IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA.No.561/Hyd/2022		
Assessment Year: 2017-18		
Prathima Educational Society, Hyderabad. PAN : AAATP3833E	Vs.	Asst.Commissioner of Income Tax, Exemption Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri K. C. Devdas.	
Revenue by:	Sri Jeevan Lal Lavidiya.	
Date of hearing:	07.02.2023	
Date of pronouncement:	13.02.2023	

O R D E R

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for the AY 2017-18, on the following grounds :

> *"1. The Honourable Commissioner of Income tax — Appeals of National Faceless Appeal Centre, New Delhi [henceforth known as Hon.CIT-[A], erred in not considering that sec.11(6) of the Income Tax Act, 1961, [for short "Act"] is prospective in operation from AY 2015-'16 and hence depreciation is not allowed against assets only if the cost of acquisition of such asset is claimed as application from AY 2015-16 or any other previous year to which the provisions are applicable.*

2. The Hon. CIT — A erred in construing sec.11(6) of the Act wrongly and retrospectively and in confirming the action of the learned Assessing Officer of disallowing of depreciation of Rs.7,95,37,619 on assets that were acquired prior to previous year relevant to AY 2015-16 during which the section is not in vogue and is not applicable.

3. The Hon. CIT-A ought to have appreciated that the amendment brought into section 11 of the Act by way of insertion of new sub-section 6 to said section 11 of the Act from AY 2015-16 was only that depreciation will not be allowed from the said AY if the cost of the acquisition of the asset is claimed as application of income in the said AY or in any subsequent AY and thereby ought to have allowed the amount of the said claim of depreciation as application in computing income under section 11 of the Act.

4. The Hon. CIT-A ought to have appreciated that the assets acquired prior to the previous year relevant to AY 2015-16 are part of the relevant Gross Block of the Assets under the Act and are inseparable and thus also section 11(6) of the Act restricting allowance of depreciation will be applicable to assets acquired during previous relevant to said AY 2015¬16 or in any subsequent AY."

2. The brief facts of the case are that the assessee trust filed its return of income for the AY 2017-18 on 04.10.2017 declaring income as NIL. The assessee trust was registered u/s 12AA and was also approved u/s 10(23C)(vi) of the Income Tax At, 1961. Subsequently, the case was selected for scrutiny through CASS and notices u/s. 143(2) and 142(1) were issued and served on the assessee. In response to the said notices, the assessee has filed details as called for in ITBA portal electronically and the same were verified by the Assessing Officer. Thereafter, Assessing Officer had passed assessment order u/s 143(3) of the Act by disallowing depreciation claimed by the assessee of Rs.7,95,37,319/- on the assets that were purchased prior to 01.04.2015. Thus, completed the assessment.

3. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), Hyderabad – 9 and thereafter, the said appeal was migrated to the NFAC, Delhi, who dismissed the appeal of assessee by holding as under :

> *"6.3.1 Findings of the AO and submission of the appellant have been duly considered. It is an undisputed fact that after the amendment of the Act, depreciation can no longer be claimed as a deduction in case the cost of acquisition of asset was treated as an application of income. This amendment is applicable for the instant assessment year. However, the appellant has pointed out that there would be no effect of this on claim of depreciation of asset that was acquired on account of application of income prior to the date of this amendment. The appellant has also relied upon the decision of Hon'ble ITAT in its own case for earlier assessment year. However, the appellant has itself submitted that these orders of ITAT are for A.Ys. prior to A.Y. 2015-16 i.e., from the date of amendment of the Income Tax Act and hence are no longer applicable to the instant year. The appellant has also quoted several other decisions in which the claim of depreciation has been allowed by the various courts in addition to the cost of acquisition being claimed as an application of income. However, with the amendment of the Act and insertion of Section 11(6), the binding legal jurisprudence of the decision no longer holds. The only issue which arises in this appeal is that why depreciation on assets purchased after 01.04.2015 can not be claimed. whether the said amendment shall impact the claim of depreciation on assets that are acquired prior to 01.04.2015. In this connection, it would be appropriate to refer to the Section and also the explanatory provisions leading to the insertion of Section 11(6) of the Income Tax Act. Section 11(6) of the income tax act is reproduced as under;*
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> *"Section 11(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 an other previous year."*
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> *6.3.2 Further, Para 7.5 of Circular No. 01/2015 containing the explanatory notes to the provision of the Finance Act. 2014 is reproduced as under;*

