IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

BEFORE SHRI DINESH KUMAR AGARWAL (J.M.)
AND SHRI N.K. BILLAIYA (A.M.)

ITA No. 6639 & 6640/Mum/2011
Assessment Years : 2007-08 & 2008-09

Asstt. Director of Income-Tax (E)-1(2), Room No. 504, Piramal Chambers, 5th floor, Parel, Mumbai – 400 012.	Vs.	The Synthetic & Rayon Textiles Export Promotion Council, Resham Bhavan, Ist floor, 78 Veer Nariman Road, Mumbai - 400 020. PAN AAATT 0077 C
(Appellant)		**(Respondent)**

Assessee by : Shri Jitendra Jain
Department by : Shri V. Krishnamoorthy

Date of hearing	04-9-2012
Date of pronouncement	12-09-2012

O R D E R

PER DINESH KUMAR AGARWAL, J.M.

These two appeals preferred by the Revenue are directed against the separate orders dtd. 13-7-2011 and 27-7-2011 passed by the ld. CIT(A) – 1, Mumbai for assessment years 2007-08 and 2008-09 respectively. Since facts are identical and common issue is involved, both these appeals are disposed of by this common order for the sake of convenience.

2. Briefly stated facts of the case extracted from ITA No. 6640/Mum/2011 for A.Y. 2008-09 are that the assessee trust is an

association setup by Government of India, Ministry of Textiles. The main objects of the assessee are to establish, promote and operate, maintain and increase the export of Synthetic & Rayon Textiles as well as undertaking market studies in foreign markets, sending out trade delegations to foreign countries etc. The assessee was granted exemption u/s 11 of the Income Tax Act, 1961 (the Act) vide Certificate issued u/s 12A of the Act. During the course of assessment proceedings the A.O. noted that the major source of income is by way of subscription amounting to Rs. 1,48,08,000/-. This entire amount of subscription has been claimed as exempt on the ground of principle of mutuality. The A.O. has not allowed the claim of the assessee on the ground that the surplus is not distributable amongst the members after dissolution. The assessee has made transactions with non-members by organising trade fairs etc. outside India. As per assessee's own claim, it exists for promotion in general. Its benefits are given to public at large and not restricted to the members alone. Due to activity of the assessee trust other than members are also benefited. Under the circumstances, the assessee trust is a non-mutual body for promotion for trade and export in particular. The A.O. further observed that the assessee incurred expenses of Rs. 1,03,16,902/- as per details appearing at page 8 of the assessment order. According to the A.O. as per section 11, the income is to be applied for charitable purpose "In India" whereas the expenses incurred by the Export Promotion Council is outside India. The total expenditure incurred amounts to Rs. 2,08,70,104/-. Out of the same, an amount of Rs. 1,03,16,902/- has been incurred in foreign exchange outside India. This expenditure incurred outside India cannot be allowed as application in charitable object, in the computation of income, the assessee has claimed it as direct promotion expenses towards object of the Trust. According to the A.O., in any case, this is not an application of income in India towards export promotion. The A.O. has further noted that the department has not accepted the decision of the Tribunal and filed an appeal in Bombay High Court against the admissibility of interest free and export expenses outside India. The A.O. further observed that the assessee has claimed depreciation of Rs. 10,84,582/- and applied as application of income u/s 11(1)(a) of the Act. According to the A.O. it amounts to double deduction in view of the decision of the Hon'ble Supreme Court in Escorts Ltd. vs. Union of India (1993)199 ITR 43 (SC) and J.K. Synthetics Ltd. v. Union of India (1992) 65 Taxman 420 (SC) and accordingly he disallowed the claim of Rs. 10,84,582/-.

3. On appeal the ld. CIT(A) on the issue of denial of exemption on the ground of mutuality and the disallowance of expenses incurred by the assessee outside India followed the decision of the Tribunal in assessee's own case for assessment years 1993-94 and 1997-98 and deleted the disallowance made by the A.O. With regard to the disallowance of depreciation vis-à-vis double deduction, the ld. CIT(A) following the

decision of the Hon'ble jurisdictional High Court in CIT vs. Institute of Banking (2003) 264 ITR 110 (Bom), deleted the disallowance made by the A.O.

4. Being aggrieved by the order of the ld. CIT(A) the Revenue is in appeal before us.

5. Ground No. 1 reads as under:-

> "Whether on the facts and in the circumstances of the case, and in law, Ld. CIT(A) was right in allowing the claim of mutuality, entrance fees and export promotion relying on the decision of the Hon'ble ITAT which was not accepted by the revenue and preferred appeal before the Hon'ble Bombay High Court."

