आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./**ITA No.2419/Mds/2017**

निर्धारण वर्ष /**Assessment Year: 2010-11**

M/s.Services Association of Seventh-Day Adventists Pvt. Ltd., AA 148, III Avenue, Anna Nagar, Chennai-600 040. **[PAN: AAACS 9035 J]**	**Vs.**	The Joint Director of Income-Tax (Exemptions), Chennai-600 034.
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr.S.Viswanathan, LLP
प्रत्यर्थी की ओर से /Respondent by	:	Mrs.Ruby George, CIT
सुनवाई की तारीख/Date of Hearing	:	19.12.2017
घोषणा की तारीख /Date of Pronouncement	:	19.12.2017

आदेश / **O R D E R**

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.2419/Mds/2017 is an appeal filed by the assessee against the Order of the Commissioner of Income Tax (Appeals)-17, Chennai, in ITA No.282/13-14/CIT(A)-17 dated 30.06.2017 for the AY 2010-11.

2. Smt. Ruby George, CIT represented on behalf of the Revenue and Shri S.Viswanathan, LLP, represented on behalf of the assessee.

3. It is submitted by the Ld.AR that the only issue in the assessee's appeal was against the action of the Ld.CIT(A) in confirming the disallowance of the depreciation. It was a submission that the assessee is a company registered u/s.25 of the Companies Act, 1956 and registered u/s.12AA of the Income Tax Act. It was a submission that as the assessee was claiming exempt income u/ss.11 & 12 of the IT Act, the AO had denied the assessee's claim of depreciation. It was a submission that the issue was squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of M/s.Medical Trust of the Seventh Day Adventists in TCA Nos.949 of 2015 & 771 of 2016 dated 08.08.2017 wherein the Hon'ble Jurisdictional High Court has held as follows:

> *20. Depreciation, as defined in Spicer and Pegler's Book-Keeping and Accounts is the measure of the exhaustion of the effective life of a fixed asset owing to use or obsolescence during a given period. It may be regarded as that part of the cost of the asset which will not be recoverable when the asset is finally put out of use. The object of providing for depreciation is to spread the expenditure incurred in acquiring the asset over its effective lifetime, and the amount of provision made in respect of an accounting period is extended to represent the proportion of such expenditure which has expired during that period.*
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> *21. The necessity of providing for depreciation emanates from the fact that once an asset ceases to be effective, it will have to be replaced. Providing for depreciation would ensure setting aside out of the revenue of an accounting period, the estimated amount by which the capital investment has expired during that period. This provision, incurred for the use of that asset for the purpose of earned profit should be charged against those profits as and when earned. Spicer, and Pegler, at page 45, states as follows:-*
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>> *"If depreciation is not provided for, the books will not contain a true record of revenue or capital. If the asset were hired instead of purchased, the hiring fee would be charged against the profits; having been purchased, the asset is, in effect, then hired by capital to revenue, and the true profit cannot be ascertained until an analogous charge for the use of the asset has been made. Moreover, unless provision is made for depreciation, the Balance Sheet will not present a true and fair view of the state of affairs, since the assets will be shown at an amount which is in excess of the true amount of the unexpired expenditure incurred on their acquisition".*
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> *22. The claim of depreciation is thus part of standard accounting practice which is required for fair presentation of a company's financials. The computation of income in the case of an entity to which section 11 is applicable would be in two stages. Firstly, the determination of the profit arrived at, which would be the total receipts net of expenditure and depreciation incurred in earning the receipts, and secondly the stage of application to Charitable/Religious objects. The two stages are distinct and are required to be complied with consecutively in order to determine the correct income and its application.*

23. The question before the Supreme Court in the matter of Escorts related to duel claims under section 35 of the Act in relation to the same asset – the first, weighted deduction and the second, depreciation. Thus, two benefits were extended in respect of the very same asset. We are faced with an entirely different and distinct position in the present batch of appeals – one that involves a claim for exemption in respect of income earned from property held for charitable or religious purposes. We see no double benefit that is extended to the assessee in this regard.

24. Truth to tell, this Court in the matter of Calavala Cunnan Charities, has decided the question now under consideration in favour of the assessee and we could well have decided this Batch of appeals simply on the strength of the aforesaid decision. We are however persuaded to proceed further with the discussion since a conflicting view has been expressed by the Kerala High Court in the case of Lissie Medical Institutions (supra). Though the attention of the Division Bench of the Kerala High court was drawn to the decision in Rao Bahadur Calavala Cunnan Chetty Charities (supra) and several decisions along similar lines, the court was persuaded to take a contrary view preferring to follow the rationale of the judgment of the Supreme Court in the case of Escorts (supra).

25. As noted by us earlier, the judgment of the Supreme Court in escorts turns on an entirely different position of law and would not impact the issue being discussed in the present case.

26. We are supported in our view by a plethora of decisions of various High Courts - the Bombay High Court in the case of CIT v. Munisuvrat Jain (1994 Tax Law Reporter 1084) and DIT (Exem) Vs. Framjee Cawasjee Institute (109 CTR 463); Karnataka High Court in CIT Vs. Society of the Sisters of St.Anne (146 ITR 28); Madhyapradesh High Court in CIT Vs. Raipur Pallottine Society (180 ITR 579); Gujarath High Court in CIT Vs. Sheth Manilal rachhnoddas Vishram Bhavan Trust 198 ITR 598; Punjab and Haryana High court in CIT Vs. Market Committee Pipli (330 ITR 16) and CIT Vs. Tiny Tots Education Society (330 ITR 21); Madhyapradesh High Court in CIT Vs. Devi Sakuntala Tharal Charitable Foundation (358 ITR 452) and the Calcutta High Court in CIT Vs. Silluguri Regulated Market Committee (366 ITR 51). In addition, the Delhi High Court in DIT Vs. Vishwa Jagriti Mission 262 CTR 558 and the Karnnataka High Court in DIT (Exem) Vs Al-Ameen Charitable Fund Trust (2016) 67 taxmann.com 160 have accepted the claim of the assessee distinguishing both the judgment of the Supreme Court in Escorts as well as that of the Kerala High Court.

27.In view of the discussion above, the question of law is answered in favour of the assessee and against the revenue.

4. In reply, the Ld.DR vehemently supported the order of the Ld.CIT(A) and the AO.

5. We have considered the rival submissions. As it is noticed that the issue is squarely covered by the decision of the Hon'ble Jurisdictional High Court of Madras in the case of M/s.Medical Trust of the Seventh Day Adventists, respectfully following the decision of the Hon'ble Jurisdictional High Court of Madras in the case of M/s.Medical Trust of the Seventh Day

Adventists, referred to supra, the order of the Ld.CIT(A) on this issue stands reversed and the AO is directed to grant the assessee the claim of depreciation as made.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the Open Court on December 19, 2017, at Chennai.

Sd/-	**Sd/-**
(अब्राहम पी. जॉर्ज)	**(**जॉर्ज माथन**)**
(ABRAHAM P.GEORGE)	**(GEORGE MATHAN)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: December 19, 2017.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF