

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' C' BENCH : CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.Nos.1474 & 1475/Mds./2013
निर्धारण वर्ष /Assessment years : 2010-11 & 2011-12

**M/s. Chettinad Academy of
Research and Education,**
Rani Seethai Hal, V floor,
603,Anna Salai,
Chennai 600 006.

Vs. The Deputy Director of
Income tax (Exemptions),
Chennai Circle,
Chennai 600 034.

[PAN AAATC 8714 H]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.R.Vijayaraghavan,Advocate
प्रत्यर्थी की ओर से /Respondent by : Mr.K.Ravi, JCIT,DR
सुनवाई की तारीख/Date of Hearing : 25-09-2017
घोषणा की तारीख /Date of Pronouncement : 26-09-2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These two appeals of the assessee are directed against the common order of the Commissioner of Income-tax (Appeals)-17, Chennai, dated 30.03.2016 pertaining to assessment years 2010-11 & 2011-12.

2. The assessee in its appeals raised the following common grounds for adjudication.

1. The order of the Commissioner of Income tax (Appeals) is contrary to law, facts and circumstances of the case.
2. The Commissioner of Income-tax (Appeals) erred in confirming the disallowance of the claim of depreciation on the ground that the same amount was claimed as application of income in the earlier years.
 - 2.1 The Commissioner of Income-tax (Appeals) erred in not appreciating the difference between computation of income and application of income in case of charitable trust u/s.11 of the Act.
 - 2.2 The Commissioner of Income-tax (Appeals) erred in confirming the disallowance of depreciation on opening balance of fixed assets on which depreciation was claimed and allowed by assessing officer in earlier years.
 - 2.3 The Commissioner of Income-tax (Appeals) erred in confirming the disallowance of depreciation on fixed assets purchased during the year.
 - 2.4 The Commissioner of Income-tax (Appeals) erred in holding that the insertion of sub section 6 to Section 11 by Finance Act 2014 with effect from 1.4.2015 was clarificatory and remedial in nature and would have retrospective effect.
 - 2.5 The Commissioner of Income-tax (Appeals) ought to have appreciated that an amendment which creates a liability is substantive in nature and will apply prospectively.
 - 2.6 The Commissioner of Income-tax (Appeals) erred in not following the ratio laid down in the following decisions holding that depreciation is allowable in respect of assets, the cost of which has been already allowed as application of income u/s.11 in the past years

CIT vs. Institute of Banking 264 ITR 119 (Bom)

CIT vs Marketing Committee, Pipli 330 ITR 16(P& H)

CIT vs Tiny Tots Educational Society 330 ITR 21 (P&H)

CIT vs Vishwa Jagriti Mission 73 ITR 91 (Del)

3. The brief facts of the case are that the assessee claimed depreciation of an amount of ₹18,32,40,101/- and ₹18,85,58,300/- for the A.Y. 2010-11 and for A.Y. 2011-12 respectively but the A.O was of the view that the assessee had claimed full cost of additions to assets as application of income in the earlier assessment years. Further, the AO found that the assessee was also claiming depreciation on the same assets in both the assessment years in the instant appeals. According to Id. Assessing Officer, since admittedly the full cost of assets had already been claimed fully as application of income towards the objects of the trust in the earlier previous years, depreciation on the same assets again would tantamount to double deduction and was therefore not allowable. The AO further noticed that in the case of trusts claiming exemption u/s. 11, the computation of income as per the special provisions under Section 11 to 13 and normal working as per I.T. Act would not apply (i.e. from Sec. 14 to 80 VVGA of the Act) and that under the provisions of section 11, the actual expenditure incurred / spent only is considered as application and notional expenditure / allowances were not to be considered as application and since depreciation is notional in nature and considered to be an allowance granted to recoup towards wear and tear of assets and further since admittedly the cost of the asset itself was fully allowed in the form of application of income in the instant case, there was

nothing remaining as part of the cost of the capital asset to be considered for further allowance by way of depreciation on the same assets which, if allowed, would amount to double deduction. Hence, the Id. Assessing Officer disallowed the claim of depreciation made by the assessee on the ground that the same amount was claimed as application of income in the earlier years. Aggrieved by the order of Id. Assessing Officer, the assessee carried these appeals before the Ld.CIT(A).

3.1 On appeal, the Ld.CIT(A) placed reliance on the following judgements.

- i) DDIT(Exemption) Vs. Adi Sankara Trust reported in (2011) 12 Taxmann.com 105 (Cochin Tribunal).
- ii) J.K.Synthetics Ltd. Vs. UOI reported in (1992) 65 Taxman 420(SC)
- iii) CIT Vs. Rao Bahadur Calavala Cunnan Chetty Charities reported in 135 ITR 485(Mad.)

