

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI C.M. GARG : JUDICIAL MEMBER

ITA No. 3640/Del/2012

Asstt. Yr: 2008-09

Income-tax Officer(E),
Trust Ward-1, New Delhi.

Vs. S.D. College Society (Lahore)
Bhupendra Bhawan Pahar Ganj,
New Delhi 0110055.

PAN: AADTS 5793 H

(Appellant)

(Respondent)

Appellant by : Smt. Shalini Verma Sr. DR.
Respondent by : Shri Jaswant Singh CA

Date of hearing : 08-07-2014
Date of order : 11-07-2014.

ORDER

PER S.V. MEHROTRA, A.M.:

This appeal, by the department, is directed against the order dated 12-4-2012 passed by the Id. CIT(A)-XXI, New Delhi, in appeal no. 106/10-11, relating to A.Y. 2008-09.

2. Brief facts of the case are that assessee is registered u/s 12A vide registration no. 1004/95-96 dated 28-1-1996 w.e.f. 1-4-1995. The assessee had filed its return of income declaring 'nil' income. The assessee had been carrying out the activity of imparting education and the society was running the institutions namely, S.D. College Ambala; S.D. Public School Ambala; S.D. Sanskrit College Ambala; and S.D. School Noida. In the course of assessment proceedings, the assessing officer noticed that assessee had claimed an amount of Rs. 58,65,877/- towards depreciaton on fixed assets.

Further, the assessee had also claimed investment in fixed assets as an application of income. The assessing officer referred to the decision of the Tribunal in the case of Parkash Education Society wherein, inter alia, it was held as under:

“In a case where the capital expenditure has been treated to have been applied for the object of the trust, allowance of deduction on account of depreciation will amount to double deduction”.

2.1. Accordingly, the assessing officer disallowed the sum of Rs. 58,65,877/-.

2.2. Before Id. CIT(A) the assessee relied on the decision of Hon’ble Punjab & Haryana High Court in the case of CIT Vs. Tiny Tots Education Society 330 ITR 21, wherein it was held that the assessee was not claiming double deduction on account of depreciation. The income of the assessee being exempt, the assessee was only claiming that depreciation should be reduced from the income for determining the percentage of funds which had to be applied for the purposes of the trust.

2.3. The assessee also relied on the ITAT decisions in the cases of –

- ITO vs. Dr. Khera Charitable Trust (ITA no. 4427/Del/2011); and
- ACIT v. Bhopal Champion School Society (2011) 14 Taxmann.com 59 (Indore-Trib).
- ITO (E) Vs. J.D. Tytler School Society (2014) 30 ITR (Trib) 277 (Del.).

2.4. Ld. CIT(A) relying on the decision of ITAT in the case of Dr. Khera Charitable Trust (supra) and the decision of Hon’ble Punjab & Haryana

High Court in the case of Tiny Tots Education Society (supra) allowed the assessee's appeal.

3. We have considered the submissions of both the parties and have perused the record of the case. We find that this issue is squarely covered in favour of the assessee by various decisions relied upon by the assessee. We find that on this issue, in the case of J.D. Tytler School Society (supra), the ITAT has held as under:

“Held, dismissing the appeal, that in accordance with the directions issued by the Directorate of Education, the school was entitled to collect the development fund for the purpose of supplanting the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. The fund collected from the students was utilized for development of amenities for the benefit and welfare of the children. The school had during the previous year provided a swimming pool and other games facilities and computers and testing equipment in the science laboratories. For all those activities the school collected the development fund which was treated as capital fund being earmarked for development of the activities. This system of accounting had been followed by the assessee in earlier assessment years also and it was not disturbed by the Department, Hence when the collection was meant for being spent on activities in the capital field, it could not be treated as revenue receipt. The decision of the Commissioner (Appeals) was justified.

The assessee claimed depreciation in the income and expenditure account. The Assessing officer held that since the benefit of application of fund had already been taken when the assets were purchased, the claim of the assessee was not allowable and disallowed the claim of the depreciation. The Commissioner (Appeals) decided in favour of the assessee. On appeal by the Department:

Held, dismissing the appeal, that it was not a case of double deduction and depreciation had to be allowed.”

3.1. The order of the CIT(A) being in conformity with the aforementioned decisions, we see no reason to interfere with the same. Accordingly, order of CIT(A) is confirmed.

4. In the result, department's appeal is dismissed.

Order pronounced in open court on 11-07-2014.

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 11-07-2014.

MP

Copy to :

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER