

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

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.749/Bang/2017
Assessment Year : 2012-13

The Assistant Commissioner of Income Tax (E), Circle – 1, Bangalore.	Vs.	M/s. Green Wood High School, No. 377, 3 <sup>rd</sup> Block, Sarjapur Road, Koramangala, Bangalore – 560 034.  <b>PAN: AAATG 6125A</b>
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Shri B.R. Ramesh, JCIT (DR)

Date of hearing	:	28.09.2017
Date of Pronouncement	:	28.09.2017

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This is a revenue's appeal directed against the order of Id. CIT (A)-14, LTU, Bangalore dated 29.12.2016 for Assessment Year 2012-13.

2. The grounds raised by the revenue are as under.

**"On Disallowance of depreciation:**

*(i) The CIT(A) has failed to appreciate the fact that the Hon'ble Kerala High Court in the case of Lissie Medical Intuitions Vs. CIT (348 ITR 344) has held that depreciation cannot be allowed on assets, where cost of such assets has already been allowed as application of income in the year of acquisition/ purchase of asset.*

*(ii) The CIT(A) has failed to appreciate that the Hon'ble Supreme Court in the case of Escorts Ltd. & another Vs. Union of India (199 ITR 43), while dealing with the issue of allowance of expenditure on scientific research u/s 35(1)(iv) [corresponding to section 10(2) (xiv) of the I.T. Act, 1922] held that any expenditure of a capital nature (or incurred towards purchase of capital assets) on scientific research allowed as deduction u/s 35(1)(iv) cannot be allowed once again as deduction in the form of depreciation on such capital assets. While*

doing so, it was observed by the Hon'ble Supreme Court that no legislature could have at all intended a double deduction in regard to the same business outgoing and if it is intended, it would be clearly expressed in the statute itself. Accordingly, it was held that even in absence of clear statutory indication to contrary, statute should not be read so as to perm it an assessee two deductions i.e. once in the form of expenditure incurred towards purchase of capital assets and secondly, in the form of depreciation on such capital assets. It was also held that even before the amendment of the Act in the form of insertion of clause (iv) of sub section (2) of section 35 by Finance Act, 1980, prohibiting allowance of depreciation, the Act did not permit a deduction for depreciation in respect of cost of capital asset acquired for the purpose of scientific research to the extent such cost had been written off/ claimed as deduction u/s 35(1)(iv) on the ground that the amendment only set out more clearly and categorically what the provision intended even earlier.

iii) The CIT(A) has failed to appreciate the fact that the issue involved in respect of capital expenditure on scientific research u/s 35(1)(1v) is similar to that of issue involved in respect of allowance of expenditure incurred towards purchase of capital assets for charitable purposes as application of income u/s 11(1)(a). Accordingly, the Law laid down by the Hon'ble Supreme Court is squarely applicable to taxation of charitable/ religious trust or institution u/s 11, 12 and 13 of the I.T. Act.

iv) Though the Finance Act, 2014 has amended the Income Tax Act, 1961 with regard to non-allowance of depreciation to charitable/ religious trust or institution on the value of assets which has already been allowed as application of income u/s 11(1) by inserting sub-section (6) of Section 11, w.e.f 01.04.2015, such amendment cannot be construed as effective prospectively inasmuch as in accordance with the ratio laid down by the Hon'ble Supreme Court in the case of Escorts Ltd. & another Vs. Union of India (Supra), the amendment only set out more clearly and categorically what the legislature had intended and conveyed u/s 11(1) even earlier to the said amendment. As such, the amendment shall be considered as clarificatory in nature making it clear that the assessee is not entitled to claim double deduction in respect of same expenditure u/s 11(1) as application of income and also depreciation simultaneously.

## **2) On Set-off of excess expenditure/application/deficit/ loss:-**

a) The CIT (A) has erred in directing the assessing officer to allow set-off of excess expenditure/application pertaining to current asst.year and earlier years against the income of the future asst.year without appreciating the fact that as per the scheme of taxation of charitable or religious trust/institution as codified u/s.11,12 and 13, there is no provision for computing loss from property held under trust/institution on account of excess application of income/funds of

*the trust.*

*b) The CIT (A) has failed to appreciate the fact that the normal computation of income under respective heads as envisaged u/s 15 to 59 are not applicable to the computation of income in respect of charitable trust/institution for the purpose of claiming exemption under sec.11, 12 and 13 and, therefore, the provisions relating to set-off of loss from one source against the income from another source, set-off of loss from one head against income from another head and carry forward and set-off of loss against the income of subsequent years as envisaged u/s 70 to 79 are also not applicable to the charitable trusts/institutions.*

*c) The CIT (A) has failed to discuss the issue in detail bringing out the facts and applying the relevant provisions of the Act, but came to a conclusion that excess expenditure/excess application shall be allowed to be carried forward and set-off against the income of the future assessment years and, thereby, rendering the order perverse.”*

3. None appeared on behalf of the assessee on the appointed date of hearing in spite of notice and hence, the appeal of the revenue was heard ex-parte qua the assessee because it was seen that both the issues involved in the present appeal are covered in favour of the assessee by various judicial pronouncements as noted by the Id. CIT(A) in his order. The Id. DR of revenue supported the assessment order.
4. We have considered the submissions of the Id. DR of revenue and gone through the orders of the authorities below. We find that the first issue involved in this appeal is regarding claim of depreciation of the assessee for Rs. 2,32,54,346/- which was disallowed by the AO on the ground that it led to double deduction since the capital asset on which depreciation is being claimed had been already allowed as application of income in earlier years. This issue was decided by Id. CIT(A) by following the tribunal order rendered in the case of Jyothy Charitable Trust (2015) as reported in 60 taxman.com 165 dated 11.06.2015. No difference in facts could be pointed out by Id. DR of revenue and therefore, by respectfully following this tribunal order, we decline to interfere in the order of CIT(A) on this issue.
5. The second issue involved is regarding set off of excess expenditure / application / deficit / loss. This issue was decided by Id. CIT(A) in favour of the

assessee as per para no. 11.7 of his order which is reproduced below for the sake of ready reference. This Para reads as under.

*“11. However, the jurisdictional ITAT order in the case of ACIT Vs City Hospital charitable trust (2015) 42 ITR(Trib) 583 (Bangalore) and DCIT Vs Manipal Academy of Higher Education (2015) 44 ITR(Trib) 18 (Bangalore) has considered the issue in favour of the assessee. The Department has filed appeal on similar issue before the Hon'ble Karnataka High Court which is pending. Respectfully following the jurisdictional ITAT order in the above cases, this ground of appeal is allowed.”*

6. Since the Id. DR of revenue could not point out any difference in facts in the present case and these cases where the tribunal had already decided the issue in favour of the assessee, we find no reason to interfere in the order of Id. CIT(A) on this issue also.
7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on the same date after completion of hearing.

Sd/-  
(VIJAL PAL RAO)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 28<sup>th</sup> September, 2017.  
/ MS/

Copy to:

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

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.