Accordingly, Ld.CIT(A) observed that Section 11(6) has been inserted by Finance Act, 2014 with effect from 01.04.2015. Further, Ld.CIT(A) was of the opinion that Since Sec.11(6) is of clarificatory nature, it would have retrospective effect, therefore to be applicable to these assessment years. Accordingly, Ld.CIT(A) confirmed the order of Id. Assessing Officer and dismissed the appeals of assessee. Against the order of Ld.CIT(A), now the assessee is in appeals before us.

4. We have heard both the parties and perused the material on record. It is noticed that similar issue came for consideration before the jurisdictional High Court in the case of DIT(Exemption)-III, Chennai Vs. M/s.Medical Trust of the Seventh Day Adventists, Chennai in TCA No.949 of 2015 and 771 of 2016 –Assessee's appeal & Tax case (Appeal) No.844 of 2010 –Departmental Appeal vide order dated 08.08.2017 wherein it was held that:-

"34.The short point that arises for decision is whether the provisions of Section 11(6) inserted by Finance (No.2) Act, 2014 w.e.f. 1.4.2015, operate prospectively with effect from assessment year 2015-16 or retrospectively with respect to earlier years as well. In this regard, M/s.Pushya Sitaraman, learned senior counsel and other learned counsels appearing for the assessee refer to the provisions of Circular 1 of 2015 dated 21.1.2015 (371 ITR (St) 0022) containing explanatory notes to the provisions of Finance (No 2) Act, 2014 The relevant portion of the circular reads as follows:

7.3. Several issues had arisen in respect of the application of exemption regime to trusts or institutions in respect of which clarity in law was required.

7.4 The first issue was regarding the interplay of the general provision of exemptions which are contained in section 10 of the Income-tax Act vis-a-vis the specific and special exemption regime provided in sections 11 to 13 of the said Act. As indicated above, the primary objective of providing exemption in case of charitable institution is that income derived from the property held under trust should be applied and utilized for the object or purpose for which the institution or trust has been established. In many cases it had been noted that trusts or institutions which are registered and have been availing benefits of the exemption regime to not apply their income, which is derived from property held under trust, for charitable purposes. In such circumstances, when the income becomes taxable, a claim of exemption under general provisions of section 10 in respect of such Income is preferred and tax on such Income is avoided. This defeats the very objective and purpose of placing the conditions of application of Income, etc., in respect of income derived from property held under trust in the first place.

7.4.1 Sections 11,12 and 13 of the income-tax Act are special provisions governing institutions which are being given benefit of

tax exemption. It is therefore imperative that once a person voluntarily opts for the special dispensation it should be governed by these specific provisions and should not be allowed flexibility of being governed by other general provisions or specific provisions at will. Allowing such flexibility has undesirable effects on the objects of the regulations and leads to litigation.

...
 7.6 *Applicability.* – *These amendments take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-2016 and subsequent assessment years.*

35. Para 7.6 of the Circular states that the amendment would apply to assessment year 2015-16 and subsequent assessment years. Reliance was placed on the judgment of the Supreme Court in CIT vs. Alom Extrusions Ltd., (2009) and CIT Vs. Vatika Townships (367 1TR 466) for the proposition that an amendment that increases the liability of an assessee is liable to be applied only prospectively. Mr. Narayanaswamy would object stating that the amendment had been inserted to correct an existing anomaly and thus was clearly clarificatory, and consequently retrospective in operation.

36. We do not agree with the Revenue. The amendment, inserted specifically with effect from Assessment Year 2015-2016 seeks to disturb a vested right that has accrued to the assessee. The amendment does not purport to be clarificatory, on the other hand the Explanatory Memorandum makes it applicable only w.e.f. A Y 2015-16 and application of the amendment retrospectively would—certainly lead to a great deal of hardship to the assessee. We are thus of the view that the provisions of section 11(6) of the Act inserted with effect from 1.4.2015 shall operate prospectively with respect to assessment year 2015-2016 only.”

5. In view of the above judgement of jurisdictional High Court, we are of the opinion that the lower authorities is not justified in disallowing the claim of depreciation as application of income while granting exemption u/s.11 of the Act and it cannot be

said that when the expenditure is allowed in its entirety on the acquisition of the fixed assets as application, the granting of depreciation as an application while allowing exemption u/s.11 of the Act, will not amount to double deduction. Hence, this ground of appeals of assessee is allowed.

6. In the result, both the appeals of the assessee for assessment years 2010-11 & 2011-12 are allowed.

Order pronounced on 26th September, 2017, at Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 26th September , 2017.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |