

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

ITA No. 120 of 2018 (O&M)
Date of Decision : 13.07.2018

IILM Education Private Limited, Gurgaon.

Appellant

Versus

Commissioner of Income Tax, Gurgaon

Respondent

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Rohit Garg, Advocate for
Mr. Karanveer Jindal, Advocate
for the appellant.

AVNEESH JHINGAN, J.

The present appeal is against the order dated 16.08.2017 passed by the Income Tax Appellate Tribunal, New Delhi (for short 'the Tribunal') dismissing the appeal of the assessee. The assessment year involved is 2012-13.

2. According to the appellant, following substantial questions of law arise for consideration:-

1. *Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in not allowing entire depreciation claimed by the appellant without appreciating that there was no cessation of the business of the Appellant ?*
2. *Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in not adjudicating on merits the specific ground of appeal raised by the appellant relating to security fees received from the students which was inadvertently not pressed by the counsel?*
3. *Whether on the facts and in the circumstances of the case*

and in law, the Tribunal failed to appreciate that the above security fees could not be added as income of the appellant considering that the same remained outstanding as liability in the balance sheet for the year under consideration and was suo-moto written back as income by the Appellant in the succeeding AY 2013-14?

4. Whether on the facts and in the circumstances of the case and in law, the findings of fact arrived at by the Tribunal in impugned order are vitiated inasmuch as they are perverse in nature, having been arrived at by improper/incorrect appreciation of evidence/ material available on record of the proceedings.

3. The facts narrated in brief are that the assessee was a private limited company having the main object of running educational institutions to promote education. During the relevant assessment year, assessee filed return declaring income of ₹ 1,25,786/-. The case was selected for scrutiny. The Assessing Officer issued a notice, that assessee had not carried any business during that year and has only done some investment activities but several expenses not relatable to income shown have been debited. The assessment was finalized vide order dated 13.03.2015 under Section 143(3) of the Income Tax Act [in short 'the Act']. An addition of ₹9,30,457/- was made.

4. Aggrieved of the said order, an appeal was filed. The Commissioner of Income Tax (Appeals) [CIT(A)] partly allowed the appeal vide order dated 28.09.2016. Expenses claimed by the appellant were allowed. Fifty percent of the depreciation claimed amounting to ₹ 3,96,044/-, was allowed as the business was stopped by appellant in September, 2011. An addition made of ₹ 3,60,000/- on account of security fees received from students was upheld.

5. The assessee filed further appeal before the Tribunal. The appeal was dismissed vide order dated 16.08.2017. It is pertinent to note

here that before the Tribunal, only one ground regarding disallowance of 50% of depreciation was pressed.

6. We have heard learned counsel for the appellant.

7. The main object of the appellant company was running of educational institutions. As per the case of the appellant, the running of educational institutions was continued till 2009-10 and thereafter the activities were discontinued. In September, 2011, the activities were finally stopped as the assessee became one of the partner in a Limited Liability Partnership namely IILM Enterprises LLP. Once it is established that no business was done in second half of the relevant assessment year, therefore, no fault can be found in the order of the Tribunal upholding the order of CIT(A) allowing 50% of the depreciation claimed.

8. The findings recorded by the Tribunal are quoted below:-

The submissions of the parties in the light of finding of fact recorded by Ld. CIT(A) clearly prove that assessee is not entitled for 100% depreciation. It is an admitted fact that assessee is a company and stopped its business activities on 20th September, 2011 when the assessee entered into the Limited Liability Partnership Agreement (LLP) with many parties and agreed to form the LLP in the name and style of "IILM Enterprse, LLP", business would be carried out in the name of the new LLP. It was, therefore, proved that assessee company discontinued its business permanently and through the execution of LLP agreement dated 20th September, 2011, the assessee company has become partner in the new LLP. Therefore, the Ld. CIT(A) was justified in holding that the activities of the assessee were finally stopped in September, 2011 when the assessee become partner in some other concern though for the same activities. Therefore, the expenditure were rightly allowed in the case of the assessee company till the closure of the business i.e. September, 2011. The depreciation was also therefore, correctly allowed for half of the year i.e. upto September, 2011 when business of the assessee company was completely stopped. Merely new LLP has started doing the same activity would not give any right to the assessee to claim depreciation for whole of the year because assessee completely stopped its business activities as a company in September, 2011.

9. Learned counsel for the appellant has not been able to point out any error in the findings recorded. The issue that the business was stopped or not in September, 2011 is a question of fact. No interference is called for by this Court, as the question raised is not a substantial question of law.

10. The question Nos.2 and 3 do not arise from the order of the Tribunal. The Tribunal has specifically recorded that the learned counsel for the assessee did not press ground Nos. 2 and 3 raised in the appeal.

11. Question No.4 claimed relates to the findings recorded by the Tribunal to be perverse. The question raised has not been addressed. Even otherwise, no error has been pointed out in the findings recorded by the Tribunal much less to show perversity.

12. No substantial question of law is involved.

13. The appeal is dismissed.

[AJAY KUMAR MITTAL]
JUDGE

[AVNEESH JHINGAN]
JUDGE

13.07.2018
pankaj baweja

Whether speaking/reasoned ?

Yes / No

Whether reportable ?

Yes / No