

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

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

ITA Nos.544 to 549/Bang/2017
Assessment years : 2007-08 to 2012-13

The Asst. Commissioner of Income Tax (Exemptions), Circle-1, Mangaluru.	Vs.	M/s. Karnataka Law Society, RPD College Road, Tilakwadi, Belgavi. PAN : AAAT 3599 E
APPELLANT		RESPONDENT

Revenue by	:	Shri. Sanjay Kumar, CIT-DR
Assessee by	:	Smt. Prathiba, Advocate

Date of hearing	:	21.09.2017
Date of Pronouncement	:	27.09.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

These appeals are preferred by the Revenue against the order of CIT(A) on common grounds. For the sake of reference, we extract the grounds raised in ITA No.544/Bang/2017 as under:

1. *The order of the Ld. CIT (A) is opposed to Law and facts of the case.*
2. *The Ld. CIT(A) has erred in allowing the assessee's claim of depreciation and not considering the judgment of the Hon'ble Kerala High Court in the case of Lissie Medical Institution dt. 17.02.2012 .*
3. *The Ld. CIT(A) has also failed to appreciate the fact that depreciation is admissible only in respect of assets used by the assessee for the purpose of*

business or profession. Since the assessee is not engaged in business but undertaking charitable/ religious activities, the benefit of depreciation should not be available to it.

4. *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.*

5. *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. During the course of hearing, the learned counsel for the assessee has contended that the impugned issue is squarely covered by the judgment of the jurisdictional High Court in the assessee's own case in which it has been held that depreciation is to be allowed in the case of assessee enjoying the benefit of section 11 of the Act ignoring the fact that the entire cost has been fully allowed as application of income under section 11 of the Act. Copy of the judgment of jurisdictional High Court is placed on record and for the sake of reference we extract the relevant portion in the assessee's own case in ITA No.200/2015:

"1. Both the learned counsels submitted before us that the controversy involved in the present case is covered by the decision of the co-ordinate Bench of this Court in the case of the Director of Income Tax(Exemptions) Vs. Al-Ameen Charitable Fund Trust (ITA No.62/2010 and connected matters) decided on 22.02.2016, in which following the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Vatika Township P. Ltd. [(2014) 367 ITR 466(SC)], the Division Bench of this Court held that the amendment of Section 11(6) of the Income Tax Act, 1961 was prospective in application and would apply from the Assessment Year 2015-16 onwards only. The assessment year in the present case before us in ITA No.94/PNJ/2014 is A.Y. 2010-11 for the respondent-assessee/Karnataka Law Society, Tilakawadi, Belagavi.

2. The relevant extract of the judgment of the Division Bench of this Court in the aforesaid case of Al-Ameen Charitable Fund(supra) is quoted below for ready reference:-

24. *The constitution Bench of the Apex Court in Vatika Township(p) Ltd.’s case (supra), had laid down general principles concerning retrospectively in paragraphs 33 and 34, and the same is*

extracted hereunder:

“33. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Government of India & Ors. Vs. Indian Tobacco Association, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation.

The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay Vs. State of Maharashtra & Ors. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.

34. In such case, retrospectively is attached to benefit the persons contradiction to the provision imposing a same burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision, which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighting factors”.

25. The Apex Court in the said judgment, while interpreting the proviso, whether to be applied retrospectively or prospectively, has considered the Notes on Clauses appended, the Finance Bill and the understanding of the Central Board of Direct Taxes in this regard. The Apex Court has also taken cognizance of the fact that the legislature is fully aware of 3 concepts in so far as amendments made to a statute:

- i) prospective amendments with effect from a fixed date;*
- ii) retrospective amendments with effect from a fixed anterior date; and*
- iii) clarificatory amendments which are prospective in nature.kk*

Keeping in view, the aforesaid principles enunciated by the Apex Court, in Vatika Township (p) Ltd.’s case (supra), it would be safely held that Section 11(6) of the Act is prospective in nature and operates with effect from 01.04.2015. This is further clarified

when compared with certain other provisions which have been made retrospectively in the same Finance Act.

26. For the foregoing reasons, we answer the question of law in favour of the assessee and against the Revenue.

27. In the result, all the appeals are dismissed.”

3. In view of the controversy being covered by the aforesaid decision against the Revenue with which we respectfully agree, the present appeal filed by the Revenue is also liable to be dismissed and the question of law framed in the present memo of appeal which is quoted below is liable to be answered in favour of the assessee and against the Revenue:

Whether on the facts and in the circumstances of the case, the Tribunal is right in law in allowing depreciation claimed by the Assessee ignoring the fact that the entire cost of asset has been fully allowed as application of income under Section 11 of the IT Act?

4. Accordingly, we answer the aforesaid question of law in favour of the assessee and against the Revenue.

The appeal of Revenue stands dismissed. No Costs.”

3. Following the judgment of jurisdictional High Court in the assessee's own case, we decide these appeals by confirming the order of CIT(A) who has rightly adjudicated the issue.

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

Pronounced in the open court on 27th September, 2017.

Sd/-

(A. K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 27th September, 2017.

/NShylu/*

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. DR | 4. Guard file | |

By order

Sr. Private Secretary,
ITAT, Bangalore.