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

BEFORE SHRI RAJENDRA SINGH, ACCOUNTANT MEMBER AND SHRI VIVEK VARMA, JUDICIAL MEMBER

ITA No.7427/Mum/2011
Assessment Year : 2007-08

Income tax officer (E)I(1) Room No.505, Piramal Chambers, 5th Floor, Parel Mumbai-400 012.	Vs.	Mumbai Education Trust MET Complex General Arun Kumar Vaidya Chowk, Bandra Reclamation Bandra (W) Mumbai-50. PAN :AAATM 0985 G
(Appellant)		(Respondent)

Appellant by	:	Shri Pravin Varma
Respondent by	:	Shri Renu Choudhari

Date of hearing	:	21.03.2013
Date of Pronouncement	:	21.03.2013

O R D E R

PER RAJENDRA SINGH, AM:

This appeal by the revenue is directed against the order dated 16.8.2011 of CIT(A) for the assessment year 2007-08. The dispute raised by the revenue in this appeal relates to disallowability of depreciation on the capital assets acquired by the assessee trust and set off of the deficit of earlier year in the income and expenditure account against income of the current year.

2. Facts in brief are that the assessee trust which was registered under section 12A of the Act, had acquired capital assets for the purpose of charitable activities amounting to Rs.28,42,05,537/- which had been considered as application of income on which depreciation of Rs.5,15,56,952/- had been claimed. The assessee had also claimed excess of expenditure incurred over the income received of earlier years aggregating to Rs.30,17,13,340/- as application of income for the current year. The AO disallowed the claim of depreciation on the capital assets on the ground that

the same amounted to double deduction. The AO placed reliance on the judgment of Hon'ble Supreme Court in the case of *Escorts Ltd. vs. UOI (199 ITR 43)*. The AO also did not consider the deficit as application of income. The assessee disputed the decision of AO and submitted before CIT(A) that both the issues were covered in favour of the assessee by the decision of Hon'ble High Court of Bombay in the case of *CIT vs. Institute of Banking Personnel Selection (264 ITR 110)*. The assessee also submitted that the judgment of Hon'ble Supreme Court in the case of Escorts Ltd. (supra), was distinguishable as the same was rendered in a different context. It was pointed out that in the said case, the Hon'ble Supreme Court had held that in case the whole cost of the assets was allowed as deduction under section 35(2)(iv) depreciation under section 32 could not be allowed as the same would amount to double deduction. CIT(A) was satisfied by the explanation given and held that the issues were covered by the judgment of Hon'ble High Court of Bombay in the case of CIT vs. Institute of Banking and Personnel Selection (supra). He, therefore allowed the claim of the assessee aggrieved by which the revenue is in appeal before the Tribunal.

3. We have heard both parties, perused the records and considered the matter carefully. The dispute raised in this appeal is regarding allowability of depreciation on capital assets acquired by the assessee trust for the purpose of carrying out charitable activities and set off of deficit of earlier years against the income of the current year. It is a settled legal position that capital asset acquired by the assessee and used for the purpose of charitable activities is to be considered as application of income and if the application of income has resulted into creation of assets which have been used for the activities of the trust, depreciation has to be allowed. The application of income is different from computation of total income. The judgment of the Hon'ble Supreme Court in the case of Escorts Ltd. (supra), was in connection with computation of total income and it was in that context that it was held that the entire amount having been allowed as deduction, any further allowance of depreciation would amount to double deduction. The depreciation on capital assets used for the purpose of charitable activities has to be considered as expenditure incurred towards charitable activities. The

view is supported by the judgment of Hon'ble High Court of Bombay in the case of CIT vs. Institute of Banking and Personnel Selection (supra). The judgment of Hon'ble Supreme Court in case of Escorts Ltd.(supra) is distinguishable and has been rightly held as not applicable to the facts of the present case, The issue of set off of deficit of earlier year against income of current year is also covered by the judgment of Hon'ble High Court of Bombay in case of CIT vs. Institute of Banking and Personnel Selection (supra), in which it has been held that excess expenditure in prior years can be set off against income of current year. CIT(A has decided the issues based on the judgment of Hon'ble Supreme Court (supra). We, therefore, see no infirmity in the order of CIT(A) and the same is therefore upheld.

4. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 21.3.2013.

Sd/-	**Sd/-**
(VIVEK VARMA)	**(RAJENDRA SINGH)**
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated: 21.3.2013.
Jv.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR " " Bench

True Copy

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.