

आयकर अपीलीय अधिकरण, C/'SMC' न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
C/"SMC" BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.2177/Mds./2017

(Assessment Year : 2014-15)

**M/s.Coimbatore Masonic Charity
Trust,**
232,Race Course road,
NGGO colony, Coimbatore 641 018.
PAN AAATC 1228 N
(अपीलार्थी /Appellant)

Vs. The DCIT(Exemptions),
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Mr.V.Jagadesan,Advocate
प्रत्यर्थी की ओर से/Respondent by : Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing : 28.11.2017
घोषणा की तारीख /Date of Pronouncement : 07.12.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-2, Coimbatore dated 30.05.2017 pertaining to assessment year 2014-15.

2. The assessee has raised the following grounds for adjudication.

1. The Learned CIT(A) is not legally justified in confirming the disallowance of depreciation of ₹28,09,454/- in computing the income to be applied for charitable objects of the Assessee Trust.
2. Courts of law have held that depreciation is a proper deduction in the case of a charitable Trust even though the cost of Assets have been claimed as application of income towards charitable objects of the Trust.
3. The CIT (A) erred in holding that depreciation should not be considered as income applied for Charitable purposes while considering whether 85% of gross income of the Trust has been applied for charitable purpose and taking the short fall as income of the Trust.

3. The Brief facts of the case are that the assessee is a charitable Trust registered u/s.12A of the Act. The assessee filed its return of income for assessment year 2014-15 declaring NIL income. During the assessment proceedings, the AO found that the assessee, in the computation of income, deducted depreciation on assets amounting to ₹28,09,454/- from the gross receipts, claiming it as application of income for charitable purposes. The Id. Assessing Officer completed the assessment u/s.143(3) of the Act on 30.11.2016 and disallowed the assessee's claim of depreciation on assets at ₹28,09,454/- by following the decision of Kerala High Court in CIT Vs. Lissie Medical Institutions in 245 ITR KLR 525(2012). Aggrieved by the order of Id.

Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). On appeal, the Ld.CIT(A) observed that depreciation is not allowable while granting exemption u/s.11 of the Act since the cost of the asset was already allowed as deduction as application of income in the year in which the asset was acquired. Against the order of Ld.CIT(A), now the assessee is in appeal before us.

4. I 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 assesses 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, I am 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, the grounds of the appeals raised by the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced on December, 2017.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,
Dated the December, 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 |