

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.2667/Chny/2017**
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

M/s. Bhakthavatsalam Memorial Trust 14, 31 st Street, TNHB Colony, Perilys Nagar, Korattur, Chennai – 600 0080.	बनाम/ Vs.	ITO (Exemption) Ward-2, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAATB-2624-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ **ITA No.2895/Chny/2017**
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

DCIT (Exemption) Chennai Circle. Aaykar Bhavan, Annexe Building, III Floor, 121, M G Road, Nungambakkam, Chennai – 600 034.	बनाम/ Vs.	M/s. Bhakthavatsalam Memorial Trust 14, 31 st Street, TNHB Colony, Perilys Nagar, Korattur, Chennai – 600 0080.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAATB-2624-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	21-02-2022
घोषणा की तारीख / Date of Pronouncement	:	21-02-2022

आदेश / O R D E R**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid cross appeals for Assessment Years (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-17, Chennai [CIT(A)] dated 12-09-2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31-03-2015.
2. The Ld. A.R submitted that the assessee's appeal is not of much significance since the assessee has succeeded an alternative ground and therefore, the appeal has been rendered merely academic in nature. Keeping in view the same, the assessee's appeal stand dismissed as being *not pressed*.
3. In the Revenue's appeal, the only issue is whether depreciation claimed by the assessee would be allowable or not keeping in view the fact the capital expenditure on fixed assets have been treated as application of income in the earlier years. The Ld. AO has denied the depreciation claim on the ground that the capital expenditure has been allowed as application of income in the earlier years and therefore, allowing the depreciation on the same would amount to double deduction. Upon further appeal, the Ld. CIT(A) has allowed the claim of the assessee by relying on the decision of Hon'ble Madras High Court in the case of **Medical Trust of the Seventh Day Adventists Vs. DIT, Exemption-III, Chennai (TCA No.949 of 2015 and 771 of 2016 dated 08.08.2017)**. In this case, it was also held that the relevant amendment was applicable w.e.f. AY 2015-16 only and the same would not have retrospective application. Aggrieved, the Revenue is in further appeal before us.

4. We find that this issue is squarely covered in assessee's favour by the cited decision of Hon'ble Madras High Court. We also find that this issue has subsequently been held in assessee's favor by Hon'ble Supreme Court in the case of **CIT Vs. Rajasthan and Gujarati Charitable Foundation Poona 402 ITR 441 (SC)**. In this case, it has been held that even though the expenditure incurred for acquisition of capital asset was treated as application of income for charitable purpose u/s. 11(1)(a) of the Act, still the depreciation would be allowed on assets acquired for charitable purposes. Thus, we do not find any infirmity in the impugned order in this regard.

Conclusion:

5. The assessee's appeal as well as Revenue's appeal stand dismissed in terms of above order.

Order pronounced on 21st February, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 21-02-2022
EDN/-

आदेश की प्रतिलिपि प्रेषित/Copy of the Order forwarded to :

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