

IN THE INCOME TAX APPELLATE TRIBUNAL

“D” BENCH, CHENNAI

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

I.T.A. No. 1812/Mds/2012
(Assessment Year : 2009-10)

The Income Tax Officer,
Company Ward – I, 1st floor,
63, Race Course,
Coimbatore – 641 018.

v. M/s Coimbatore Stock Exchange Ltd.,
No.683-686, Stock Exchange Building
Trichy Road, Singanallur,
Coimbatore – 641 005.

(Appellant)

PAN : AAACC 8424 H
(Respondent)

Appellant by : Smt. Ruby George, CIT-DR
Respondent by : Shri A.S. Sriraman, Advocate

Date of Hearing : 03.06.2013
Date of Pronouncement : 06.06.2013

O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In thhhhhis appeal filed by the Revenue, its grievance is that CIT(Appeals) held assessee to be eligible to claim depreciation as an application of income for the purpose of claiming exemption under Section 11 of Income-tax Act, 1961 (in short 'the Act').

2. Facts apropos are that assessee, while computing its exemption of income under Section 11 of the Act, had considered depreciation on assets also as an application of income. Assessing Officer had not allowed such claim, relying on the decision of Hon'ble Apex Court in the case of Escorts Ltd. v. Union of India (199 ITR 43).

3. Assessee's appeal before CIT(Appeals) was successful. According to him, Tribunal, in assessee's own case for assessment years 2005-06 and 2006-07 in I.T.A. Nos. 1086 & 1087/Mds/2010 had held that such a claim could be allowed.

4. Now before us, learned D.R., strongly assailing the order of CIT(Appeals), submitted that the decision of co-ordinate Bench of this Tribunal for the earlier years, had not been accepted by the Department and Department had moved in appeal before Hon'ble jurisdictional High Court.

5. Per contra, learned A.R. strongly supported the order of CIT(Appeals).

6. We have perused the orders and heard the rival submissions. The short question is whether depreciation could be claimed as application of income while computing the income that is eligible for

exemption under Sections 11 and 12 of the Act. In assessee's own case, for assessment years 2005-06 and 2006-07, this Tribunal, vide order dated 8.2.2011, had held that an assessee could claim depreciation as application of income of funds while computing its eligible exemption under Sections 11 and 12 of the Act. The same view has been followed by this Tribunal in the case of Sri Ranganathar Trust in I.T.A. No. 1954/Mds/2012 dated 28.1.2013.

Relevant para 6 of this Tribunal is reproduced hereunder:-

“6. We have perused the orders and heard rival contentions. No doubt, Hon'ble Kerala High Court in the case of *Lissie Medical Institutions v .CIT(supra)*, after considering the decision of Hon'ble P&H High Court in the case of *M/s.Tiny Tots Education Society (supra)*, which had in turn followed its own decision in the case of *Market Committee, Pipli (supra)*, has held that notional claim of depreciation on an asset, the value of which was claimed as an application of income could not be allowed while computing the income of a charitable institution. Their Lordships held so, for a reason that by making such an allowance, a charitable institution got a permission to generate income outside the books. As against this, Hon'ble P&H High Court in the decisions of *Market Committee, Pipli(supra)* and of *M/s.Tiny Tots Education Society (supra)* had held clearly in favour of the assessee that depreciation was allowable as utilization for the purpose of computing exempt income under sections 11 & 12 of the Act. Decisions relied on by the Assessing Officer for disallowing the claim of the assessee were all considered by Hon'ble P&H High Court in the above case. In fact, this issue had come up before the Tribunal in the case of *G.K.R. Charities Vs.DDIT(E) (supra)* where it was held as under:-

“7. After considering the rival submissions and perusing the materials available on record, we find that the Tribunal in the above mentioned case, while deciding the similar issue, has allowed the claim of depreciation to the assessee by observing as under:

“5. We have perused the orders and heard the rival contentions. For the purpose of determining the income of a Trust eligible for exemption under Section 11 of the Act, income arising from property held under Trust, constitutes the income of the Trust. It will mean income from property, business, dividends, interest on securities or other interest. In other words, the income for the purpose of Section 11 of the Act is the income as per the accounts of the Trust. It means, income in the commercial sense, without reference to the heads of income, specified in Section 14 of the Act, i.e. the book income and not total income as defined in Section 2(45) of the Act. This position is confirmed in CIT v. Trustees of H.E.H. Nizam's Supplemental Religious Endowment Trust (1981) 127 ITR 378 (A.P.), CIT v. Rao Bahadur Calawala Cunnan Chetty Charities (1982) 135 ITR 485 (Mad.) and CIT v. Estate of V.L. Ethiraj (1982) 136 ITR 12 (Mad.). This position is also confirmed by the CBDT vide its Circular No.5-P (LXX-6) dated 19th June, 1968. The concept of commercial income necessarily envisages deduction of depreciation on assets of the Trust. Depreciation on assets of a Trust is to be deducted for the purpose of calculating income of a Trust. This is because of the fact that the concept of commercial income necessarily envisages deduction of depreciation on assets of the Trust. Even reasonable depreciation on assets and interest on Sinking Fund or Repairs Reserve are to be deducted as held by the Mumbai Bench of this Tribunal in Balkan-Ji-Bari (1979) 2 Taxman 377(Bom.). Hon'ble Bombay High Court had rejected a reference application of the Revenue in the case of CIT v. Framjee Cawasjee Institute (1993) 109 CTR 463, holding that the answer to the question whether depreciation was allowable to a charitable Trust was self-evident, even if the capital value of the assets on which depreciation was claimed had been allowed as a deduction under Section 11, as an application of income for religious or charitable purposes. Once again in CIT v. Institute of Banking Personnel Selection (IBPS) 264 ITR 110, Hon'ble Bombay High Court held that depreciation should be allowed even on assets, the cost of which had been allowed as exempt under Section 11 in the preceding years. Their Lordship also held that depreciation should be allowed even on assets received on transfer from another charitable Trust on which no cost was borne by the assessee Trust. Other High Courts which have also taken the view that depreciation is deductible are Hon'ble Karnataka High Court in the case of CIT v. Society of the Sisters of St. Anne (1984) 146 ITR 28 and Hon'ble Madhya Pradesh High Court in the case of CIT v. Rajpur Pallottine Society (1989) 180 ITR 579. In CIT v. Seth Manilal Ranchhoddas Vishram Bhovan Trust (1992) 105 CTR (Guj) 303 it was held by Hon'ble Gujarat High Court that depreciation should be allowed while computing such income under Section 11(i)(a) of the Act.

Assessing Officer's stand that 'provision of computation of income under Section 11' does not contain any provision which may entitle an assessee to claim weighted deduction for any expenses incurred' is not acceptable as Section 11 provides that the income of the Trust is to be computed on commercial basis i.e. as per normal accounting principles. Normal Accounting Principles clearly provide for deducting depreciation to arrive at income. Income so arrived at (after deducting depreciation) is to be applied for charitable purpose. Capital expense is application of the income so determined. So there is no double deduction or double claim of the same amount as application. Thus depreciation is to be deducted to arrive at income and it is not application of income. No doubt, Department has relied on the decision of the Supreme Court in the case of Escorts Ltd. (supra). However, in this case the issue before Hon'ble Supreme Court was that whether both depreciation under Section 32 and capital expenditure on scientific research under Section 35(1)(iv) can be claimed as deduction. Reference to this decision cannot be drawn as in the case of Escorts (supra) both were deductions under the head 'business income' whereas in case of a charitable Trust depreciation is a deduction to arrive at income and capital expenditure is application of such income. The aforesaid decision in the case of Escorts Ltd. cannot be applied to determine taxable income for a Trust as the provisions to determine taxable income of the Trust are totally different and normal provisions for computing income under five heads cannot be applied. Thus the assessee is eligible for claiming depreciation for all these assessment years. The orders of the authorities below are set aside and the A.O. is directed to allow the claim of depreciation."

No doubt, the decision of Hon'ble Kerala High Court was not considered by the Co-ordinate Bench. Nevertheless, as pointed out by Ld. A.R. at the best, the decision of Hon'ble Kerala High Court brings in a cleavage of opinion on the issue where there was otherwise a unity among other High Courts on this issue. It is trite law when there is a cleavage of opinion on an issue between various High Courts, till such time the jurisdictional High Court has taken an adverse view, this Tribunal can elect to follow the view in favour of the assessee. We are of the opinion that Ld. CIT(A) was justified in directing the A.O. to consider the claim of depreciation as a part of utilization of the assessee."

7. We are, therefore, of the view that Id. CIT(Appeals) was justified in allowing the claim of the assessee. No interference is required.
8. In the result, appeal of the Revenue is dismissed.

Order was pronounced in the Court on Thursday, the 6th of June, 2013, at Chennai.

sd/-
(Challa Nagendra Prasad)
Judicial Member

sd/-
(Abraham P. George)
Accountant Member

Chennai,
Dated the 6th June, 2013.

Kri.

Copy to: (1) Appellant
(2) Respondent
(3) CIT(A)-I, Coimbatore
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(5) D.R.
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