vk;djvihyh; vf/kdj.k] t;iqjU;k;ihB] t;iqj IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

Mk0 ,l- lhrky{eh]U;kf;dlnL; ,oaJhjkBksMdeys'k t; UrH kkbZ] ys[kk lnL; ds le{k BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

vk;djvihy la-@ITA No. 424/JPR/2022

fu/kZkj.ko"kZ@AssessmentYear :2010-11

Shri Digamber Jain Atikshaya Keshtra VPO Bada, Padampura, Jaipur.	cuke Vs.	ITO, (Exemptions), Ward-1, Jaipur.
LFkk;hys[kk la-@thvkbZvkj la-@PAN/GIR No.: AAATS 5225 R		
vihykFkhZ@Appellant		izR;FkhZ@Respondent

fu/kZkfjrh dh vksjls@Assesseeby : Shri Rajeev sogani (C.A)&

Ms. Ruchika Sogani (Adv.)

jktLo dh vksjls@Revenue by: Ms. Monisha Choudhary (Addl.CIT)

lquokbZ dh rkjh[k@Date of Hearing :25/05/2023

mn?kks"k.kk dh rkjh[k@Date of Pronouncement: 22 /08/2023

vkns'k@ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the assessee is directed against the order of the ld. CIT(A) dated 28-09-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2010-11 wherein the assessee has raised the following grounds of appeal.

"1. In the facts and circumstances of the case and in law, the ld. CIT(A) has erred in confirming the action of ld. AO of reopening the assessment u/s 147 of Income Tax Act, 1961. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without any basis.

2. In the facts and circumstances of the case and in law, the ld. CIT(A) has erred in confirming the action of Id. AO of not providing copy of reasons recorded, for reopening of the case of the assessee trust, thereby depriving the assessee trust from objecting to such reasons recorded, which is against the principle of natural justice. The action of the ld. CIT(A) is illegal, unjustified arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without any basis.

3. In the facts and circumstances of the case and in law, the ld. CIT(A) has erred in confirming the action of ld. AO of issuing notice u/s 148 of Income Tax Act, 1961 without obtaining proper sanction u/s 151 of the Income Tax A ct, 1961. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without jurisdiction.

4. In the facts and circumstances of the case and in law, Ld CIT(A) has erred in confirming the action of ld. AO of not allowing exemption to the assessee trust in accordance with section 11(2). The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by allowing exemption under section 11(2).

5. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of Id. AO of rejecting the claim of the assessee trust, under section 24(a), being 30 percent of the rental income, amounting to Rs. 4,93,435 carmed by the assessee trust. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case Relief may please be granted by allowing such claim of the assessee trust.

6. In the facts and circumstances of the case and in law, the d. CIT(A) has orred in confirming the action of Id. AO of not allowing the claim of depreciation, of Rs. 1,80,824, made by the assessee trust on the premises that the said trust had already claimed capital expenditure on such asset as application of Income while computing its income. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by allowing the claim of depreciation of Rs. 1,89,824 while computing its income.

7. In the facts and circumstances of the case and in law, the d. CIT(A) has erred in deciding the appeal ex-parte. The action of Id.CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by providing opportunity to assesee trust of being heard.

2.1 At the outset of hearing, the Bench observed that there is delay of 10 days in filing the appeal by the assessee for which the ld. AR of the assessee filed an application for condonation of delay with following prayers:-

> " Aggrieved by the said order the assessee trust filed appeal before Id. CIT(A). The appeal was then decided by Id. CIT(A) ex-parte vide order dated 28.09.2022. Accordingly, the appeal was to be filed on or before 27.11.2022 as per the provisions of Section 253(3).
>
> It is submitted that the assessee is a trust running Digamber Jain Mandir in Padampura.Two events namely Mahamastakabhisheka and Panchkalyanaka were organized at national level at Shree Mahavir Ji, Karauli. The said events were one of their kind and first in the 21st Century. Therefore, all the Digamber Jain Mandir Trusts had participated in organizing the said events. Accordingly, the assessee trust was also occupied in the preparations of events as well as in attending the events. First, event Panchkalyanaka was from 24.11.2022 to 28.11.2022. Thereafter, the Second event Mahamastakabhisheka was from 27.11.2022 to 04.12.2022. It is submitted that the last date for filling appeal was 27.11.2022 i.e. the date falling between the dates of aforementioned two national level events. The assessee trust and its trustees because of the preparation of events and on the dates of events were so occupied that they could not file the appeal within the stipulated time.As per the provisions of sections 253(5), if there is sufficient cause for delay in filing of appeal, Hon'ble ITAT may condone such delay.
>
> In the above legal and factual background it is submitted that preparation for national level events and attending such national level events of Digambar Jains was sufficient cause for not filing appeal within the stipulated time by Digambar Jain Mandir i.e. assessee trust.It is submitted that the delay was not deliberate.
>
> As soon as the trustees got free from events on 05.12.2022 necessary actions were taken for filing of appeal. The appeal could be filed on 07.11.2022.
>
> In view of above, it is humbly prayed that delay in filing of appeal of 10 days may please be condoned.
>
> Reliance is placed on the following judicial pronouncement of the Hon'ble Supreme Court:
>
> Collector, Land Acquisition vs. Mst. Katiji [1987] 167 ITR 471
>
> "The legislature has conferred the power to condone delay by enacting S.5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the end of justice that being the life-purpose of the existence of the institution of courts."

In view of above, a very humble prayer is made for condoning the delay."

2.2 During the course of hearing, the ld. DR fairly not objected to assessee's application for condonation of delay and prayed that Court may decidethe issue as deem fit and proper in the interest of justice.

2.3 We have heard the contention of the parties and perused the materials available on record. The prayer made by the assessee for condonation of delay of 10 days has merit and we concur with the submission of the assessee. Thus the delay of 10 days in filing the appeal by the assessee is condoned in view of the decisionof Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3.1 Apropos Ground of appeal of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

''5. Ground No. 1: This ground is general in nature and requires no adjudication. This will be covered by the specific grounds raised by the appellant.

6. GROUND Nos.2&3:- In these grounds the appellant has stated that the A.O. has not provided reasons for opening or taken requisite sanction for the same.
However in the Assessment order it is stated:-

"Since, the assessee was having total income exceeding maximum amount not chargeable to tax, proceeding were started under section 147 of the I.T. Act, 1961 and notice under section 148 of the I.T. Act, 1961 was issued on 31.03.2017 after recording reasons in

writing and obtaining necessary approval from Commissioner of Income Tax (Exemption), Jaipur.

In response to notice under section 148 of the IT. Act, 1961, Authorized Representative of the assessee filed reply on 14.11.2017-

"In this connection, I am to bring to your kind notice that the assessee has already been filed his return on income on 31-03-2011 with ITO Ward-7(2), Jaipur showing income at Rs.NIL.

It is therefore respectfully requested before your good-self to kindly treat return filed in response to notice U/s 148 of the IT. Act, 1961."

Since, the return of income filed by the assessee is beyond the time limit provided under section 148 of the LT Act, 1961. No cognizance is taken and assessment is completed under section 144 of the I.T. Act, 1961.

Notices under section 142(1) of the IT. Act, 1961 alongwith query letter were issued.

In response thereto, Shri Narendra Kumar Goswami, Advocate and Authorized Representative of the society attended the proceeding from time to time and furnished the requisite details/submission. The case discussed with him."

Hence, there is no merit in the same, and these grounds are DISMISSED.

7. GROUNDS No. 4:- In this ground the appellant claim that the Ld AO has erred in not allowing exemption to the assessee trust in accordance with section 11(2).

7.1 OBSERVATION OF THE A.O.:- In the assessment order. Assessing Officer observed as given below:

"It is also noted that amount of Rs.1,11,000/- has been claimed to be exempted under section 11(2) of the 1.T. Act, 1961 on account of amount set apart for specified purpose. Therefore, assessee was requested to file the copy of form No.10 filed alongwith return of income. In compliance to which Id. Authorized Representative of the assessee filed written reply on 27.11.2017 stating that no form No.10 was prepared and filed.

As per the provisions of section 11(2), in order to claim benefit pl accumulation of income in excess of 15% of the income, filing of Form No.10 alongwith return of income is mandatory requirement and assessee has failed to fulfil the same, hence no benefit under section 11(2) is allowed to the assessee.

Penalty proceedings under section 271(1)(c) of the IT. Act, 1961 are initiated separately for concealment and furnishing of inaccurate particular of income."

Since it is well known fact that in order to claim the exempted income under section 11(2) of the I.T. Act, 1961, it is mandatory for the trusts to file Form No. 10. During the course of assessment proceedings the Authorized Representative of the assessee filed a written reply stating that no form No.10 was prepared and filed. During appellate proceedings no submission/explanation has been fumished in spite of various opportunities therefore it is assumed the appellant has no explanation to offer. Hence, the ground does not stand and the same is DISMISSED.

8. GROUND No. 5: In this ground the appellant claim that the Ld AO has erred in rejecting the claim of the assessee trust, under section 24(a), being 30 percent of the rental income, amounting to Rs. 4,93,435 earned by the assessee trust.

8.2 OBSERVATION OF THE A.O. In the assessment order. Assessing Officer observed as given below:-

"There is no provision in the Act with regard to trusts which allows application of income on notional basis. In fact section 11 is so worded that it talks of only exempting an income from a property held under trust subject to certain conditions and does not go beyond in giving authority for computing total income. In the case of an assosseo rogistered u/s 12A of the Act, its total income is required to be computed in accordance with section 11, 12 & 13 of the Act and provision of these sections do not envisage any notional application of income. In the case of trusts/institutions, their income is exempt from tax under section 11 and 12 of the Act. Therefore, in these cases national deduction cannot be treated as application of income.

Therefore keeping in view the settled position of land no deduction under section 24(a) is allowable as application of income."

The assessment of the A.O. found to be conclusive and no submission/explanation has been furnished by the appellate during the appellate proceedings.

9. GROUND No. 6:- In this ground the appellant claim that the Ld AO has erred in not allowing the claim of depreciation, of Rs. 1,89,824, made by the assessee trust on the premises that the said trust had already claimed capital expenditure on such asset as application of Income while computing its income.

9.2 OBSERVATION OF THE A.O.:- In the assessment order, Assessing Officer observed as given below:-

"It is noticed that the assessee society has claimed depreciation on fixed assets at Rs.1,89,824/-in the income and expenditure account. It has also claimed capital expenditure as application of income in the computation income. The assessee is a charitable institution registered under section 12AA claiming exemption in respect of income of application under section 11 and further has claimed depreciation on capital assets on ground that though the income was allowed as application of income of under section 11 of the IT. Act. The assessee has claimed the said depreciation under section 32 of the IT Act, 1961, which was applicable only in respect of the assets which was used for the purpose of business. Admittedly, the assessee is a charitable institution and not doing any business. If the assessee is engaged itself in business activity, then it would not be eligible for exemption under section 11 of the IT. Act, 1961. It was not the case of the assessee that any business undertaking was held under the assessee trust.

Depreciation claimed by the assessee was not in respect of any assets which was used for business purpose but was admittedly used for assessee's charitable activities. Hence, section 32 is not applicable here because the assessee was not carrying of any business activity, nor the depreciation claimed in respect of any asset which was used for business purposes. Section. 32 is not applicable. Considering the facts and circumstances of the case as well as above discussion, claim of depreciation made by the assessee at Rs.1,89,824/- is hereby disallowed."

The assessment of the A.O. found to be conclusive and no submission/explanation has been furnished by the appellate during the appellate proceedings.

10. GROUND No. 7:- In this ground the appellant craves to add, amend or alter any of the grounds on or before the hearing. No such option has been exercised by the appellant during the appellate stage. Therefore, this ground is not adjudicated. This ground is treated as DISMISSED for statistical purpose.

It is noteworthy that the order passed by the A.O. was u/s 144 of the I.T. Act, 1961. Even during the appellate proceedings no explanation has been put forward. This show the recalcitrant attitude of the appellate towards the legal proceedings initiate by the department.

11. In the result, the appellant's appeal is DISMISSED.''

3.2 During the course of hearing, the ld. AR of the assessee prayed that reassessment proceedings are illegal, without jurisdiction and therefore deserve to be quashed for which following detailed written submission has been filed by the ld. AR of the assessee.

''I The appellant trust is managing Digamber Jain Mandir in Padampura, Jaipur. The trust was granted approval u/s 12AA vide letter no 967 dated 04.10.1989.

II. The assessee trust filed its return of income on 31.03.2011 declaring total income of Rs NIL. Assessment u/s 147 was completed on 30.11.2017 by assessing income of Rs 4,27,780 as against Nil Income.

III. Ld. CIT(A) has confirmed the above additions by passing an ex-parte order dated 28.09.2022.

GROUNDS OF APPEAL

GROUND NO.1: REOPENING OF ASSESSMENT U/S 147 OF THE ACT

GROUND NO.2: NOT PROVIDING COPY OF REASONS RECORDED

1. ASSESSING OFFICER

Ld. AO reopened the case of the assessee trust alleging that the return of income had not been filed by the assessee trust and also did not provide copy of reasons recorded during the assessment proceedings.

2. COMMISIONER OF INCOME TAX (APPEALS)

Ld. CIT(A) has upheld the decision of ld. AO.

3. SUBMISSION:

3.1. The sole reason for reopening of the assessment is said to be not filing of return of income by the assessee trust for AY 2010-11. The said reason is evident from Page 1 of the order of Ld. AO

3.2. The very fact of non-filing of return is patently wrong. The return of income for AY 2010-11 was filed on 31.03.2011. This fact is evident from Para 3 at Page 2 of the assessment order. The relevant evidence for filling of return of income is placed at [PB 1-2]

3.3. The assessee trust was not provided copy of reasons during the assessment proceedings and due to the same, the assessee trust was deprived from filing the objections against the reasons recorded.

3.4. It is important to note that the ld. AO has computed the income on the basis of return of income filed by the assessee trust, which, as per the reasons recorded was said to be have not been filed by the assessee trust.

3.5. In the view of above, the jurisdiction u/s 147 is wrongly assumed and therefore the entire reassessment is without jurisdiction and deserves to be quashed. Reliance is placed on the following judicial pronouncements where re-opening was quashed if the same was based on wrong facts:

- Narain Dutt Sharma vs. ITO [2018] 91 taxmann.com 463 (Jaipur - Trib.) – Copy enclosed [CLC 1-6].

"As we have noted above, there is a clear contradiction on part of the AO to hold that assessee has not filed his return when the records so filed before us shows, and a fact which remain undisputed, that the return of income has been filed even though manually and which has been duly acknowledged. In the instant case, the AO has thus failed to examine the AIR information so received which would have provided the nexus or the vital link to form a prima facie opinion that income of the assessee had escaped assessment for the impugned assessment year. In absence of necessary nexus between the tangible material and formation of belief, the reassessment proceedings cannot be sustained in the instant case"

- Satish Kumar Khandelwal vs. ITO [2021] 127 taxmann.com 683 (Jaipur - Trib.) – Copy enclosed [CLC 7-14].

"Thus, it is manifest from the reasons recorded by the Assessing Officer that the Assessing Officer begins with the statement that the assessee has not filed return of income for the A.Y. 2011-12. Further while forming the belief, again the Assessing Officer has stated that the assessee has not filed return of income and therefore, he has reason to believe that the income of Rs. 15,20,500/- to be deposited in the bank. account chargeable to tax, has escaped assessment. This statement of the Assessing Officer in the reasons recorded is the basis for formation of belief is factually incorrect as the Assessing Officer himself has recorded this fact in the assessment order and stated that the return of income was filed by the assessee through e-filing on 05/9/2011 declaring total income of Rs. 2,26,290/-. Further when the assessee has declared the turnover of more than Rs. 31.00 lacs then the deposits in the bank account would not ipso facto a reason to belief that the entire amount is the income assessable to tax. We find that the Assessing Officer has reopened the assessment in a mechanical manner without application of mind and solely on the basis of information. The Assessing Officer has not taken the pain to verify the return of income filed by the assessee"

3.6. In the present case, assessment was reopened for the following two main reasons:

A. Cash Deposits in Bank	Rs 68,48,216
B. Interest Income from Bank	Rs 5,21,152

3.7. It may please be noted that none of the additions based on the above reasons have been made in the reassessment proceedings. The additions made are on the following reasons:

I.	Accumulation of Income under section 11(2)	Rs.1,11,000
II.	Income from House Property under section 24(a)	Rs.1,48,031
III.	Depreciation under section 32	Rs.1,89,824

3.8. The condition precedent to the exercise of the jurisdiction under section 147 is the formation of a reason to believe by the Assessing Officer. Upon the formation of the reason to believe that income chargeable to tax has escaped assessment, the AO is empowered to assess or to reassess such income 'and also' any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under section 147.

3.9. Explanation 3 to section 147 provides that even though the notice issued under section 148 containing the reasons for reopening the assessment does not contain a reference to a particular issue with reference to which income has escaped assessment, yet the AO

may assess or reassess the income in respect of any issue which has escaped assessment, when such issue comes to his notice subsequently in the course of the proceedings

3.10. It is submitted that the words 'and also' cannot be read as being in the alternative. These words are conjunctive and cumulative. Therefore, meaning of the words 'and also' is that the AO, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2), must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section.

3.11. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the AO has formed a reason to believe that it has escaped assessment. Hence, the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe, is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. Reliance is placed on the following judgments:

- Jet Airways Ltd [2011] 331 ITR 236 (Bombay) – Copy enclosed [CLC 15-23]. Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Whether an Explanation to a statutory provision is intended to explain its content and cannot be construed to override it or to render substance and core nugatory - Held, yes - Whether after insertion of Explanation 3 to section 147 by Finance (No. 2) Act, 2009, with effect from 1-4-1989, section 147 has an effect that Assessing Officer has to assess or reassess income ('such income') which escaped assessment and which was basis of formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during course of proceedings - Held, yes - Whether, however, if after issuing a notice under section 148, he accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in event of a challenge by assessee - Held, yes
- Ranbaxy Laboratories Ltd. [2011] 12 taxmann.com 74 (Delhi) – Copy enclosed [CLC 24-32].

