

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BENGALURU**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
and  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.1684/Bang/2017  
(Assessment years: 2012-13 & 2013-14)

Deputy Commissioner of Income-tax(Exemptions)  
Circle 1,  
Bengaluru.

... Appellant

Vs.

Karnataka State Muslim Federation,  
No.06/1, Cantonment Railway Station Road,  
Bengaluru.  
*PAN:AAATK 5933C*

... Respondent

Appellant by : Dr.P.V.Pradeep Kumar, Addl.CIT(DR)  
Respondent by : Shri C.R.Nulvi, CA.

Date of hearing : 05/04/2018  
Date of pronouncement : 13/04/2018

**O R D E R**

**Per SUNIL KUMAR YADAV, JM:**

This appeal is filed by the revenue against the order of the Id. Commissioner of Income-tax (Appeals)-14, LTU, [CIT(A)], Bengaluru, dated 31/05/2017.

2. The revenue raised the following grounds of appeal:

**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.

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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.

3. At the outset, it is noticed that the appeal is defective and the same is liable to be dismissed since the defects pointed out by the Registry remain unrectified. Moreover, we notice that the issue raised by the revenue is covered against the revenue by the decision of the Hon'ble Apex Court in the case of *Commissioner of Income Tax vs. Rajasthan & Gujarati Charitable Foundation Poona* (2018)(89 Taxman.com127)(SC) wherein it was held as under:

“2. After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.

3. It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in '*Lissie Medical Institutions v. CIT* [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344 (Ker.)'.

4. It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income Tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.”

4. In the result, the appeal filed by the revenue is dismissed.

*Order pronounced in the open court on 13<sup>th</sup> April, 2018*

Sd/-

**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru.

D a t e d : 13/04/2018

*srinivasulu, sps*

**Copy to :**

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

sd/-

**(SUNIL KUMAR YADAV)**  
**JUDICIAL MEMBER**

By order

Senior Private Secretary  
Income-tax Appellate Tribunal  
Bangalore