"7.5 The second issue which had arisen was that the existing scheme of section 11 as well as section 10(23C) of the Income-tax Act provided exemption in respect of income when it is applied to acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. was being claimed and such amount of notional deduction was not being applied for charitable purpose. As a result, double benefit was being claimed by the trusts and institutions. Therefore, these provisions were required to be rationalised to ensure that double benefit is not claimed and such notional amount does not get excluded from the condition of application of income for charitable purpose."

6.3.3 In view of the express provisions of the Act stating that no depreciation is allowable in respect of any asset acquisition of which has been claimed as an application of income in any other previous year, the contention of the appellant can not be accepted. In view of the same, the addition of Rs. 7,95,37,619/- done by the AO on account of depreciation claimed on assets that were earlier used as an application of income is upheld and the grounds of appeal of the appellant are dismissed."

4. In support of the depreciation claimed, the Chairman of the assessee society filed the following written submissions :

1. The issue for consideration is the arriving at "income" and "application of income" u/sec.11(1) read with sec.11(6) of the Income Tax Act, 1961 (for short "Act") for the AY 2017-18 considering that sec.11(6) of the Act was introduced by Finance Act No. 2/2014 w.e.f. 01-04-2015 / AY 2015-16 by way of amendment to Act.

2. Sec.11(6) of the Act is held clearly, by the Hon'ble Apex Court in Civil Appeal No. 7186 Of 2014 - CIT -III, PUNE Vs. Rajasthan And Gujarati Charitable Foundation Poona, that the amendment is prospective in nature.

3. Sec.11(6) introduced by Finance Act, 2014, AY 2015-16 reads as follows :

Section 11(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."

4. Given the prospective nature of amendment, there is a consensus that as per sec.11(6) of the Act, w.e.f. AY 2015-16, the cost of any asset acquired by the Trust on or after 01-04-2014 can be claimed as application of income with no depreciation claim in calculation of income or depreciation can be claimed in calculation of income on the cost of acquisition with no application claim.

5. However, there is a dispute by the learned AO in respect of depreciation claim of Rs.7,95,37,619 in AY 2017-18 on scrutiny on the block of assets acquired upto the previous year relevant to the AY 2014-15 i.e., before 31.03.2014 and the cost of acquisition of which may have been claimed as application of income. The depreciation claim rejection has been affirmed by the Hon'ble CIT(A) [Commissioner of Income tax - Appeals of National Faceless Appeal Centre, New Delhi] vide orders with DIN ITBA/ NFAC/ S/ 250/ 2022-23/ 1044954516(1) 26/08/2022 after a lapse of nearly two years from the date of submission of Written Submissions.

6. There was no dispute on allowance of depreciation upto AY 2016-17 on the assets acquired prior to the previous year relevant to AY 2015-16. This is not taken note of by the Hon. CIT-A.

7. The Hon. CIT - A erred in not considering that sec.11(6) of the Income Tax Act, 1961, [for short "Act"] is prospective in operation from AY 2015-'16 and hence depreciation is not allowed against assets only if the cost of acquisition of such asset is claimed as application from AY 2015-16 or any other previous year to which the provisions are applicable.

7.1. Sec.11(6) of the Act introduced w.e.f. AY 2015-16 has two limbs, namely, (i) claiming of cost of acquisition of asset as application of income, and (ii) allowance of depreciation in calculation of income to be applied. If the cost of acquisition of asset is claimed as application of income, depreciation is not allowable in arriving at income. On the other hand if the cost of the acquisition is not claimed as application of income, the depreciation is allowable in arriving at income. That is, both the limbs are mutually alternative limbs and either limb of the section can be availed by the Assessee but not both. In other words, the assessee has the option to choose the alternative as it may choose. It may not give scope for any other interpretation.

