

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B", BANGALORE**

**Before Shri A.K.Garodia, AM & Shri George George K, JM**

ITA No.1253/Bang/2017 : Asst.Year 2012-2013

The Asst.Commissioner of Income-tax (Exemption) Circle 1, Mangaluru.	Vs.	M/s.Institute of Social Service, D.No.17-3-129, Roshni Nilaya, Fr.Mullers Kankanady, Mangalore. <b>PAN : AAAAI0215L.</b>
(Appellant)		(Respondent)

Appellant by : Smt.Padmameenakshi, JCIT  
Respondent by : Shri V.K.Gurunathan, Advocate

<b>Date of Hearing : 01.11.2017</b>	<b>Date of Pronouncement : 03.11.2017</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the Department is directed against the CIT(A)'s order dated 17.03.2017. The relevant assessment year is 2012-2013.

2. The effective grounds raised read as follows:-

*"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."*

3. The briefly stated the facts of the case are as follows:-

3.1 The assessee is a charitable trust registered u/s 12AA of the Income-tax Act. For the assessment year 2012-2013, return of income was filed on 18.09.2012 declaring nil income. The assessment u/s 143(3) was completed vide order dated 30.03.2015. The Assessing Officer in concluding the assessment u/s 143(3) of the Act, had disallowed the assessee's claim of depreciation amounting to Rs.35,75,797 as application of income.

3.2 Aggrieved by the order of the assessment in disallowing the claim of depreciation, the assessee preferred an appeal to the first appellate authority.

3.3 The CIT(A), following the judgment of the Hon'ble jurisdictional High Court in the case of *Director of Income-tax (Exemption) v. Al-Ameen Charitable Fund Trust [(2016) 383 ITR 517 (Kar.)]* held that the assessee is entitled to claim depreciation as application of income irrespective of the fact that the cost of asset on which depreciation is claimed is allowed as application previously.

3.4 The Revenue being aggrieved by the order of the CIT(A) in granting depreciation as application of income, has preferred the present appeal before the Tribunal.

3.5 The learned Departmental Representative relied on the grounds raised in the memorandum of appeal.

3.6 The learned AR, on the other hand, submitted that the issue in question is squarely covered by the judgment of the Hon'ble jurisdictional High Court in the case of *Al-Ameen Charitable Fund Trust (supra)*.

4. We have heard the rival submission and perused the material on record. The Hon'ble jurisdictional High Court in the case of *Al-Ameen Charitable Fund Trust (supra)* had held that the assessee is entitled to claim depreciation as application of income irrespective of the fact that the cost of asset on which the depreciation is claimed is allowed as application in the previous year. The relevant finding of the Hon'ble High Court reads as follow:-

*“20. It is also to be noticed that while in the year of acquiring the capital asset, what is allowed as exemption is the income out of which such acquisition of asset is made and when depreciation deduction is allowed in the subsequent years. It is for the losses or expenses presenting the wear and tear of such capital asset incurred if, not allowed then there is no way to preserve the corpus of the Trust for deriving its income as held in Society of the Sisters of St.Anne's case (supra). This judgment of co-ordinate Bench of this Court is binding on us and we have no reasons to disturb the settled position of law at this length of time / depart from the said reasoning. As such, the arguments advanced by the Revenue apprehending double deduction is totally misconceived.”*

4.1 It was further held by the Hon'ble High Court that the amendment brought in by the Finance Act, 2014 is only prospective and does not have application for assessment years prior to 2015-2016. In view of the above judgment of

the Hon'ble High Court (supra), we hold that the CIT(A) is justified in holding that assessee is entitled to the benefit of depreciation as application of income for the relevant assessment year. It is ordered accordingly.

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

Order pronounced on this 03<sup>rd</sup> day of November, 2017.

Sd/-  
**(A.K.Garodia)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Bangalore ; Dated :03<sup>rd</sup> November, 2017.  
Devdas\*

**Copy of the Order forwarded to :**

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

True copy  
BY ORDER,

(Asstt. Registrar)  
**ITAT, Bangalore**