

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.2206/Bang/2016
Assessment year : 2014-15

I.T.O. (Exemptions), Ward – 1, Mangaluru.	Vs.	M/s. City Hospital Charitable Trust, Pound Garden, Nandavan Vyasa Rao lane, Kadri, Mangalore. PAN : AAATC4496J
APPELLANT		RESPONDENT

Revenue by	:	Smt. H. L. Sowmya Achar, Additional CIT
Assessee by	:	Smt. Sheethal, Advocate

Date of hearing	:	18.09.2017
Date of Pronouncement	:	22.09.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the Revenue against the order of CIT(A), *inter alia*, on the following grounds:

- “1. The order of the Ld. CIT (A) is opposed to Law and facts of the case.
2. Disallowance of revenue expenditure to the extent claimed as application u/s 11
3. The learned CIT(A) erred in allowing assessee's claim for revenue expenditure incurred on the loan amount availed which was not considered as income. The amount of loan taken was neither treated as receipts of the trust nor the amount spent on application was reduced to that extent in the computation of income.

- 3.1 *The learned CIT(A) erred in not following the ratio laid down by the Hon'ble Apex Court in the case of **Escorts Ltd and Anr Vs Union of India — 199 ITR 43** wherein it is held that double deduction cannot be presumed unless specifically provided for by law.*
4. *The amount of loan taken was neither treated as receipts of the trust nor the amount spent on application was reduced to that extent in the computation of income.*
5. *The Learned CIT(A) erred in allowing assessee's claim of as Capital Receipt on fixed deposits even though it is the revenue receipt which is not considered as income available for application.*

6. Depreciation :-

- 6.1 *The learned CIT(A) erred in allowing assessee's claim for depreciation on assets put into use during the accounting year relevant to the assessment year, even though the entire cost of these assets has been claimed by the assessee as application of income for charitable activities.*
- 6.2 *The learned CIT(A) erred in not following the ratio laid down by the Hon'ble Apex Court in the case of **Escorts Ltd and Anr Vs Union of India — 199 FIR 43** wherein it is held that double deduction cannot be presumed unless specifically provided for by law.*
- 6.3 *The learned CIT(A) failed to take cognizance of the fact that allowing the total cost of the asset as an application of income and allowing deprecation on the value of such assets in the same year results in double deduction and it is not as per the provisions of the Income Tax Act.*
- 6.4 *The learned CIT(A) erred in not following the ratio laid down by the Hon'ble Kerala High Court in the case of Lissie Medical Institution ITA No. 42 of 2011 dated 17.02.2012 wherein it is held that in order to reflect the true income available for application for charitable purposes, the assessee should write back in the accounts the depreciation amount to form part of the income to be accounted for application for charitable purposes.*
- 6.5 *The order of CIT(A) may be set aside and that of AO be restored by placing reliance of the recent judgment of Hon'ble High Court of Delhi in the case of DIT(Exemption) vs. Charanjiv Charitable Trust dt. 18.03.2014 in ITA No. 321 to 323/2013 wherein it is held that Tribunal was not justified in directing the allowance of depreciation in respect of assets, the cost of which has been allowed as deduction as application of income of the Trust.*

7. *For these and such other grounds it is urged that the order of the Ld. CIT(A), on the above points may be set aside and the order of the Assessing Officer be restored.*
8. *The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of the hearing of the appeal.”*

2. With respect to disallowance of revenue expenditure of Rs.1,33,82,498/- as application under section 11, we find that during the year assessee's fixed deposit of Rs.96,14,484/- was matured and assessee has received security deposits of Rs.37,68,014/- from B.S. & Co. aggregating to Rs.1,33,82,498/-. AO reduced the same from the revenue's expenditure claimed as application under section 11 on the ground that above amount was not considered for income available for application. Assessee preferred an appeal before the CIT(A) with the submission that AO himself misconstrued the fact by reducing the revenue expenditure incurred to the extent of proceeds of fixed deposit matured and security deposit received by alleging that assessee has met revenue expenditure out of this income also. In fact, the assessee made the investment out of corpus funds and not out of revenue receipts. Hence, the proceed of such investment is not forming part of revenue receipts / revenue expenditures. The CIT(A) re-examined the issue in the light of relevant provisions of the Act and find force in the arguments of the assessee that amount disallowed by the AO out of revenue expenditure claimed as application under section 11 is in fact not revenue in nature and in the capital transactions. The CIT(A) accordingly directed the AO to allow the revenue expenditure amounting to Rs.1,33,82,498/- under section 11.

3. Aggrieved, the Revenue is before the Tribunal and placed the heavy reliance upon the order of the AO whereas the learned counsel for the assessee besides placing the reliance upon the order of the CIT(A) has contended that during the assessment proceedings, assessee has shown the receipts of Rs.2,29,92,985/-. The expenditure includes fixed deposits matured of Rs.96,14,484/- and Rs.37,68,014/- as security deposits. Therefore, the entire

amount was available for its application under section 11 of the Act. Hence the disallowance of revenue expenditure of Rs.1,33,82,498/- is not proper.

4. Having carefully examined the order of the lower authorities in the light of rival submissions, we find that assessee has received Rs.2,29,92,985/- which was shown as income. Assessee has also received a fixed deposit matured at Rs.96,14,484/- and security deposit of Rs.37,68,014/-. The entire amount was applied and assessee claimed the revenue expenditure of Rs.3,41,10,002/-. The treatment given by the assessee does not appear to us to be illogical and illegal. Therefore, we find no infirmity in the order of the CIT(A) who has rightly directed the AO to allow the revenue expenditure amounting to Rs.1,33,82,498/- under section 11 of the Act.

5. Next ground relate to disallowance of depreciation on fixed deposit. The depreciation was disallowed by the AO on the ground that assessee has claimed exemption under section 11 of the Act. This issue was covered by judgment of jurisdictional High Court in the case of CIT(A) vs. Bangalore Baptist Hospital Society (71 TAXmann.com 192) and Director of Income-tax, Exemptions Vs. Al-Ameen Charitable Fund Trust (67 Taxmann.com 160) in which it has been held that amendment to section 11 of the Act by the Finance Bill 2014 is prospective in nature and operates with effect from 01.04.2015 and hence assessee's claim for depreciation on assets for the assessment year under question was to be allowed even though entire cost of those assets had been claimed as an application of income for charitable activities. The CIT(A) has allowed the relief to the assessee following the judgment of jurisdictional High Court. Therefore, we find no infirmity in the order of the CIT(A) and we accordingly uphold the order of the CIT(A).

6. In the result, appeal of the Revenue is dismissed.

Pronounced in the open court on 22nd September, 2017.

Sd/-

(A. K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 22nd September, 2017.

/NShylu/*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. DR

By order

Sr. Private Secretary,
ITAT, Bangalore.