8. If the words 'I ... 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" are interpretated to extend the coverage to assets acquired prior to previous year relevant to AY 2015-16, it amounts to retrospective application of the section and it is not so intended as submitted in the above para. And, as rightly held by the Hon'ble SC in CIT - III, PUNE Vs. Rajasthan And Gujarati Charitable Foundation Poona, cited supra, the provisions are applicable prospective. The words "..asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year" in the /I same" or "any

other previous year" refer to previous year relevant to AY 2015-16 or another previous year following it and does not relate the previous years preceding it. Not doing so will cause unintended hardships to the Trust and deprives it of its right to choose between the alternatives.

8.1. Thus, the Hon. CIT - A erred in construing sec.11(6) of the Act wrongly and retrospectively and in confirming the action of the learned Assessing Officer of disallowing of depreciation of Rs.7,95,37,619 on assets that were acquired prior to previous year relevant to AY 2015-16 during which the section is not in vogue and is not applicable.

9. The Hon. CIT-A ought to have appreciated that the amendment brought into section 11 of the Act by way of insertion of new sub¬section 6 to said section 11 of the Act from AY 2015-16 was only that depreciation will not be allowed from the said AY if the cost of the acquisition of the asset is claimed as application of income in the said AY or in any subsequent AY and thereby ought to have allowed the amount of the said claim of depreciation as application in computing income under section 11 of the Act .

9.1. The Hon. CIT-A did not appreciate that the section has two alternative options made available from AY 2015-16 to the Assessee, being claiming depreciation in arriving at income or cost of the asset as application of income and not both. Prior to the said year, the Assessee has option to choose both. Therefore, the Assessee can choose the option only from AY 2015-16 and can not travel retrospectively reopening the previous assessments. The section is held applicable prospectively too by the Hobble Supreme Court.

10. The Hon. CIT-A ought to have appreciated that the assets acquired prior to the previous year relevant to AY 2015-16 are part of the relevant Gross Block of the Assets under the Act and are inseparable and thus also section 11(6) of the Act restricting allowance of depreciation will be applicable to assets acquired during previous relevant to said AY 2015-16 or in any subsequent AY.

10.1.The Hon.CIT-A ought to have appreciated that the assets acquired during the period prior to the previous year relevant to AY 2015-16 form the respective block of assets and are inseparable to check whether a particular asset was claimed as application or not since mere "claiming" does not amount to "allowing".

11. Sec.11(6) from AY 2015-16allows depreciation for calculation of income purposes if the cost of the acquired asset is not claimed as application in the same or any other previous year.

12. In other words, From AY 2015-16, the section allows either depreciation on assets acquired during the previous year for calculation of income purposes or as application of the cost of the acquired asset and not both. It may not mean otherwise specifically so because the calculation of income and application and carry forward and set off principles are quite different from business assesses.

13. The position upto AY 2014-15 was that, and it has been approved by the apex court in CIT -III, PUNE Vs. Rajasthan And Gujarati Charitable Foundation Poona, cited supra, while confirming the Bombay High Court decision in CIT Vs. Institution of Banking Personnel Selection (IBPS) (2003) 131 Taxman 386 (Bombay), the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust and the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets.

13.1 Apex Court in Civil Appeal No. 5091 in Lissie Medical Institutions Vs. CIT held that "We find force in this contention because assessee cannot be taken by surprise by disallowing depreciation which was being allowed for several years and to demand tax for one year after making dis-allowance. We feel assessee should be allowed to write back the depreciation for this year and even for previous and then allow the same to be carried forward for application for subsequent years. It is for the assessee to write back depreciation and if done the assessing officer will modify the assessment determining higher income and allow recomputed income with the depreciation written back by the assessee to be carried forward for subsequent years for application for charitable purposes."

13.2 That is, the assessee is entitled to depreciation on cost of acquisition and also as application of cost of acquisition. In addition, the assessee has option to claim depreciation or not to claim depreciation in any AY and carry forward the cost of asset. Further, the right to claim expenditure includes the right to carry forward the unabsorbed expense as held by Apex Court in CIT -III, PUNE Vs. Rajasthan And Gujarati Charitable Foundation Poona, cited supra.

13.3 However, the Hon.CIT-A ought to have considered the necessary implications if he follows that depreciation is not to be allowed from AY 2013-16 even if the cost of the acquisition of the assets was claimed before upto previous year relevant to AY 2014-15.

13.4 This results in different situations and can be broadly classified into 5 categories of assessment years cumulatively upto AY 2014-15,(i) Category-1 where the depreciation and application, both are allowed with enough income, (ii) Category-2 where depreciation and application are not allowed as the expenses are more than the income, (iii) Category-3 where depreciation is allowed and application is not allowed due to insufficiency of income, (iv) Category-4 where depreciation only is allowed and application is partly allowed due to insufficiency of income, and (v) Category-5 where depreciation is partly allowed and no application is allowed.

13.5 The above situations lead to (i) allowance of depreciation only, (ii) allowance of depreciation partly, (iii) allowance of application fully, (iv) allowance of application partly, (v) no depreciation allowance, and (vi) no allowance of application.

13.6 The amounts may have been claimed in the Return of Income and the same is reflected in excess application showing negative balance to be set off against future application. The position may be continuing until 2014-15 year-wise.

13.7 In such a situation the deduction though claimed, if it could not be allowed due to low income, poses the genuine difficulty to assessee if the narrow and pedantic interpretation that sec.11(6) prohibits allowance of depreciation if the cost of the asset was "claimed" as application in any previous year preceding the previous year relevant to AY 2015-16 irrespective of the fact whether it was allowed or not.

13.8 That is, the words "claimed" is not equal to "allowed".

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4.1 Thereafter, the assessee depicted a table explaining its own case for the assessment years 2004-05 to 2014-15.

14. <u>The Assessee on the records of Department :</u>

15. The appellant is a registered with Income Tax Department with PAN AAATP3833E as a public charitable society with one of the main objects for imparting medical education and other allied sciences. In furtherance, it had set-up and is running a medical college at Nagunuru Village, Karimnagar District, Telangana State.

16 The Society was registered with Registrar of Societieson03-12-1997 and the appellant was also granted registration under sec.12 AA of the Act on 04.10.2000.

17. The appellant has been continuously filing the returns of income with the Department. The appellant Society has claimed cost of acquisition of the assets as application under section 11(2) of the Act even when it results in excess application. Depreciation on assets was claimed u/ section 11(1) of the Act even if it results in loss / further loss. For many assessment years the Department had disallowed this claim of deprecation amount by terming the same as double claim, but at appellate forums, after hearing the appellant's detailed submissions the appeals were allowed in favour of the appellant. In appellant's own case ITAT has rendered the decision in its favour as recently as on 03.12.2010 in Asst. Year 2005-06. Thus, till the Asst. Year 2014-15 i.e., before the Act was amended by insertion of sub-

section 6 to section 11, the claim of the appellant was duly supported by the jurisdictional Hon'ble ITAT decisions and is accepted by the department.

18 The memorandum explaining clauses of the FINANCE (NO. 2) BILL, 2014 - Provisions relating to direct taxes in the context of insertion of the above sub-section 6 explaining the objects had stated as follows:

" Rationalisation of taxation regime in the case of charitable trusts and institutions.

The existing provisions of section 11 of the Act provide for exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions subject to various conditions contained in the said section. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for the charitable purposes, and where such income cannot be applied during the previous year, it has to be accumulated in the modes prescribed and applied for such purposes in accordance with various conditions provided in the section. If the accumulated income is not applied in accordance with the conditions provided in the said section, then such income is deemed to be taxable income of the trust or institution.

