IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1389/Bang/2024
Assessment year : 2017-18

GEAR Foundation, No.175, Gear Campus, Gear Road, Off Sarjapura Road, Bengaluru – 560 035. **PAN: AAATG 9137C**	Vs.	The Assistant Commissioner of Income Tax, Exemptions Circle 1, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Vivek, CA
Respondent by	:	Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	12.12.2024
Date of Pronouncement	:	26.12.2024

O R D E R

Per Prashant Maharishi, Vice President

1. This appeal is filed by GEAR Foundation (the assessee/appellant) for the assessment year 2017-18 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [ld. CIT(A)] dated 27.05.2024 wherein appeal filed by assessee against the assessment order passed u/s. 143(3) of the Income-tax Act, 1961 (the Act) dated 24.12.2019 by the ACIT, Exemptions Circle-1, Bangalore was dismissed.

2. The assessee has two grievances that (i) it has not been granted accumulation of income u/s. 11(2) of the Act amounting to Rs. 335,28,160 and (ii) further depreciation was disallowed of Rs.132,43,091 for the reason that assessee has claimed double deduction.

3. The brief facts show that assessee is a trust, who filed its return of income on 22.12.2017 at Rs. NIL. Assessee has claimed exemption u/s. 11 of the Act. Return was picked up for scrutiny and notice u/s. 143(2) was issued on 28.9.2018. The ld. AO found that assessee has claimed accumulation of income u/s. 11(2) of the Act of Rs.335,28,160, but has not filed Form 10 for such claim of accumulation. As the assessee failed to fulfil the pre-condition that Form 10 is required to be filed within the due date prescribed u/s. 139(1) of the Act, the benefit of accumulation was not granted. Accordingly, the unutilised amount of Rs.467,71,251 was brought to tax.

4. The second issue in appeal is that assessee has claimed depreciation on the assets. The ld. AO asked whether assessee has already claimed the purchase cost of the asset as application of fund in earlier years or not? The assessee categorically stated that it has not claimed acquisition of the asset as application of income. However, assessee could not show that cost of the asset is not claimed as application of income with sufficient evidence, The ld.

AO held that it amounts to double deduction and accordingly same was disallowed.

5. Thus, assessment order u/s. 143(3) of the Act was passed where the total income of assessee was assessed at Rs.467,71,251.

6. Assessee, aggrieved with the same, preferred appeal before the ld. CIT(A). The ld. CIT(A) granted two opportunities of hearing to the assessee which were not responded, therefore based on the Statement of Facts, the ld. CIT(A) passed the appellate order. On the issue of accumulation of income, he confirmed the addition holding that assessee has not filed Form 10, the purpose of accumulation and amount of accumulation is not known and same cannot be granted. With respect to second addition, he held that assessee has failed to show that acquisition cost of the assets have not been claimed as application of income in earlier years and depreciation is correctly disallowed by the ld. AO to avoid double deduction. Accordingly appeal of assessee was dismissed.

7. We have heard the rival contentions and carefully perused the order of the ld. lower authorities. The ld. AR produced before us order of ld. CIT(Exemptions), Bangalore dated 21.05.2020 wherein the delay in filing Form 10 for AY 2017-18 has been condoned by him for accumulation of income of Rs.335,28,160. In view of this, as the delay has been condoned by the appropriate authority, ground no.1 of the appeal deserves to be allowed in favour of assessee.

The ld. AO is directed to grant accumulation of total income of Rs. 335,28,160.

8. With respect to the second ground of appeal, disallowance of depreciation is made by the ld. AO for the reason that assessee has failed to show that on the acquisition cost of those assets, it has not claimed it as application of income. Before us, the ld. AR submitted that assessee is willing to produce all the details of assets on which depreciation is claimed before the ld. AO and it does not amount to double deduction. It was stated by him that before the AO as well as the CIT(A), assessee has made this categorical statement, despite this, depreciation is disallowed. It was further stated that there is no evidence with the ld. AO at all, on which assessee has claimed depreciation, cost of acquisition of those assets have already been allowed to the assessee. The ld. DR also agreed that if the assessee can satisfy the ld. AO with various computation of income of earlier years that assessee has not claimed the actual cost of the assets as application of income on which assessee has claimed depreciation for this year, disallowance can be deleted. In view of the above facts, we restore ground no.2 of the appeal to the ld. AO, with a direction to the assessee to substantiate the claim that if depreciation is allowed to the assessee, it will not amount to double deduction. The ld. AO may examine the same and if found that there is no double deduction, depreciation be allowed to that extent to the assessee.

9. All other grounds of appeal of the assessee are with respect to charging of interest u/s. 234A, B & C of the Act, which are merely consequential in nature and therefore, dismissed.

10. In view of the above, the appeal of the assessee is allowed partly.

Pronounced in the open court on this 26th day of December, 2024.

Sd/-	Sd/-
(SOUNDARARAJAN K.) JUDICIAL MEMBER	(PRASHANT MAHARISHI) VICE PRESIDENT

Bangalore,
Dated, the 26th December, 2024.

/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.