

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH ' B '**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.550/Bang/2017  
(Assessment Year : 2010-11)

Asst. Commissioner of Income Tax (Exemptions),  
Circle 1, Mangaluru.

õ . Appellant.

Vs.

Shri Siddarameshwar Education Trust,  
Shivabasava Nagar, Belgaum.

õ .. Respondent.

Appellant By : Smt. Padma Meenakshi, JCIT (D.R)  
Respondent By : None.

Date of Hearing : 10.10.2017.  
Date of Pronouncement : 13.10.2017.

**O R D E R**

**Per Shri N.V.Vasudevan, J.M. :**

This appeal by the Revenue is against the order dated 15.12.2016 of Commissioner of Income Tax (Appeals), Belagavi relating to Assessment Year 2010-11.

2. The assessee is a charitable trust with objects to provide education by running several educational institutions. In the course of assessment u/s. 143(3) of the Act for AY 2010-2011 the AO noticed from the details of depreciation claimed, that the depreciation was claimed by the Assessee on assets, the cost of acquisition of which in the year of their acquisition had been claimed by the assessee as application of funds towards the objects of the

trust and the claim of the Assessee was allowed as such. According to the AO, once at the time of acquisition of the assets, the capital expenditure is considered as application of income for charitable purpose u/s.11(1) of the Act, on the very same assets, allowing depreciation would amount to allowing double deduction. The AO 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* was squarely applicable. In the aforesaid case, the facts were that capital expenditure on acquisition of assets was allowed as deduction u/s 35(2)(iv) of the Act. On the very same assets depreciation was claimed by the Assessee in the subsequent years. The claim for deduction on account of depreciation was disallowed by the Revenue authorities on the ground that since the cost of the asset which was capital expenditure on scientific research was allowed as deduction allowing depreciation on the very same asset would amount to conferring double deduction and hence no depreciation is allowable u/s 32 on the same asset. This view was confirmed by the Hon'ble Supreme Court in the case of *Escorts Ltd. (supra)*. The AO was of the view that following the ratio laid down in the case of *Escorts Ltd. (supra)*, the claim for deduction on account of depreciation should be disallowed.

3. The AO 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 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) directed the AO to allow the claim of the Assessee for deduction on account of depreciation by concluding that 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. The CIT(A) also relied on the decisions 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](#) wherein it was held 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<sup>ble</sup> Supreme Court in the case of *Escorts Ltd. 199 ITR 43 (SC)* have been referred to and distinguished by the Hon<sup>ble</sup> Court in the aforesaid decisions.

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

6. We have heard the submissions of the Id. 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.+

7. 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.+

8. 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 there is no merit in the appeal by the revenue and the same is dismissed.

9. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open court on the 13th day of Oct., 2017.

Sd/-  
**(JASON P BOAZ)**  
Accountant Member

Sd/-  
**(N.V. VASUDEVAN)**  
Judicial Member

Bangalore,  
Dt.13.10.2017.

\*Reddy gp

Copy to :

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2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Senior Private Secretary  
Income Tax Appellate Tribunal  
Bangalore.