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

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No. 686/Bang/2015
Assessment year : 2009-10

M/S.CMR Janardhana Trust, No.2, 3rd Cross, 6th A Main, 2nd Block, HRBR Lay-out, Bangalore-560043. Pan No. AAATC 0512H	Vs.	The Assistant Director of Income-Tax, (Exemption), Circle 17(1), Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri C.Ramesh, CA
Respondent by	:	Shri G.Ramesha, JCIT

Date of hearing	:	30.12.2015
Date of Pronouncement	:	08.01.2016

O R D E R

Per N.V. Vasudevan, Judicial Member:

This appeal by the assessee is against the order dated 25.3.2015 of CIT(Appeals), LTU, Bangalore, relating to AY 2009-10.

2. Ground No.1 raised by the Assessee is general in nature and calls for no specific adjudication. Ground No.2 & 3 raised by the Assessee reads as follows:-

"2. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of expenditure of Rs.5,04,766/- as having been incurred in foreign currency and hence, cannot be considered as applied for charitable purposes in India.

3. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of expenditure of Rs.5,04,766/- with a finding that, the payment is to relatives as envisaged U/s.13(3) of the act ignoring the fact that, the Assessing Officer has not given any such findings in the assessment and the issue of infringement of provisions of section 13(3) of the act was not before the Honble CIT(A) ".

3. The assessee is a charitable trust duly registered u/s.12A(a) of the Income Tax Act, 1961 (Act). The Assessee has established various educational institutions in Bangalore with the object of imparting education, principally to Telugu speaking minority of Karnataka and to help preserve their language and culture without distinction of religion. The other objects of the Assessee are establishment of hostels, training institutes, orphanages, residential schools etc.

4. In the course of assessment proceedings the AO noticed that a sum of Rs.5,04,766/- was claimed as application of income for charitable purpose. The said sum represented amount paid for meeting the education expenses of Ms.Thrista daughter of Ms.Sabitha Ramamurthy, a trustee of the Assessee and was shown

as sponsorship fee. According to the AO the sum in question had been spent for charitable purpose outside India and therefore the same cannot be regarded as application of income for charitable purpose in view of the provisions of Sec.11(1)(a) of the Act.

> **"Income from property held for charitable or religious purposes.**
>
> **11.** (1) Subject to the provisions of Section 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—
>
> (*a*) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes **in India**; and, where any such income is accumulated or set apart for application to **such purposes in India**, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;"

5. According to the AO the Assessee has not established that the payment made for studies abroad resulted in spending income for charitable activities in India. The AO accordingly held that Rs.5,04,766/- was not applied for charitable purpose and accordingly added the said sum to the total income of the Assessee.

6. Before CIT(A) the Assessee pointed out that the expenditure was in the nature of a sponsorship for Ms.Trishtha to enable her to pursue her Master of Arts in Education in Stanford University, USA. The CIT(A) called for the resolution of the trust authorizing incurring of the aforesaid expenditure and also documentary evidence of the manner in which her services were utilized during the previous year. The request of Ms.Trishtha for sponsoring her studies abroad and

the resolution of the trust authorizing incurring of the expenditure were filed before CIT(A). The CIT(A) noticed that the resolution of the trust authorizing incurring of the expenditure was conditional on Ms.Trishtha giving an undertaking that she will return to India. The CIT(A) noticed no such undertaking had been given by Ms.Trishtha. The Assessee claimed before CIT(A) that Ms.Trishtha returned to India after completing studies on 15.6.2008 and worked for the Assessee trust. The Assessee gave details of services rendered by Ms.Trishtha to the Assessee trust. The same are set out in para 3.2 of CIT(A)'s order.

7. The CIT(A) did not agree with the above submissions of the Assessee. She held that as per the deed of trust one of the objectives of the trust was to grant financial assistance to poor and to grant financial assistance to educated persons from amongst the poor to establish self-employment schemes. According to CIT(A) the aforesaid objective will not be fulfilled in giving scholarship to Ms.Trishtha because she was a person of means and the payment in question was also prohibited u/s.13(3) of the Act, which reads thus:

> **"13.** (1) Nothing contained in section 11 [97][or section 12] shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—
>
> **(a) & (b)…..**

(*c*) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(*i*) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(*ii*) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3) :

…….

(3) The persons referred to in clause (*c*) of sub-section (1) and sub-section (2) are the following, namely :—

(*a*) the author of the trust or the founder of the institution;

(*b*) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees];

(*c*) where such author, founder or person is a Hindu undivided family, a member of the family;

(*cc*) any trustee of the trust or manager (by whatever name called) of the institution;]

(*d*) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(*e*) any concern in which any of the persons referred to in clauses (*a*), (*b*), (*c*) , (*cc*) and (*d*) has a substantial interest."

According to CIT(A), since one of the Trustee was related to Ms.Tristha, the sponsoring of her education abroad by the Trust cannot be regarded as application for charitable purpose.

8. Aggrieved by the order of the CIT(A), the Assessee has raised ground No.2 & 3 before the Tribunal. The learned counsel for the Assessee submitted that Ms.Trishtha is well qualified and rendered services to the Assessee and therefore the expenditure in question cannot be held to be not application of income for charitable purpose. He brought to our notice the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. CMR Janardhana Trust (2015) 55 Taxmann.com 516 (Karn.) wherein it was held that payment for services rendered and where such services have resulted in substantial growth in the activities of the trust are to be allowed and cannot be said to be in contravention of provisions of Sec.13(1)(c) of the Act, though such payments are to specified persons u/s.13(3) of the Act.

9. We have considered his submission and find that in the present case no evidence whatsoever of either of the educational qualification or the nature of services rendered by Ms.Trishtha to the trust has been established by acceptable evidence, though there was only a oral assertion by the Assessee in this regard. The CIT(A) had specifically called upon the Assessee to prove with documentary evidence the manner in which services of Ms.Trishtha were utilized by the Assessee. In the given circumstances, we are of the view that the conclusions drawn by the CIT(A) are correct and calls for no interference.

10. Ground Nos.4 & 5 raised by the Assessee reads as follows:

> "4.The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of depreciation of Rs.515,36,087/- ignoring the position of law for the A Y.2009-10 that, depreciation is an allowance to be considered for application.
>
> 5. The learned Commissioner of Income Tax (Appeals) erred in not following the ratio laid down by the Hon'ble tribunal Bangalore in the case of ACIT Vs Sri.Adhichunchanagiri Shikshana Trust (2013) 141 ITD 575 (Blore) ".

11. 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.

12. 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.

13. 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.

14. On appeal by the Assessee, the CIT(A) upheld order of the AO. Aggrieved by the order of the CIT(A), the Assessee has raised ground No.4 & 5 before the Tribunal.

15. We have heard the submissions of the ld. DR, who relied on the order of CIT(A) and the decision of the Hon'ble Delhi High Court in the case of DIT(E) Vs. Charanjiv Charitable Trust (2014) 43 taxmann.com 300 (Delhi). We have considered the order of the CIT(A). 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."

16. It is no doubt true that the Hon'ble Delhi High Court in the case of Charanjiv Charitable Trust (supra) has taken a contrary view but then when two views are possible on an issue, the view favourable to the Assessee has to be followed. The decision of the Hon'ble Punjab & Haryana High Court is in favour of the Assessee and has followed the decision of the Hon'ble Karnataka High Court in the case of Society of Sisters of Anne (supra). The interpretation to the contrary given by the CIT(A) on the decision of the Hon'ble Karnataka High Court in the case of Society of Sisters of Anne (supra) cannot therefore be accepted. 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."

17. 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) has to be reversed. Consequently grounds No.4 & 5 raised by the Assessee are allowed.

18. In the result, the appeal by the Assessee is partly allowed.

Pronounced in the open court on this 08th day of January, 2016.

sd/-	sd/-
(INTURI RAMA RAO)	(N.V. VASUDEVAN)
Accountant Member	Judicial Member

Bangalore,
Dated, the 08th January, 2016.

/Eks/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.