Section 13 of the Act provides for the circumstances under which exemption under section 11 or 12 in respect of whole or part of income would not be available to a trust or institution.

The sections 11, 12, 12A, 12AA and 13 constitute a complete code governing the granting or withdrawal of registration and its cancellation, providing exemption to income, and also the conditions under which a charitable trust or institution needs to function in order to be eligible for exemption. They also provide for withdrawal of exemption either in part or in full if the relevant conditions are not fulfilled.

Several issues have arisen in respect of the application of exemption regime in cases of trusts or institutions in respect of which clarity in law is required.

The first issue is regarding the interplay of the general provision of exemptions which are contained in section 10 of the Act vis-a-vis. the specific and special exemption regime covered in sections 11 to 13.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 he applied and utilized for the object or purpose for which the institution or trust has been established. In many cases it has been noted that trusts or institutions which are registered and have been claiming benefits of the exemption regime do not apply their income, which is derived from property held under trust, for charitable purposes. In such circumstances, when the income becomes taxable, then 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 under trust in the first place.

Sections 11, 12 and 13 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 litigations.

Similar situation exists in the context of section 10(23C) which provides for exemption to funds, institution, hospitals, etc. which have been granted approval by the prescribed authority. The provision of section 10(23C) also have similar conditions of accumulation and application of income, investment of funds in prescribed modes etc.

Therefore, it is proposed to amend the Act to provide specifically that where a trust or an institution has been granted registration for purposes of availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of section 10 [other than that relating to exemption of agricultural income and income exempt under section 10(23C)]. Similarly, entities which have been approved or notified for claiming benefit of exemption under section 10(23C) would not be entitled to claim any benefit of exemption under other provisions of section 10 (except the exemption in respect of agricultural income).

The second issue which has arisen is that the existing scheme of section 11 as well as section 10(23C) provides exemption in respect of income when it is applied to acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. is claimed and such amount of notional deduction remains to be applied for charitable purpose. Therefore, double benefit is claimed by the trusts and institutions under the existing law. The provisions need to be rationalised to ensure that double benefit is not claimed and such notional amount does not get excluded from the condition of application of income for charitable purpose.

In view of the above, it is also proposed to amend the Act to provide that under section 11 and section 10(23C), income for the purposes of application 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 these sections in the same or any other previous year.

These amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years. [Clauses 5 & 7].

19 Thus, from the above the intention of the legislature was made very clear that the amendment is only prospective and not retrospective. Further, the use of words 'in the same or any other previous year in the newly inserted sub-section 6 is clearly in relation to the assessment year 2015-16 and subsequent assessment years as stated in the memorandum of finance bill. In the opinion of the appellant, the learned AO may disallow depreciation on fixed assets purchased on or after 01-04-2014 and claimed as application. The provision is not retrospective in operation and hence

Depreciation on assets purchased prior to 01-04-2014 may not be disallowed since no cost of acquisition is claimed on such assets for AY 2015-16 or any subsequent assessment year.

20 The Hon'ble Supreme Court rejected the argument of the Department that the newly inserted said sub-section 6 is clarificatory in nature and therefore the same must be applied retrospectively and should be applied in those cases where the assessments and appeals that are pending: Commissioner of Income Tax -III, Pune vs,. Rajasthan& Gujarati Charitable Foundation Poona, [2018] 89 taxmann.com 127 (SC)/ [2018] 253 Taxman 165 (SC)/ [2018] 300 CTR 1(SC).

21 The provisions relating to charity be it relating to reckoning of income, inclusion of voluntary contributions in income or in respect of application of income, differ in many ways from the usual computation provisions of business income. The Hon. Board had accepted these views in the form of circular/ instructions by recognizing very peculiar aspects which are not known to business assessees, such as repayment of loans (vide Circular no: 100 dated 24-01-1973) or donating to another charitable organization (instruction no: 1132 dated 5-1-78 [172 ITR 698,709) as application.

22. Here, the underlying objective of provisions including section 11(1) or 11 (2) etc., relating to taxation of charities, in the humble view of appellant, is to make available more and more funds with the charitable organizations so that they can render more charitable works and thereby supplement the Government efforts. In the view of the appellant, capital expenditure in the form of acquisition of assets is allowed as application of income by various High Courts and Supreme Court and this resulted in saving taxes on income and conserving the cash flow to create a broad base / nucleus for rendering charitable activity. This helps the replacement of such assets on self-finance basis without affecting the corpus.

23 The allegation that depreciation is remaining unutilized for charitable purposes is ill-founded since depreciation will not effect any cash outflow by the Trust and thus is naturally reflected in assets only in the cash / bank balances or other assets. Alternatively, it may represent the diminution of value of the asset, which is also expenditure.

24 It is reiterated that application is computed to carry forward or set off the income not applied for the charitable purposes or to ascertain the amount to be incurred in the future years or the back-log application. It does not increase income or receipts.

25. In this context , we though it is appropriate to bring few judicial views on the allowability of certain expenses as application towards charitable purposes.

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26. Thus, from the above it can be seen allowability of claim for depreciation and the application of the same amount in the hands of charitable trusts, in the opinion of the appellant society, is only to provide the charitable entities with more and more funds for doing their charitable activity and unfortunately, the same is misunderstood or misjudged as double claim.

27. Be that as it may, w.e.f., Asst. Year 2015-16 and subsequent assessment years the above claim is statutorily denied, even to the appellant society, as already submitted in the previous paragraphs, as it had not claimed the amount depreciation on assets that were purchased on or after from the said previous relevant to assessment year 2015-16 and subsequent assessment years if their cost is claimed as application.

28. Thus, seen from any angle, the amount of claim of depreciation on assets that were purchased prior to previous year relevant to assessment year 2015-16 and claimed as application is eligible under the provisions of the Act in the assessment year 2015-16 and subsequent assessment years since the appellant has not claimed the cost of acquisition of such assets as application in those assessment years.

29. We therefore pray your good selves to kindly pass orders for allowance of the claim of deprecation amount of Rs.7,95,37,319 against which the cost of acquisition was not claimed as application in the assessment year 2015-16 and subsequent assessment years or to grant such other relief as your good selves deems fit and proper in the circumstances detailed as above."

5. The ld.AR further submitted that the assessee is entitled to depreciation on the assets which were acquired by the assessee in the previous years.

6. Per contra, the ld.DR relied upon the orders of lower authorities. The written submissions filed by the ld. DR in support of its case read as under :

"Income Tax Act, 1961 gives the exemption in taxes to the charitable organization mainly based on two criteria. They are as:

(a). Approval From CIT(Exemp) u/s.12

(b). When approval is granted charitable organization needs to apply 85% of the gross receipt for the charitable purpose.

It is to be stated that statute is very clear about the expenditure for charitable purpose or for on object of trust only. No other specific criteria is mentioned to avail the privilege This shows the very well intention of the statue makers.

2. Based on the above facts it is worth mentioning here that the IT Act permits two types

of expenditure.

(a) Revenue.

(b) Capital.

In case of Revenue expenditure assessee gets the 100% amount of expenditure as deduction for that year in which year the expenditure is done.

But in case of capital expenditure i.e. the expenditure having enduring benefits needs to be capitalized and depreciations is allowed for the years based on the rate of depreciation as per IT rules.

But in order to promote the charitable organizations Act has provided extra relief to these charitable organizations by allowing them to claim 100% of capital expenditure also for the year in which that expenditure has been done.

But this relief was misused by some of the charitable organization claiming both the capital expenditure and depreciation for the same assets. This act of them has created 2 major consequences for not applying the major part of the gross receipt for the year and also subsequent year for the charitable purpose. This can be understood by an example as follows.

