

Mere non-registration of asset in name of assessee doesn't lead to denial of depreciation claim thereon

Summary – The High Court of Rajasthan in a recent case of Jawahar Kala Kendra., (the Assessee) held that where certain assets were already transferred to assessee-society, assessee's claim for depreciation could not be rejected merely because those properties had not yet been registered in name of assessee

Merely because revenue authorities rejected assessee's claim for depreciation on account of non-registration of assets in name of assessee, it could not form a ground to pass penalty order under section 271(1)(c)

Facts

- The assessee was a cultural society generating creative artistic activities through programs in the field of performing arts, visual arts, literature, electronic media and film, folklore, indigenous craft etc. It was constituted as an autonomous body by the Government of Rajasthan to preserve and promote art and culture in Rajasthan.
- Subsequent to constitution as a society, all the assets and liabilities relating to kala kendra were transferred to the assessee-society and incorporated in the books of the assessee society. The assessee claimed depreciation for the first time during the relevant year stating that the assets were transferred to it by the Government of Rajasthan.
- The Assessing Officer rejected assessee's claim holding that assessee did not provide any evidence in order to prove the change of ownership of the building and, therefore, the title still continued to be with the State of Rajasthan.
- The Commissioner (Appeals) allowed the claim of depreciation partly.
- The Assessing Officer thereafter imposed penalty under section 271(1)(c) on account of the depreciation which was disallowed by the appellate authority as well.
- The Commissioner (Appeals) sustained the penalty order.
- The Tribunal set aside penalty order holding that the assets were brought into the books of account and details of all assets were provided and, therefore, it could not be said that the depreciation was claimed wrongly by the assessee so as to be subjected with penalty under section 271(1)(c).
- On revenue's appeal:

Held

- The Tribunal has rightly deleted the penalty for the reason that though the claim was disallowed by the Assessing Officer, thereafter, partly allowed by the Commissioner (Appeals) and further not pressed by the assessee, but the fact remains that the assessee-society was constituted as an autonomous body by an order issued by the Governor of Rajasthan to preserve and promote art and culture of Rajasthan and to contribute to the social and cultural development of the people of the

State. It is also an admitted fact that subsequent to the said order of the Governor of Rajasthan, the assessee-society came to be formed and was registered under the Societies Registration Act, 1958 and the Commissioner has also granted registration under section 12A to the assessee society.

- It is an admitted fact and which has not disputed by the revenue that possession over the property is being enjoyed by the assessee and no claim of reclaiming the assets have been made by the State Government subsequent to transfer of the assets to the assessee-society. Merely because title has not been transferred or properties were not registered in the name of the assessee under the Indian Registration Act, depreciation could not be disallowed. Admittedly possession and user is of the assessee.
- Thus, the claim of depreciation was allowable and as such it cannot be said that the claim made by the assessee was wrong or inadmissible since beginning.
- Merely because the assessee did not challenge disallowance of depreciation further, is no reason to come to the conclusion that assessee is to be visited with penalty. In so far as the assessee is concerned when all facts and details of assets were before Assessing Officer than it cannot be said that assessee concealed particulars of income.
- The Tribunal has decided the issue after appreciation of evidence on record and facts found on record that the assets in question were duly disclosed and the assessee neither concealed income nor furnished inaccurate particulars of income.
- Thus, there is no infirmity or perversity in the order of the Tribunal so as to call for any interference of the Court.