IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 435 OF 2018

Commissioner of Income Tax-(exemption), Pune … Appellant

V/s.

Shri Balaji Society … Respondent

Mr. Suresh Kumar for the Appellant.

CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.

DATED : SEPTEMBER 15 , 2022.

P.C. :

. This is an appeal filed under section 260(A) of the Income Tax Act, 1961 against the order dated 30th June 2017 passed by the Income Tax Appellate Tribunal, Pune Bench, whereby the appeal preferred by the appellant has been dismissed.

2. The following substantial questions of law have been proposed for our consideration:-

A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in holding that the provision of section 13(1)(c) and 13(2)(c) of the I.T. Act were not attracted in this case despite the fact that payments were made on account of advertisement to prohibited person?

B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in holding that the assessee was allowed to claim exemption under section 11 of the Act despite the fact that the payment were made to prohibited persons as defined under section 13(1)(c) and 13(2)(c) of the I.T. Act?

C. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in allowing the appeal of the assessee by ignoring the fact that assessee like charitable or religious institutions are governed by almost the separate or independent provisions of section 11, 12, 12A, 12AA & 13 and these provisions are independent code in itself in Chapter III of the Income Tax Act, 1961 and claim of depreciation under section 32 comes under Chapter IV of the Act under the head 'D' - profit and Gains of Business or Profession and depreciation is allowed when capital assets are used for the purpose of business?

D. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in allowing the appeal of the assessee by ignoring the fact that in the case of charitable or religious institutions, the assessee is not eligible for any type of depreciation as the entire expenditure for the purchase of capital assets is allowed as a deduction and the same is treated as application of income under section 11(1) and claiming depreciation on the same capital assets tantamount to double deduction and is not as per law as these capital assets are not used for the purpose of business or profession as provided under section 32(1)?

E. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in holding that both depreciation and application of income are to be considered separately to determine the correct income without appreciating that the same tantamount to double deduction which is not correct as per the relevant provisions of the I.T. Act?

F. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in dismissing the appeal filed by the revenue on the issue of disallowance of depreciation placing reliance on their own decision without appreciating the fact that the Hon'ble Supreme Court in the case of Escorts Ltd. & another V/s. Union of India (199 ITR 43), while dealing with the issue of allowance of expenditure on scientific research under section 35(1)(iv) {corresponding to section 10(2)(xiv) of the IT Act, 1922} held that any expenditure of a capital nature (or incurred towards purchase of capital assets) on scientific research allowed as deduction under section 35(1)(iv) cannot be allowed once again as deduction in the form of depreciation on such capital assets?

3. Learned counsel for the appellant fairly stated that the questions of law proposed as 'A, B and D' were also raised in Income Tax Appeal No. 762 of 2016 and Income Tax Appeal No. 782 of 2016 for the earlier assessment years 2008-2009 and 2009-2010 were dismissed vide judgment and order dated 11th December 2018. However it was urged that the Tribunal had failed to decide one question which was raised before it. The said question of law reads as under :-

> 3. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was justified in allowing depreciation on an asset already treated as application of income.

4. However, it has been brought to our notice that the issue has been concluded by this Court in the Case of '***CIT v. Institute Of Banking Personnel Selection (IBPS)***'[1]. It was held :

> "3. As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property.
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> During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @2½% and they also claimed depreciation on furniture @ 5%. The question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income Tax Act makes provision in respect of C.A. No. 7186/ 2014 etc. computation of income of the Trust from the property held for charitable or religious purposes and it

1 (2003) 131 Taxman 386

also provides for application and accumulation of income. On the other hand, section 28 of the Income Tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 34. In that matter also, a similar argument, as in the present case, was advanced on behalf of the revenue, namely, that depreciation can be allowed as deduction only under section 32 of the Income Tax Act and not under general principles. The Court rejected this argument. It was held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income Tax Act The Court rejected the argument on behalf of the revenue that section 32of the Income Tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived form building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income Tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. In view of the aforestated judgment of the Bombay High Court, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department."

5. This view was noticed with approval by the Hon'ble Supreme Court in the case of ***'Commissioner of Income Tax-III, Pune v. Rajasthan & Gujarati Charitable Foundation Poona'***[2].

6. In view of the settled position of law, the appeal is found to be without merits and is dismissed accordingly.

(VALMIKI SA MENEZES, J) **(DHIRAJ SINGH THAKUR , J)**

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