Let us suppose that one charitable organization ABC has gone of the object to provide the medical services gets the gross receipt of Rs.100 for a year from the property held by the trust. From that receipt the trust purchases some machinery e.g. MRI machine for Rs.50 and claim it as application of Income for that year. Along with it the Trust apply Rs.50 for the object of Trust also. Further it also claim the depreciation of Rs.5 on that new assets purchased during the year at the rate of 10%.

Now the computation of trust income will be as under:

Gross receipt from the property held by the Trust : Rs.100

Less : Application of income for charitable purpose : Rs.50

Capital expenditure : Rs.50

Depreciation : Rs.5

Total Income : Rs.(-5)

Based on the above example following inferences can be drawn.

(a) Trust has claimed loss of Rs.5 which it will set off against next year income and not spend Rs.5 in next year also out of from the gross receipt of next year.

(b) Trust will claim depreciation in the subsequent year also, so effectively they will not apply that amount of money for charitable purpose in subsequent year also.

(c) Trust has claimed the expenditure more than the actual expenditure done for procuring that capital assets.

(d) Whole concept of the charity gets defeated which has given the tax relief to trust just for fulfilling one condition to make application of 85% of the Gross receipt of the year for the charitable purpose or for object of trust.

In order to plug the loopholes the CBDT has come with amendment and included one more section 11(6) in I.T Act 1961 v.e.f from 01.04.2015 which is reproduced as follow for ready reference.

Section 11(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".

The section is very clear that the assessee Trust is having the choice of expenditure of capital nature as application for that year or they can claim the depreciation on it. Further it also states that if the capital expenditure has already been claimed on any such assets in its Block of assets in any previous year, [Which is evident from last (4) words of the Section. 11(6)] assessee is not entitle for depreciation after 01.04.2015.

Further in order to clarify more it is also reiterated that the introduction of this section is very well prospective in nature and not retrospective. Because the Act denies the depreciation after 01.04.2015, and not for the earlier year on which assessee has not only claimed the capital expenditure but also depreciation up to 01.04.2015.

In the light of above mentioned facts it is prayed that the depreciation should not be allowed to assessee on the assets on which it has not only claimed capital expenditure for whole of the cost of assets but also the depreciation up to 31.03.2015. Allowing such kind of expenditure will not only defeat the very purpose of "Tax relief' to "Charity" or "Charitable Organization" but also will open the avenue for the Trust to divert the fund and not apply for the object of Trust or for charitable purpose."

7. We have heard the rival contentions of the parties and perused the material available on record. Section 11(6) of the Act provides as under :

Section 11(6) inserted with effect from 1.4.2015 by Finance Act No.2/2014, 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."

8. The plain language of the amendment establishes the intent of the legislature in denying the depreciation deduction in computing the income of Charitable Trust is to be effective from 01.04.2015. This view is further supported by the Notes on Clauses in Finance [No.2] Bill, 2014, memo explaining provisions and circulars issued by the Central Board of Direct Taxes in this regard. Clause No.7 of the Notes on Clauses reads thus:

> *"Clause 7. of the Bill seeks to amend section 11 of the Income-tax Act relating Income from property held for charitable or religious purposes. The existing provisions of the aforesaid section contain a primary condition that for grant of exemption in respect of income derived from property held under trust, such income should be applied for the charitable purposes in India, and where such income cannot be so applied during the previous year, it has to be accumulated in the prescribed modes. It is proposed to insert sub-sections (6) and (7) in the said section so as to provide that—*
>
> *(i) 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 any previous year, and*
>
> *(ii) where a trust or an institution has been granted registration under clause (b) of sub-section (1) of section 12AA or has obtained registration at any time under section 12A [as it stood before is amendment by the Finance (No.2) Act, 1996] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (1) and clause (23C) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.*
>
> *This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years".*
>
> *The Memo explaining the provisions in Finance (No.2) Bill, 2014 reads thus:*
>
> *"The second issue which has arisen is that the existing scheme of section 11 as well as section 10(23C) provides exemption in respect of income when it is applied to acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. is claimed and such amount of notional deduction remains to be applied for charitable purpose. Therefore, double benefit is claimed by the trusts and institutions under the existing law. The*