6. At the time of hearing the ld. D.R. supports the order of the A.O.

7. On the other hand, the ld. Counsel for the assessee while relying on the order of the ld. CIT(A) also relied on the order of the Tribunal in assessee's own case in ITA No. 5884/Mum/97 for A.Y. 1993-94 dtd. 5-5-2003 and ITA No. 4150/Mum/2000 for A.Y. 1997-98 dtd. 11-2-2004. He also placed on record the copy of the said orders of the Tribunal. He, therefore, submits that the order passed by the ld. CIT(A) be upheld.

8. We have carefully considered the submissions of the rival parties and perused the material available on record. We find merit in the plea of the ld. Counsel for the assessee that the issue raised by the Revenue in ground No. 1 is fully covered in favour of the assessee by the decision of

the Tribunal in assessee's own case (supra) wherein the Tribunal vide para 3 of its order dtd. 5-5-2003 (supra) has held that entrance fee is a capital receipt and not assessable as income for the purpose of section 11 of the Act. Similar view has been taken by the Tribunal in the appeal for the A.Y. 1997-98 (supra). In the absence of any distinguishing feature brought on record by the Revenue, we respectfully following the consistent view of the Tribunal, decline to interfere with the order of the ld. CIT(A) on this account. The ground taken by the Revenue is, therefore, rejected.

9. The common ground taken by the Revenue in ground No. 2 for assessment year 2007-08 and ground no. 1 for the assessment year 2008-09 reads as under:-

> "Whether on the facts and in the circumstances of the case, and in law, Ld. CIT(A) was right in ignoring the ratio of Hon'ble Supreme Court judgments in the case of Escorts Ltd. v/s UOI 199 ITR 43 wherein Hon'ble Supreme Court has held that double deduction cannot be presumed if the same is not specifically provided by law, in addition to normal deduction."

10. At the time of hearing the ld. D.R. supports the order of the A.O.

11. On the other hand the ld. Counsel for the assessee while relying on the decision of the Hon'ble Bombay High Court in Institute of Banking (supra) and the order of the ld. CIT(A) submits that the order passed by the ld. CIT(A) be upheld.

12. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that the facts are not in dispute. In the present case the assessee is not claiming double deduction on account of depreciation as has been held by the Revenue Authorities. The income of the assessee being exempt, the assessee is only claiming that depreciation should be reduced from the income for determining the percentage of funds which have to be applied for the purpose of Trust. Thus there is no double deduction claimed by the assessee. Recently the Hon'ble Punjab & Haryana High Court in CIT vs. Market Committee, Pipli (2011) 330 ITR 16 (P&H) after distinguishing the decision of the Hon'ble Supreme Court in Escorts Ltd. vs. UOI (1993) 199 ITR 43 (SC) while relying on various decisions including the decision of Hon'ble jurisdictional High Court in Institute of Banking (supra) has held vide penultimate para 10 as under:-

> "In the present case, the assessee is not claiming double deduction on account of depreciation as has been suggested by learned counsel for the Revenue. The income of the assessee being exempt, the assessee is only claiming that depreciation should be reduced from the income for determining the percentage of funds which have to be applied for the purposes of the trust. There is no double deduction claimed by the assessee as canvassed by the Revenue. The judgment of the hon'ble Supreme Court in Escorts Ltd. case [1993] 199 ITR 43 is distinguishable for the above reasons. It cannot be held that double benefit is given in allowing claim for depreciation for computing income for purposes of section 11. The questions proposed have, thus, to be answered against the Revenue and in favour of the assessee".

13. In the absence of any distinguishing feature brought on record by the Revenue, we respectfully following the consistent view of the Hon'ble

jurisdictional High Court, which is binding on us, the recent decision of Hon'ble Punjab & Haryana High Court (supra) and keeping in view that the interpretation has to be construed in a manner beneficial to the assessee as held in CIT vs. Vegetable Products ltd. [1973] 88 ITR 192 (SC), we are inclined to uphold the finding of the ld. CIT(A) in deleting the disallowance made by the A.O. The common ground taken by the Revenue for the assessment years 2007-08 and 2008-09 is, therefore, rejected.

14. In the result, Revenue's appeals for the assessment years 2007-08 and 2008-09 stand dismissed.

Order pronounced on 12-09-2012.

Sd/-	Sd/-
(N.K. BILLAIYA)	(DINESH KUMAR AGARWAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated : 12-09-2012.
RK

Copy to:
1. The Appellant
2. The Respondent
3. Commissioner of Income Tax (Appeals)- Concerned, Mumbai
4. Commissioner of Income Tax – Concerned Mumbai
5. Departmental Representative, Bench 'E', Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI