case for A.Y. 2008-09 vide ITA No.1540/PN/2012 order dated 31-12-2013 and submitted that both the grounds have been decided by the Tribunal in favour of the assessee. He accordingly submitted that this being a covered matter the grounds raised by the Revenue should be dismissed. The Ld. Departmental Representative on the other hand while supporting the order of the Assessing Officer fairly conceded that the issues have been decided in favour of the assessee by the Tribunal.

8. We find the Tribunal in assessee's own case for A.Y. 2008-09 (Supra) while deciding the issue of allowability of deduction even when there was violation of provisions of section 13(1)(c) has observed as under (Para 11 of the order) :

"11. In so far as the plea of the Assessing Officer that on account of expenditure of RS.20,000/- incurred on medical expenses of Sister Susane (trustee) there is a violation of section 13(1)(c) of the act is concerned, we find that the approach of the Assessing Officer is clearly misdirected. As noted earlier and which has also been appreciated by the CIT(A), the concerned Sister has been serving the Trust without charging any salary and she has devoted entire life in the Trust and therefore it would be natural and even imperative for the assessee Trust to take care of her medical needs. Assessee pointed out before the CIT(A) that Sister Susane was wholly dependent on the Trust with no personal bank account or wealth and therefore it was in the fitness of things that her medical needs were to be taken care by the Trust. The said expenditure under the circumstances of the case, in our view, does not amount to violation of section 13(1)(c) of the Act. Notably, even if we strictly apply section 13(1)(c) of the Act, it would be evident that the amount has been spent on a person who is rendering services to the Trust and the impugned amount of Rs.20,000/- spend in the whole year cannot be considered as unreasonable or excessive. Therefore, considering the entirety of the circumstances, we find no error on the part of the CIT(A) in holding that there is no violation of provisions of section 13(1)(c) of the Act on account of incurrence of medical expenses of Rs.20,000/- for Sister Susane."

8.1 So far as the issue relating to denial of depreciation is concerned, we find the Tribunal at para 13 of the order has observed as under :

"13. The only other issue remaining by way of Grounds of Appeal Nos. 3 and 4 relate to the denial of assessee's claim of depreciation of Rs.42,38,718/- on the assets. The CIT(A) has deleted the disallowance following the judgment of the Hon'ble Bombay High Court in the case of DIT (Exemption) vs. Framjee Cawsjee Institute, 109 CTR 463 (Bom). Nothing to the contrary has been argued by the Revenue before us and therefore, following the judgment of the Hon'ble Bombay High Court, we find that the CIT(A) made no mistake in allowing the claim of depreciation of Rs.42,38,718/-. Thus, Grounds of Appeal Nos. 3 and 4 are also dismissed".

8.2 Since both the issues have been decided by the Tribunal in favour of the assessee by dismissing the appeal filed by the Revenue and nothing contrary was brought to our notice, therefore, respectfully following the decision of the Coordinate Bench of the Tribunal in assessee's own case for the immediately preceding assessment year the grounds raised by the Revenue are dismissed."

9. Following the consistent view of the Tribunal in assessee's own case for the immediately 2 preceding assessment years and in absence of any contrary material brought to our notice against the order of the

Tribunal, we uphold the order of the CIT(A) on both the issues. The grounds raised by the Revenue are accordingly dismissed.

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

Pronounced in the Open court on 04-09-2014.

Sd/-	Sd/-
(SHAILENDRA KUMAR YADAV)	**(R.K. PANDA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Pune, dated : 04th September, 2014
Satish

Copy of the order is forwarded to :

1. The Assessee
2. The Department
3. The CIT(A)-V, Pune
4. The CIT-V, Pune
5. D.R. “A” Bench, Pune
6. Guard File

By order

// True Copy //

Assistant Registrar,
Income Tax Appellate Tribunal, Pune