IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH 'B' BENCH

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT AND
SHRI RAJENDRA, ACCOUNTANT MEMBER**

ITA No.3209/Mum/2011
Assessment Year: 2007 -08

Dy. DIT(E)-I(1), r.No.504, Piramel Chambers, 5th Floor, Parel, Mumbai-400 012	Vs.	M/s. M. L. Charitable Trust, 228, Pragati Industrial Estate, N.M. Joshi Marg, Lower Parel, Mumbai-400 013 **PAN NO: AAAJM 2638 B**
(Appellant)		(Respondent)

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CO No. 138/Mum/2011
Assessment Year: 2007 -08

M/s. M. L. Charitable Trust, 228, Pragati Industrial Estate, N.M. Joshi Marg, Lower Parel, Mumbai-400 013 **PAN NO: AAAJM 2638 B**	Vs.	Dy. DIT(E)-I(1), r.No.504, Piramel Chambers, 5th Floor, Parel, Mumbai-400 012
(Appellant)		(Respondent)

Assessee by	:	Shri Sandeep Goel
Revenue by	:	Shri D. J. Shukla
Date of hearing	:	18.09.2012
Date of pronouncement	:	03.10.2012

ORDER

Per Rajendra, A.M. :

The present appeal and the cross objections are directed against the order dt.15.11.2010 passed by the CIT(A)-1, Mumbai. Following Grounds of Appeal have been raised by the Assessing officer (AO):

1)"On the facts and circumstances of the case and in law, the Id.CIT(A) erred in allowing the assesee's claim of depreciation of Rs. 1,39,49,018/- without appreciating the fact that the said claim of depreciation amounts to claiming a double deduction, which in view of the ratio of the judgements in the cases of Escorts Ltd. vs. Union of India (1993) 199 ITR 43 and

(1992) 65 Tax Man 320 (SC) in the case J.K.Synthetics Ltd. vs. Union of India cannot be allowed.
2)"The Appellant prays that the order of the ld.CIT (Appeals)-1, Mumbai be set aside and that of the Assessing Officer be restored."
3)"The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2.Following cross objections were filed by the assessee-trust :

"1.The learned C.I.T(A) erred in not considering the Grounds of Appeal submitted by the Respondent that repayment of loans by the Respondent of Rs.1,55,09,525/. be allowed as application of income of the Respondent in accordance with provisions of Sec. 11 of the I.T.Act, 1961.
2.The Respondent prays that the Assessing Officer be directed to allow repayment of loans of Rs.1,55,09,525/- as application of income in accordance with provisions of Sec. 11 of I. T. Act.
3.The Respondent craves leave to add to, amend, alter or amplify the Grounds of Cross-objection."

3.Assessee-trust filed its return of income on 31.11.2007 declaring total income at Rs.Nil. Assessment order was passed u/s.143(3) of the Income-tax Act, 1961(Act) on 21.12.2009 determining the total income at Rs. 1,02,34,564/-.During the assessment proceedings AO found that the assessee trust had claimed an amount of Rs.1.39 Crores on account of depreciation on assets,cost of which had been claimed to be application within the meaning of section 11(1)(a) of the Act for the purposes of availing exemption u/s.11 of the Act.

4.AO held that the claim of depreciation as application of income u/s.11(1)(a) against the income of the current AY amounted to claiming double deduction,that capital expenditure incurred on these assets had already been allowed as application of income,that the judgment of Institute of Banking Personnel Selection (2003) 264 ITR 110 had not been accepted on merits by the department. Relying upon the orders of the Escorts Ltd. (199 ITR 43) and J. K. Synthetics Ltd. (65Taxmann 320) he disallowed the claim of the assessee on account of depreciation amounting to Rs.1.39 crores.

5. The assessee preferred an appeal before the First Appellate Authority (FAA). After considering the submissions of the assessee trust and the assessment order he held that the facts of the case of the Escorts Ltd. (supra) were different, that decision of the Hon'ble

Jurisdictional High Court in the case of Institute of Banking Personnel Selection (supra) was squarely applicable in the case under consideration, that depreciation was allowable expenditure in the case of the appellant trust.He allowed the appeal filed by the assessee trust and deleted the addition made by the A.O.

6. Before us, DR (Departmental Representative) relied upon the order of the A.O. and submitted that the issue was decided by the Hon'ble High Court of Bombay in favour of the assessee in the case of Institute of Banking Personnel Selection (supra). He further relied upon the order of the Hon'ble High Court of Punjab and Haryana in the case of Marketing Committee, Pipli, (330 ITR 16).

6.1. We have heard the rival submissions and perused the matter before us.We find that the issue of allowability of depreciation;on capital asset from the income of the charitable trust for determining the quantum of funds which have been applied for the purpose of trust in terms of section 11; has been decided in favour of the assessee by the order of the Hon'ble High Courts of Bombay and Punjab and Haryana.The Hon'ble Bombay High Court has held, in the case of Institute of Banking Personnel Selection(supra), as under :-

"Normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income-tax Act, 1961. Income of a charitable trust derived from building, plant and machinery and furniture is liable to be computed in a normal commercial manner although the trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Act providing for depreciation, for computation of income derived from business or profession is not applicable. However, the income of the trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from the gross income of the trust.

Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years against the income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which adjustment had been made having regard to the benevolent provisions contained in section 11 of the Act and such adjustment will have to be excluded from the income of the trust under section 11(1)(a)."

7. Respectfully following the order of the Hon'ble Bombay High Court, we decide ground nos. 1, 2 & 3 against the A.O.

8. As a result, the appeal filed by the Revenue stands dismissed.

9. Cross objections, filed by the assessee-trust,were not pressed by the AR before us, hence same are rejected.

10. As a result, the cross objections filed by the assessee-trust stand dismissed.

Order pronounced in the open court on 3rd October, 2012

Sd/- **(D. MANMOHAN)** **Vice President**	**Sd/-** **(RAJENDRA)** **Accountant Member**

Mumbai, Dated 3rd October, 2012
Copy to:
1. The appellant
2. The respondent
3. Commissioner of Income Tax (Appeals), Mumbai
4. Commissioner of Income Tax, Mumbai
5. Departmental Representative, Bench 'B' Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI

Roshani