  Section 147 of the Income-tax Act, 1961 - Income escaping assessment - General - Whether if during course of reassessment proceedings, Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in reasons to believe as recorded for initiation of proceedings and notice, he would be competent to make assessment of those items - Held, yes - Whether, however, Legislature could not be presumed to have intended to give blanket powers to Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or

related with reasons to believe, on basis of which he assumed jurisdiction - Held, yes - Whether for every new issue coming before Assessing Officer during course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148 - Held, yes - Assessing Officer reopened assessee's assessment on ground that items, viz., club fees, gifts and presents and provision for leave encashment had escaped assessment - During reassessment proceedings, Assessing Officer was satisfied with justifications given by assessee regarding aforesaid items but found deduction under sections 80HH and 80-I as claimed by assessee to be not admissible - He, consequently, while not making additions on items of club fees, gifts and presents, etc., reduced claim of deduction under sections 80HH and 80-I - Whether Assessing Officer had jurisdiction to reassess issues other than issues in respect of which proceedings were initiated - Held, yes - Whether, however, since Assessing Officer had not made any disallowance in respect of items of club fees, gifts and presents and, thus, reasons for initiation of reassessment proceedings ceased to survive, there was no justification in reducing claim of deduction under sections 80HH and 80-I - Held, yes

In view of the above, reopening of assessment is patently illegal and deserves to be quashed.

GROUND NO.5: REJECTION OF CLAIM U/S 24(a) OF THE ACT AMOUNTING TO RS 1,48,031

1. ASSESSING OFFICER

   Ld. AO has disallowed the claim of the assessee trust u/s 24(a) amounting to Rs.1,48,031 on the ground that no such deduction is available to trusts whose incomes are to be computed as per the provisions of section 11 and 12 of the Act.

2. COMMISIONER OF INCOME TAX (APPEALS)

   Ld. CIT upheld the decision of ld. AO stating that assessment made by ld. AO is conclusive.

3. SUBMISSION:

   3.1. Ld. AO has erred in law in holding the deduction under section 24(a) is not available to Charitable Trusts. The said deduction under section 24(a) is very much available to Charitable Trusts, also in respect of any rental income earned by them. Reliance is placed on the following judicial pronouncements:

   - M/s. Pallonji Shapoorji Charity Vs. The IncomeTax Officer (E) Trust, Range 2(2), Mumbai

     I have considered rival contentions and carefully gone through the orders of the authorities below and found from record that AO has disallowed assessee's claim of deduction u/s.24 in respect of income from House Property on the plea that assessee is a Trust. Income of the Trust is to be computed commercially, keeping

in view the provisions of the Act, The Hon'ble Punjab and Haryana High Court in the case of Tiny Tots Education Society 330 ITR 21 held that assessee is entitled to claim depreciation even if entire amount of assets have been shown as utilization of funds. Jurisdictional High Court in case of Institute of Banking Personnel Selection has also held that claim of depreciation on fixed asset has to be allowed even if entire amount was shown as utilization of funds while computing surplus of the assessee's funds. This decision of the Bombay High Court has been recently affirmed by the Hon'ble Supreme Court. Applying the proposition of law laid down in case of Institute of Banking Personnel Selection, I do not find any merit for the disallowance of claim of deduction u/s.24 in respect of income of assessee-Trust from House property. Accordingly, I direct the AO to allow deduction u/s.24 as claimed by the assessee.

- Vishwa Kalyan Society Vs DCIT (ITAT Ahmedabad) ITA No. ITA No. 449/AHD/2019

  We have heard the rival contentions, perused the material on record and duly considered facts of the case. We note that the learned CIT (A) had confirmed the order of the AO denying the deduction under section 24 of the Act after placing reliance on the order of Chennai tribunal in case of of Anjuman-EHimayath-E-Islam ITA No. 2271 (MDS) of 2014 for A.Y.2009-10. However we find that the order which has been relied upon by the learned CIT (A) has been challenged before the Hon'ble Madras High Court in T.C.A No. 46 of 2021 reported in 127 com 78, where Hon'ble bench reversed the order of the Tribunal by observing as under:

  As per the Income-tax Act, income" means "net income", which is taxable. Income from property should be computed as per sections 22 to 27 of the Act and the income from business have to be computed under sections 28 and 44 of the Act. Such computed income is exempted from tax under sections 11 and 13, if 85% o f the same is spent on the charitable objects. Once the income is computed and determined 85% of such computed income should be utilized for charitable objects.

