

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-C” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER**

<b>ITA Nos. and Assessment Years</b>	<b>Appellant</b>	<b>Respondent</b>
1701/Bang/2017 2010-11	The Assistant Commissioner of Income Tax (Exemptions), Circle – 1, Mangaluru.	M/s. Anjuman-E-Islam, 2 <sup>nd</sup> Floor, Anjuman Complex, Hubli – 580 020. <b>PAN : AAAAA 4108 Q</b>
1702/Bang/2017 2011-12	-do-	-do-
1698/Bang/2017 2012-013	-do-	-do-

Revenue by	:	Shri. Kumar Ajith, Additional CIT
Assessee by	:	Shri. Narendra Sharma, Advocate

Date of hearing	:	13.12.2017
Date of Pronouncement	:	22.12.2017

**ORDER**

***Per Sunil Kumar Yadav, JM :***

These appeals are preferred by the Revenue against the order of the CIT(A) on common grounds. In ITA Nos.1701 and 1702/Bang/2017, the Revenue has challenged the order of the CIT(A) mainly on two issues, one is with regard to disallowance of depreciation and the other is carry forward of excess expenditure/application/deficit/losses. But in ITA No.1698/Bang/2017, the Revenue has assailed the order of the CIT(A) on one ground i.e., disallowance of depreciation. I, however, for the sake of reference, extract the grounds raised in appeal No.1701/Bang/2017:

**1) On Disallowance of depreciation:**

1. *Whether in the facts and circumstances of the case and in law, the learned CIT(A) erred in allowing depreciation in respect of assets which have already been allowed as application of income in its entirety in earlier years.*
2. *Whether in the facts and circumstances of the case and in law, the learned CIT(A) is correct in allowing depreciation which amounts to double deduction when already full expenditure has been allowed in earlier years.*
3. *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.*
4. *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 permit 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.*

**2) On carry forward 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.*

2. During the course of hearing, the learned counsel for the assessee invited my attention that both these grounds are covered by the order of the Tribunal in the case of Jyothy Charitable Trust Vs. DCIT in ITA No.662/Bang/2015 and by the judgment of the jurisdictional High Court in the case of All Saints Church, 148 ITR 786 (Kar) and Society of Sisters of St. Ann, 146 ITR 28 (Kar) with the submission that Tribunal has examined these issues in the light of various judicial pronouncements in the favour of the assessee on both the issues. Therefore, the order of the CIT(A) be confirmed as it was in consonance with the finding of the Tribunal.

3. The learned DR placed reliance upon the judgment of the Hon'ble Kerala High Court in the case of Lissie Medical Intuitions Vs. CIT 24 Taxmann.com 9 in support of his contention that if the assessee treats expenditure on acquisition of assets as application of income for charitable purposes under section 11(i)(a) of the Act, then assessee cannot claim depreciation on value of such assets.

4. Besides, he placed heavy reliance upon the order of the AO.

5. Having carefully examined the orders of the lower authorities in the light of rival submissions and the judgments referred to by the parties, I find that Tribunal has examined both the issues in his order in the light of judgment of the jurisdictional High Court and the judgment of the Hon'ble Kerala High Court in the case of DDIT (Exemption) Vs. Lissie Medical Institutions (348 ITR 344) and categorically held that depreciation is to be allowed on the assets acquired on application of income in the year of its acquisition. The relevant observation of the order of the Tribunal is extracted hereunder for the sake of reference:

*"4. The AO however, 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), confirmed the order of the AO.*

*6. Aggrieved by the order of the CIT(A), the revenue has referred the present appeal before the Tribunal. The relevant ground of appeal raised by the assessee is ground No.2 relating to disallowance of depreciation.*

*7. 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."*

8. *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."*

9. *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 grounds No.2 raised by the Assessee is allowed."*

6. Therefore, following the view taken by the Tribunal, I decide the issue in favour of the assessee and accordingly I confirm the order of the CIT(A) who has adjudicated the issues in terms of finding of the Tribunal.

7. So far as the other issues regarding carry forward of excess application of income for set off as application of income in subsequent years is concerned, the issue was also examined by the Tribunal in its order in the light of various judicial pronouncements and has finally allowed to carry forward excess application of income for set off as application of income in subsequent years. The relevant observation of the Tribunal is extracted hereunder for the sake of reference:

*"13. We have considered his submission. Section 11(1)(a) does not contain any words of limitation to the effect that the income should have been applied for charitable or religious purpose only in the year in which the income has arisen. The application for charitable purposes as contemplated in section 11(1)(a) takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. Hence, even if the expenses for such purposes have been incurred in the earlier years and the said expenses are adjusted against the income of a subsequent year, the income of such subsequent year can be said to be applied for charitable or religious purposes in the year in which such adjustment takes place. In other words, the set-off of excess of expenditure incurred over the income of earlier years against the income of a later year will amount to application of income of such later year. The above is the position of law as held in the case of CIT Vs. Maharana of Mewar Charitable Foundation 164 ITR 439 (Raj) CIT Vs. Shri Plot Swetamber Murti Pujak Jain Mandal 211 ITR 293 (Guj.). In CIT Vs. Institute of banking Personnel Selection 264 ITR 110 (Born) it was held that in case of charitable trust whose income is exempt under s. 11 excess of expenditure in the earlier years can be adjusted against income of subsequent years and such adjustment would be application of income for subsequent years and that depreciation is allowable on the assets the cost of which has been fully allowed as application of income under s. 11 in past years. In Govindu Naicker Estate VS. AD1T 248 1TR 368 (Mad), the Hon'ble Madras High Court held that the income of the trust has to be arrived at having due regard to the commercial principles, that s. 11 is a benevolent provision, and that the expenditure incurred on religious or charitable purposes in earlier year or years can be adjusted against the income of the subsequent year. The principle that the loss incurred under one head can only be set off against the income from the same head is not of any relevance, if the expenditure incurred was for religious or charitable purposes, and the expenditure adjusted against the income of the trust in a subsequent year, would not amount to an incidence of loss of an earlier year being set off against the profit of a subsequent year. The object of the religious and charitable trust can only be achieved by incurring expenditure and in order to incur that*

*expenditure, the trust should have an income. So long as the expenditure incurred is on religious or charitable purposes, it is the expenditure properly incurred by the trust, and the income from out of which that expenditure is incurred, would not be liable to tax. The expenditure, if incurred in an earlier year is adjusted against the income of a later year, it has to be held that the trust had incurred expenditure on religious and charitable purposes from the income of the subsequent year, even though the actual expenditure was in the earlier years, if in the books of account of the trust such earlier expenditure had been set off against the of the subsequent year. The expenditure that can be so adjusted can only be expenditure on religious and charitable purposes and no other. The High Court relied on the decision in the case of CIT Vs. Society of Sisters of ST. Anne 146 ITR 28 (Kar.).*

14. *We are therefore of the view that there is merit in ground No.3 raised by the Assessee. Accordingly, the same is allowed."*

8. Since the Tribunal has taken a particular view in a similar set of facts, I find no justification to take a contrary view in this appeal. Accordingly, I confirm the order of the CIT(A).

9. In the result, appeals of the Revenue are dismissed.

*Pronounced in the open court on 22<sup>nd</sup> December, 2017.*

**Sd/-  
(SUNIL KUMAR YADAV)  
JUDICIAL MEMBER**

Bangalore.

Dated: 22<sup>nd</sup> December, 2017.

/NShylu/\*

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| 1. Appellants | 2. Respondent | 3. DR |
| 4. CIT        | 5. Guard file |       |

By order

Sr. Private Secretary,  
ITAT, Bangalore.