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

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No. 676/Bang/2014
Assessment year : 2011-12

The Assistant Commissioner of Income Tax, Circle 1(1), Mangalore.	Vs.	M/s City Hospital Charitable Trust, 3-30-2389, 'Nandavan', Vyasa Rao Lane, Kadri, Mangalore – 575 003. **PAN : AAATC 4496J**
APPELLANT		RESPONDENT

Appellant by	:	Dr. P.K. Srihari, Addl. CIT(DR)
Respondent by	:	None

Date of hearing	:	10.03.2015
Date of Pronouncement	:	20.03.2015

O R D E R

Per N.V. Vasudevan, Judicial Member

This appeal by the assessee is against the order dated 4.3.2014 of CIT(Appeals), Mysore, relating to AY 2011-12.

2. The assessee is a charitable trust running various medical institutions including paramedical and nursing colleges. In the course of

assessment u/s. 143(3) of the Act for AY 2011-2012 the AO noticed from the details of depreciation claimed, that the depreciation was claimed on assets, the cost of acquisition of the said assets had been claimed by the assessee as capital expenditure towards application of funds towards the objects of the trust and allowed as such. According to the AO, allowing such a claim would amount to allowing double deduction. On the facts of the present case, he was of the view that the decision of the Hon'ble Supreme Court in the case of *Escorts Limited & another Vs. Union of India 199 ITR 43* is squarely applicable, wherein it has been categorically held that when deduction u/s 35(2)(iv) is allowed in respect of capital expenditure on scientific research, no depreciation is allowable u/s 32 on the same asset.

3. The assessee pointed out that Hon'ble High Court of Karnataka in the case of *All Saints Church, 148 ITR 786 (Kar)* and *Society of Sisters of St. Ann, 146 ITR 28 (Kar)* has taken the view that where capital expenditure on acquisition of depreciable asset is considered as application of income for charitable purpose, allowing depreciation on the very same capital asset would not amount to double allowance. The assessee also pointed out that the decision of *Escorts Ltd. (supra)* will not be applicable as it was rendered on a different set of facts.

4. The AO however, held that allowance of depreciation when the cost has already been recovered by way of exemption as application of income

amounts to double deduction and double benefit on the same asset. The AO referred to the decision of the of Hon'ble High Court of Kerala in the case of *DDIT(E) v. Lissie Medical Institutions, 348 ITR 344 (Ker)* wherein it was held that allowing depreciation of a depreciable asset when the cost of acquisition of depreciable asset was allowed as application of income for charitable purpose amounts to double depreciation and therefore depreciation cannot be allowed. The AO also distinguished the cases cited by the Assessee.

5. On appeal by the Assessee, the CIT(A) held that the claim of the Assessee for depreciation has to be allowed, following the decisions rendered in the following cases:-

i) Manipal Hotel & Restaurant Management College Trust, (Manipal in ITA Nos. 187/UDP/CTI(A)MNG/10-11, dated 14.3.2013.

ii) Manipal Academy of Higher Education, Manipal in ITA No. 43/UDP/CIT(A) MNG/13-14, dated 21.1.2014.

iii) Academy of General Education, Manipal, in ITA No. 75/UDP/CIT(A)MNG/10- 11, dated 14.3.2013..

iv) Dr. T.M.A. Pal Foundation, Manipal in ITA No. 76/UDP/CIT(A)MNG/12-13, dated 14.3.2013.

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6. Aggrieved by the order of the CIT(A), the Revenue has raised grounds No.2 to 2.5 before the Tribunal.

7. We have heard the submissions of the ld. DR, who relied on the order of AO. We have considered the order of the AO. Identical issue

came up for consideration before ITAT Bangalore Bench in the case of *DDIT(E) v. Cutchi Memon Union (2013) 60 SOT 260 Bangalore ITAT*, wherein similar issue has been dealt with by this Tribunal. In the aforesaid case, the assessee claimed depreciation and the AO denied depreciation on the ground that at the time of acquiring the relevant capital asset, cost of acquisition was considered as application of income in the year of its acquisition. The AO took the view that allowing depreciation would amount to allowing double deduction and placed reliance on the decision of Hon'ble Supreme Court in *Escorts Ltd. (supra)*. The CIT(A), however, allowed the claim of assessee. On further appeal by the Revenue, the Tribunal held as follows:-

> "20. We have considered the rival submissions. If depreciation is not allowed as a necessary deduction for computing income of charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income as it is nothing but a decrease in the value of property through wear, deterioration, or obsolescence. Since income for the purposes of section 11(1) has to be computed in normal commercial manner, the amount of depreciation debited in the books is deductible while computing such income. It was so held by the Hon'ble Karnataka High Court in the case of CIT Vs. Society of Sisters of St. Anne 146 ITR 28 (Kar). It was held in CIT vs. Tiny Tots Education Society (2011) 330 ITR 21 (P&H) , following CIT vs. Market Committee, Pipli (2011) 330 ITR 16 (P&H) : (2011) 238 CTR (P&H) 103 that depreciation can be claimed by a charitable institution in determining percentage of funds applied for the purpose of charitable objects. Claim for depreciation will not amount to double benefit. The decision of the Hon'ble Supreme Court in the case of Escorts Ltd. 199 ITR 43 (SC) have been referred to and distinguished by the Hon'ble Court in the aforesaid decisions.

21. The issue raised by the revenue in the ground of appeal is thus no longer res integra and has been decided by the Hon'ble Punjab & Haryana High Court in the case of CIT v. Market Committee, Pipli, 330 ITR 16 (P&H). The Hon'ble Punjab & Haryana High Court after considering several decisions on that issue and also the decision of the Hon'ble Supreme Court in the case of Escorts Ltd. (supra), came to the conclusion that depreciation is allowable on capital assets on the income of the charitable trust for determining the quantum of funds which have to be applied for the purpose of trusts in terms of section 11 of the Act. The Hon'ble Punjab & Haryana High Court made a reference to the decision of the Hon'ble Supreme Court in the case of Escorts Ltd. (supra) and observed that the Hon'ble Supreme Court was dealing with a case of two deductions under different provisions of the Act, one u/s. 32 for depreciation and the other on account of expenditure of a capital nature incurred on scientific research u/s. 35(1)(iv) of the Act. The Hon'ble Court thereafter held that a trust claiming depreciation cannot be equated with a claim for double deduction. The Hon'ble Punjab & Haryana High Court has also made a reference to the decision of the Hon'ble Karnataka High Court in the case of CIT v. Society of Sisters of Anne, 146 ITR 28 (Kar), wherein it was held that u/s. 11(1) of the Act, income has to be computed in normal commercial manner and the amount of depreciation debited in the books is deductible while computing such income. In view of the aforesaid decision on the issue, we are of the view that the order of the CIT(A) on the above issue does not call for any interference.

22. Consequently, ground No.5 raised by the revenue is dismissed."

8. We may also add that the legal position has since been amended by a prospective amendment by the Finance (No.2) Act, 2014 w.e.f. 1.4.2015 by insertion of sub-section (6) to section 11 of the Act, which reads as under:-

> "(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year."

9. As already stated, the aforesaid amendment is prospective and will apply only from A.Y. 2015-16. In view of the above legal position, we are of the view that the order of the CIT(A) does not call for any interference. Consequently grounds No.2 to 2.5 raised by the Revenue are dismissed.

10. The other issue that arises for consideration in this appeal which is projected by the Revenue in grounds No.3 to 3.2 of the grounds of appeal, is as to whether the CIT(Appeals) was justified in holding that assessee, a trust, is entitled to carry forward expenditure incurred in excess of its income for setting off against income of the succeeding years? The assessee is a trust registered u/s. 12A of the Act. For the A.Y. 2011-12, the assessee filed a return of income showing application of income by more than Rs.1,57,89,730/- of its receipts. The assessee sought to carry forward the excess application for setting off as application of income in the subsequent assessment years. The assessee relied on various judicial decisions including the decision of the ITAT, Bangalore in the case of *Medical Relief Society of South Kanara* wherein the Tribunal had allowed carry forward of excess application of income for set off as application of income in subsequent assessment years. The AO however

observed that in the case of *Medical Relief Society of South Kanara*, the department has filed an appeal before the Hon'ble High court of Karnataka vide ITA 1034 of 2008 on the similar issue against the order of the Hon'ble ITAT allowing excess application to be carried forward and set off. The same is pending before the jurisdictional High Court as on date. Since the matter is pending before the jurisdictional High Court, the claim for carry forward was refused by the AO in order to keep the issue alive.

11. On appeal by the assessee, the CIT(A) directed the AO to allow claim of the assessee and in doing so, followed the decision rendered by the ITAT Bangalore in the following cases:-

> "This issue was also before me in the following Trusts cases, wherein I have decided the issue in favour of the assessee trusts.
>
> i) Manipal Hotel & Restaurant Management College Trust, (Manipal in ITA Nos. 187/UDP/CTI(A)MNG/10-11, dated 14.3.2013.
>
> ii) Manipal Academy of Higher Education, Manipal in ITA No. 43/UDP/CIT(A) MNG/13-14, dated 21.1.2014.
>
> iii) Academy of General Education, Manipal, in ITA No. 75/UDP/CIT(A)MNG/10- 11, dated 14.3.2013..
>
> iv) Dr.T.M.A. Pal Foundation, Manipal in ITA No. 76/UDP/CIT(A)MNG/12-13, dated 14.3.2013.

12. Aggrieved by the order of CIT(A), the Revenue has filed the present appeal before the Tribunal.

13. In the grounds of appeal, the Revenue has reiterated the stand of the AO that there is no provision in the Act to allow carry forward of excess application of income for set off as application of income in subsequent years. The ld. DR reiterated the stand of the Revenue as contained in the grounds of appeal.

14. We have considered his submission. Section 11(1)(a) does not contain any words of limitation to the effect that the income should have been applied for charitable or religious purpose only in the year in which the income has arisen. The application for charitable purposes as contemplated in section 11(1)(a) takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. Hence, even if the expenses for such purposes have been incurred in the earlier years and the said expenses are adjusted against the income of a subsequent year, the income of such subsequent year can be said to be applied for charitable or religious purposes in the year in which such adjustment takes place. In other words, the set-off of excess of expenditure incurred over the income of earlier years against the income of a later year will amount to application of income of such later year. The above is the position of law as held in the case of *CIT Vs. Maharana of Mewar Charitable Foundation 164 ITR 439 (Raj); CIT Vs. Shri Plot Swetamber Murti Pujak Jain Mandal 211 ITR 293 (Guj.). In CIT Vs. Institute of Banking Personnel Selection 264 ITR 110 (Bom),* it was held that in case of charitable trust whose income is exempt under s. 11, excess

of expenditure in the earlier years can be adjusted against income of subsequent years and such adjustment would be application of income for subsequent years and that depreciation is allowable on the assets the cost of which has been fully allowed as application of income under s. 11 in past years. In *Govindu Naicker Estate VS. ADIT 248 ITR 368 (Mad)*, the Hon'ble Madras High Court held that the income of the trust has to be arrived at having due regard to the commercial principles, that s. 11 is a benevolent provision, and that the expenditure incurred on religious or charitable purposes in earlier year or years can be adjusted against the income of the subsequent year. The principle that the loss incurred under one head can only be set off against the income from the same head is not of any relevance, if the expenditure incurred was for religious or charitable purposes, and the expenditure adjusted against the income of the trust in a subsequent year, would not amount to an incidence of loss of an earlier year being set off against the profit of a subsequent year. The object of the religious and charitable trust can only be achieved by incurring expenditure and in order to incur that expenditure, the trust should have an income. So long as the expenditure incurred is on religious or charitable purposes, it is the expenditure properly incurred by the trust, and the income from out of which that expenditure is incurred, would not be liable to tax. The expenditure, if incurred in an earlier year is adjusted against the income of a later year, it has to be held that the trust had incurred expenditure on religious and charitable purposes from the income of the subsequent year,

even though the actual expenditure was in the earlier years, if in the books of account of the trust such earlier expenditure had been set off against the income of the subsequent year. The expenditure that can be so adjusted can only be expenditure on religious and charitable purposes and no other. The High Court relied on the decision in the case of *CIT Vs. Society of Sisters of ST. Anne 146 ITR 28 (Kar.)*.

15. We are therefore of the view that there is no merit in grounds No.3 to 3.2 raised by the Revenue. Accordingly, the same are dismissed.

16. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 20th day of March, 2015.

Sd/-	Sd/-
(ABRAHAM P. GEORGE) Accountant Member	(N.V. VASUDEVAN) Judicial Member

Bangalore,
Dated, the 20th March, 2015.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.