  In view of the above judgment, and following the same we are of the view that, deduction u/s 24(a) is allowable to the assessee. Hence, the ground of appeal of the assessee is allowed. In the result appeal of the assessee is allowed.

In view of the above, addition made by ld. AO amounting to Rs 1,48,031 and confirmed by ld. CIT(A) deserves to be deleted.

GROUND NO.6: NOT ALLOWING CLAIM OF DEPRECIATION AMOUNTING TO RS 1,89,824

1. ASSESSING OFFICER

   Ld. AO has disallowed the claim of the assessee trust u/s 32 amounting to Rs.1,89,824 on the ground that no such deduction is available to trusts as section 32 is not applicable on charitable trusts.

2. COMMISIONER OF INCOME TAX (APPEALS)

Ld. CIT upheld the decision of ld. AO stating that assessment made by ld. AO is conclusive.

3. SUBMISSION:

3.1. It is submitted that claim for depreciation is very much available to charitable trusts also. Reliance is placed on the following judicial pronouncements wherein Hon'ble courts have held that claim of depreciation by a charitable trust is allowed as deduction and does not amount to taking of double benefit.

- CIT vs. Market Committee, Pipli [330 ITR 60] (P&H)
- CIT vs. Society of Sisters of St. Anne [146 ITR 28] (Kar)
- CIT vs. Bhoruka Public Charitable Trust [240 ITR 513] (Cal)
- CIT vs. Institute of Banking Personnel Selection (IBPS) [131 Taxman 386](Bom)
- CIT vs. ShethManilalRancchoddasVishramBhawan Trust]198 ITR 598] (Guj)
- CIT vs. Raipur Pallottine Society [180 ITR 579] (MP)
- CIT vs. Ganga Charity Trust Fund [162 ITR 612] (Guj)
- CIT vs. Indian Jute Mills Association [134 ITR 68] (Cal)
- Director of Income Tax (Exemption) vs. FramjeeCawasjee Institute [109 CTR 463] (Bom)

3.2. Hon'ble ITAT Jaipur in the case of Compucom Foundation- ITA NO. ITA NO: 900/JP/16 has also agreed to the above contention of the assessee – Copy enclosed [CLC 33-40].

3.3. The other decision of the Hon'ble Jaipur Bench covering the issue in favor of the assessee is as under:

M/s Shri S.S. Jain Subodh Siksha Samiti vs. ITO, ITA No. 250/JP/2007 – Copy enclosed [CLC 44-52].

3.4. The issue is also covered by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Krishi Upaj Mandi Samiti [2015] 55 taxmann.com 63 (Rajasthan) – Copy enclosed [CLC 41-43].

3.5. Further reliance is placed on the following judicial pronouncements in which, it has been held that amendment made in section 11(6) is prospective in nature and it would operate with effect from 1/4/2015.

The extracts of which have been set out for the sake of convenience:

CIT vs. Bangalore Baptist Hospital Society [2016] 71 taxman 192 (Kar) –

> "The Apex Court in the said judgment, while interpreting the proviso, whether to be applied retrospectively or prospectively, has considered the Notes on Clauses appended, the Finance Bill and the understanding of the Central Board of Direct Taxes in this regard. The Apex Court has also taken cognizance of the fact that

> the legislature is fully aware of 3 concepts insofar as amendments made to a statute:
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> prospective amendments with effect from a fixed date;
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> retrospective amendments with effect from a fixed anterior date;
>
> and clarificatory amendments which are prospective in nature.
>
> Keeping in view, the aforesaid principles enunciated by the Apex Court, in Vatika Township [P.] Ltd.,'s case (supra), it would be safely held that Section 11[6] of the Act is prospective in nature and operates with effect from 01.04.2015."

3.6. Similar view has been adopted by the Hon'ble Karnataka High Court in its following other decisions:

- CIT vs. Karnataka Reddy Janasangha [2016] 72 taxmann.com 88 (Kar)
- PCIT vs. Sri Sri Adichunchunagiri Shikshana Trust [2016] 72 taxmann.com 133 (Karnataka)

In view of the above, addition made by ld. AO amounting to Rs 1,89,824 and confirmed by ld. CIT(A) deserves to be deleted.

GROUND NO.3: NOT OBTAINING PROPER SANCTION U/S 151 OF THE ACT ASSESSING OFFICER:

Ld. AO did not obtain proper sanction as per provisions of section and reopened the assessment.

1. COMMISSIONER OF INCOME TAX-APPEALS:

Ld. CIT has upheld the decision of ld. AO.

2. SUBMISSIONS:

3.1. It is submitted that one of the pre-conditions for reopening u/s 147 is contained in section 151 of the IT Act, 1961 which reads as under:

> Section 151: Sanction for issue of Notice
>
> No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice…"

3.2. In view of above, ld. AO was duty bound to obtain a sanction from specified higher authority containing his satisfaction that the case is fit for reopening. From perusal of Proforma for obtaining approval [PB 3-4] it can be seen that the sanction granted was not in accordance with the provisions of law. Hon'ble CIT-(Exemptions) just wrote that in view of reasons he was satisfied that the case was fit which is a stereotype phrase. Not

even a single word was written which could suggest that any mind application was made and she was really satisfied that it was a fit case for reopening.

3.3. The reasons were undated and merely signed by ld. AO. Thus, it is not clear that when the reason for reopening were sent for further approval. It can also be assumed that the reasons were recorded on the last day of the financial year.

3.4. Further, Hon'ble CIT-(Exemptions) just wrote that "Yes I am Satisfied" This make us clear that no mind application was made as it was stereotype phrase and he was really satisfied that it was a fit case for reopening.

3.5. Also, it is pertinent to note that the so-called satisfaction was accorded on 31.03.2017 and on the same day itself notice u/s 148 was issued to the assessee (AO Page 1). Further, as submitted above the reasons were not dated. Therefore, the time taken in arriving at the satisfaction and the sanctity of process of obtaining satisfaction cannot be ascertained.

3.6. Reliance in placed on the following judicial pronouncements wherein under the similar set of circumstances it was held that the sanction was granted without any application of mind and, therefore, the reopening is bad in law. Relevant extract has been set out for the sake of convenience:

Supreme Court

- Chhugamal Rajpal v. S.P. Chaliha [1971] 79 ITR 603 (SC)

  ".Further, the report submitted by him under section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under section 148. To question No. 8 in the report which reads "Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148", he just noted the word "Yes" and affixed his signature thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under section 148. The important safeguards provided in sections 147 and 151 were lightly treated by the Income-tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under these provisions as of little importance. They have substituted the form for the substance…"

- CIT, Jabalpur v. S.Goyanka Lime & Chemical Ltd [2015] 64 taxmann.com 313 (SC) where the Hon'ble Supreme Court has rejected the SLP filed by the department and ,thus, therefore, affirmed the decision of Hon'ble High Court of Madhya Pradesh in the case of CIT, Jabalpur v. S. Goyanka Lime & Chemical Ltd. [2015] 56 taxmann.com 390 (Madhya Pradesh) where in it was has held as under:

  "...7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down: —

'The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.'

10. In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration…" In view of above, reassessment proceedings are illegal, without jurisdiction and, therefore, deserve to be quashed.

GROUND NO.4: NOT ALLOWING EXEMPTION U/S 11(2) OF THE ACT
GROUND NO.7: PASSING EX-PARTE ORDER BY CIT-(A)
The above two grounds are not pressed."

3.3 It is also noted that during the course of hearing, the ld. AR of the assessee has not pressed the Ground No. 4 & 7 which are dismissed being not pressed.

3.4 On the other hand, the ld. DR supported the order of the lower authorities.

3.5 We have heard both the parties and perused the materials available on record. The crux of the issue in this appeal is that whether the reopening of the assessment by the AO is valid alongwith not providing copy of the reasons recorded by him to the assessee. We noted from para 2 & 3of the assessment order as under:-

''2. Since the assessee was having total income exceeding maximum amount not chargeable to tax, proceeding were started under section 147 of the I.T. Act, 1961 and notice under section 148 of the I.T. Act, 1961 was issued on 31-03-2017 after recording reasons in writing and obtaining necessary approval from Commissioner of Income Tax (Exemption), Jaipur.

3. In response to notice under section 148 of the I.T. Act, 1961, Authorised Representative of the assessee filed reply on 14-11-2017.

''In this connection, I am to bring to your kind notice that the assessee has already been filed his return of income on 31-03-2011 with ITO, Ward-7(2) Jaipur showing income as NIL.

It is, therefore, respectfully requested before your goodself to kindly treat as return filed in response to notice u/s 148 of the I.T. Act, 1961''

It is noted that the return of income for the A.Y.. 2010-11 was filed by the assessee on 31-03-2011 which fact is clearly established from the assessment order. The relevant evidence like computation of total income and acknowledgement of return by Income Tax Department dated 31-03-2011bearing receipt No. 2721031176 is placed on record at Page1 and 2 of assessee's paper book. It is also noticed from the assessment order that the assessee trust was not provided copy of reasons during the assessment proceedings which indicates from its written submission that the assessee trust was deprived off filing the objections against the reasons recorded. It is also noted that the AO had computed the income on the basis of return of income filed by the assessee trust which as per the reasons recorded was said to be have not been filed by the assessee trust. Hence from the above facts and circumstances, we find that the jurisdiction u/s 147 is wrongly assumed and thus entire assessment proceedings is without jurisdiction and thus it is quashed in view of the following decisions.

1. Narain Dutt Sharma vs ITO 91 Taxmann.co, 463 (Jaipur Trib)

2. Satish Kumar Khandelwal vs ITO, 127 Taxmann.com 683 (Jaipur Trib)

Further the Bench noted that in the present case the assessment was reopened for the following two reasons:-

A Cash Deposit in Bank Rs.68,48,216/- B Interest income from Bank Rs. 5,21,152/-

It is also imperative to mention the Reasons for the belief that income has escaped assessment by the Income Tax Officer (Exemption), Ward-1,

Jaipur as under:-

> ''On perusal of ITS details, it is noticed that the assessee society has deposited cash amounting to Rs.68,48,216/- in its bank account during the financial year 2009-10 relevant to assessment year 2010-11. The assessee has also received interest of Rs.5,21,152/- from Bank. Further, the assessee's income as per information received in form of cash deposit and interest were Rs.73,69,368/- i.e. exceeding maximum amount which was not chargeable to income tax. The assessee society has not filed its return of income for the A.Y. 2010-11 which the assessee was under statutory obligation to file.
>
> In view of the above facts and circumstances, I have sufficient reason to believe that income of Rs.73,69,368/- has escaped assessment for A.Y. 2010-11 within the meaning of Section 147 of the I.T. Act, 1961. As such, it is a fit case for issuance of notice u/s 148 of the I.T. Act, 1961 for A.Y. 2010-11
>
> Sd/-
> (Ajay Kumar Gupta)
> Income Tax Officer (Exemption)
> Ward -1, Jaipur

It is also noted that none of the additions based on the above reasons had been made in the assessment proceedings. The additions made are on the following reasons:-

1.	Accumulation of Income under section 11(2)	Rs.1,11,000
2.	Income from House Property under section 24(a)	Rs.1,48,031
3.	Depreciation under section 32	Rs.1,89,824

The condition precedent to the exercise of the jurisdiction under section 147 is the formation of a reason to believe by the Assessing Officer. Upon the formation of the reason to believe that income chargeable to tax has escaped assessment, the AO is empowered to assess or to reassess such income 'and also' any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under section 147.Explanation 3 to section 147 provides that even though the notice issued under section 148 containing the reasons for reopening the assessment does not contain a reference to a particular issue with reference to which income has escaped assessment, yet the AO may assess or reassess the income in respect of any issue which has escaped assessment, when such issue comes to his notice subsequently in the course of the proceedings. It is noted that the words 'and also' cannot be read as being in the alternative. These words are conjunctive and cumulative. Therefore, meaning of the words 'and also' is that the AO, upon the formation of a reason to believe under section 147 and the issuance of

a notice under section 148(2), must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the AO has formed a reason to believe that it has escaped assessment. Hence, the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe, is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. Reliance is placed on the following judgments:

• Jet Airways Ltd [2011] 331 ITR 236 (Bombay) – Copy enclosed [CLC 15-23].

Ranbaxy Laboratories Ltd. [2011] 12 taxmann.com 74 (Delhi) – In view of the above factual position of the case, it is found that reopening of assessment is patently illegal and deserves to be quashed. Since we are disposing off this appeal on legal issues, therefore the other grounds raised by the assessee are not adjudicated

upon on merits and thus infructuous. Thus the appeal of the assessee is disposed off as indicated hereinabove.

4. In the result appeal of the assessee is partly allowed

Order pronounced in the open court on 22/08/2023.

Sd/- Sd/-

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(RATHOD KAMLESH JAYANTBHAI) (Dr. S. Seethalakshmi)

ys[kk lnL; @Accountant Member U;kf;dlnL;@Judicial Member

Tk;iqj@Jaipur

fnukda @Dated:- 22/08/2023

*Mishra vkns'k dh izfrfyfivxzsf'kr@Copy of the order forwarded to:

1. The Appellant- Shri Digamber Jain Atikshaya Keshtra, Jaipur
2. izR;FkhZ@ The Respondent- ITO(E), Ward-1, Jaipur
3. vk;djvk;qDr@ The ld CIT
4. vk;dj vk;qDr¼vihy½@The ld CIT(A)
5. foHkkxh; izfrfuf/k] vk;djvihyh; vf/kdj.k] t;iqj@DR, ITAT, Jaipur
6. xkMZQkbyZ @ Guard File (ITA No. 424/JPR/2022)

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