

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-4435/Del/2016  
(Assessment Year: 2011-12)**

DCIT(Exemption) Circle 1(1), E-2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherejeet, Civic Centre, New Delhi.	vs	Institute of Sisters of Charity 21-A, Ring Road, Lajpat Nagar, New Delhi. AAAT10168B
<b>Assessee by</b>	<b>None</b>	
<b>Revenue by</b>	<b>Sh. Arun Kumar Yadav, Sr. DR</b>	

<b>Date of Hearing</b>	<b>20.12.2017</b>
<b>Date of Pronouncement</b>	<b>26.12.2017</b>

**ORDER**

**PER K. NARSIMHA CHARY, J.M.**

Aggrieved by the order dated 13.06.2016 in appeal no. 124/2015-16 Revenue preferred this appeal on the following grounds:

1. *“On the facts and in the circumstances of the case and in law the Ld.CIT (A) has erred in allowing the appeal of the assessee by ignoring the fact that in the case of charitable or religious institutions, the assessee is not eligible for any type of depreciation as the entire expenditure for the purchase of capital assets is allowed as a deduction and the same is treated as application of income u/s 11(1) and claiming depreciation on the same capital assets is a double deduction*

*and is not as per law as these capital assets are not used for the purpose of business or profession as provided u/s 32(1).*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in ignoring the fact that assessee like charitable or religious institutions are governed by almost the separate or independent provisions of section 11, 12, 12A, 12AA & 13 and these provisions are independent code in itself in Chapter III of the Income Tax Act, 1961. The income and expenditure is computed on the basis of application of income for charitable or religious purposes and the deduction is allowed of the entire expenditure including the capital expenditure for purchase of capital assets u/s 11(1).*
3. *The assessee craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

2. Briefly stated facts are that the assessee is a trust running various educational institutions and medical & social work centers. The assessment u/s 143(3) was completed at 'NIL' income by the Assessing Officer ADIT (Exemption) for the A.Y. 2011-12 by an order dated 31.01.2014. Later on the DCIT (Exemption), the then Assessing Officer, on perusal of Assessment record find that the order of assessment dated 31.01.2014 was erroneous. The DCIT (E) noticed that the earlier Assessing Officer had completed the assessment allowing the depreciation claim of the assessee amounting to Rs. 2,19,57,951/-. He was of the view that since the assessee is claiming expenditure on account of purchase of fixed assets, the depreciation shouldn't have been allowed. The DCIT(E), passed the Rectification Order u/s 154 of the Income Tax Act, 1961 and recomputed the total income at Rs. 2,19,57,951/- vide order dated 24.03.2015 and issued the demand notice amounting to Rs. 1,02,39,060/- for the AY 2011-12.

3. In appeal Ld. CIT (A) followed the order of the Hon'ble Jurisdictional High Court in the case of DIT vs. VishwaJagariti Mission 73 DTR (Del.) 195 followed in DIT vs. Indraprastha

Cancer Society in ITA No. 240/2014 order dated 18.11.2014 and held that in computing the income of a charitable trust, depreciation of assets owned by the trust is a necessary deduction on commercial principles and the amount of depreciation debited to the accounts of the charitable institution has to be deducted to arrive at the income available for application to charitable and religious purposes. Revenue is challenging such a finding in this appeal.

4. It is the argument of the Ld. DR placed reliance on the rectification order dated 24.03.2015. Ld. AR submitted that since the Ld. CIT (A) granted relief to the assessee by following the binding precedents of the Hon'ble Jurisdictional High Court the same cannot be interfered with.

5. We have gone through the record. In Carolex Foundation, New Delhi vs. Department of Income Tax dated 4.11.2015 in ITA No. 2876/Del/2010 a coordinate bench of this Tribunal held as follows:

*That the Ld. Assessing officer has failed to appreciate the difference between the Income chargeable to tax and the application of Income which is a condition for the purpose of exemption u/s 11. Application of income is not a computation of income and the provision of application of income would come into play only after the income chargeable to tax is determined."*

6. There is no dispute of the fact that the assessee has been purchasing fixed assets in the earlier years and the same have been used for charitable purposes. Ld. CIT (A) followed the decision of the Hon'ble Jurisdictional High Court in the case of DIT vs. VishwaJagariti Mission (supra) followed by the High Court in DIT vs. Inraprastha Cancer Society (supra), to reach the

conclusion that in computing the income of a charitable institution of a trust, depreciation of assets owned by the trust/institution is a necessary deduction on commercial principles and the amount of depreciation debited to the accounts of the charitable institution has to be deducted to arrive at the income available for application to charitable and religious purposes. The question of law that is involved in the case on hand also relates to the allowability of depreciation on the assets of the trust. Since the Ld. CIT (A) allowed relief to the assessee while following the jurisdictional High Court's decisions, which are binding on this Tribunal also, we do not find any illegality or irregularity in the impugned order of the Ld. CIT (A) and accordingly we uphold the same. The appeal is *devoid* of any merits and, therefore, is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.12.2017

Sd/-

Sd/-

**(N.K. SAINI)**

**(K. NARSIMHA CHARY)**

**ACCOUNTANT MEMBER**

**JUDICIAL MEMBER**

Dated: 26.12.2017

\*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