> *provisions need to be rationalized to ensure that double benefit is not claimed and such notional amount does not excluded from the condition of application of income for charitable purpose".*

9. From the perusal of the Section 11(6) of the Act read with the notes on Clause reproduced hereinabove, it is abundantly clear that the assessee is not entitled to the depreciation from the assets while computing its income. The contention of the Ld.AR reproduced hereinabove, wherein it was mentioned that the assets were acquired during the period prior to the previous year relevant to the year under consideration forming the respective block of assets, were inseparable, so as to work out separately the cost of the particular asset. In our view, this argument is preposterous and not acceptable. The language of the Act reproduced hereinabove is clear, unambiguous and is incapable of two interpretations. Where any income of the assessee is either applied or accumulated or set apart for application, then for such purposes, the income of the assessee shall be determined without any deduction or allowed by way of depreciation. The contention of the ld.AR that the assets acquired prior thereto on which the assessee had claimed the depreciation were not the assets acquired during the year under consideration and therefore, the assessee is entitled to depreciation on such assets, is contrary to the provision to section 11(6) of the Act, as it prohibits the allowance of such depreciation to the assets of the assessee. Section 11(6) of the Act does not make any distinction whether the assets are acquired by application of income in the year under consideration or any other previous year. It only provides non-grant of depreciation to the assessee for the purpose of determining the income of the assessee, as the assessee had claimed full exemption for the expenditure incurred by it as application of income.

10. It is not the case of the assessee before us that the assets acquired by the assessee without claiming the application of income in respect of such asset for which the assessee is claiming the depreciation. In our view, once the assessee has claimed the application of income in acquiring the assets either in the current year or in the previous year, then the assessee is not entitled to claim depreciation on such assets. Hence, we do not find any merits in the contentions raised by the assessee and the order passed by the ld.CIT(A) giving the reasons, is in accordance with the bare provision of the Act and hence, the present appeal is devoid of any merits and accordingly, the appeal of the assessee is dismissed.

11. So far as the judgments relied upon by the assessee are concerned, all those decisions are prior to the amendment by virtue of section 11(6) of the Act was inserted in the Act. We may like to point out here that various Hon'ble High Courts including decision of Hon'ble Karnataka High Court in the case of Pr. CIT v. Sri Sri Adichunchunagiri Shikshana Trust reported in [2016] 72 taxmann.com 133/241 Taxman 289 (Kar.), decision of Hon'ble Madras High Court in the case of Medical Trust of the Seventh Day Adventists reported in [2017] 84 taxmann.com 202 (Madras), and the decision of Hon'ble Allahabad High Court in the case of Seth Anandram Jaipuria Edu. Society Cantonment reported in [2017] 80 taxmann.com 96 (Allahabad) have held that, *Section 11(6) inserted by Finance (No.2) Act, 2014 denying depreciation while computing income of charitable trust, is prospective in nature and operates with effect from 1-4-2015.* The assessment for the year under consideration is 2017-18 and therefore, section 11(6) is squarely applicable to the facts of the case and the Revenue is justified in denying the depreciation to the assessee on the assets

purchased prior to the previous year relevant to the assessment year under consideration. In the light of the above, the appeal of the assessee is dismissed.

12. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 13th February, 2023.

Sd/-	**Sd/-**
(RAMA KANTA PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 13th February, 2023.
TYNM/sps

Copy to:

S.No	Addresses
1	1) Prathima Educational Society, Plot No.213, Road No.1, Film Nagar, Jubilee Hills, Hyderabad 500096, Telangana, India. 2) M Poorna Chander Rao., Partner in Sriramamurthy & Co., Chartered Accountant, H.No.6-3-185, Flat No.201, Sai Damodar Residency, New Bhoiguda, Secunderabad.
2	The Asst. Commissioner of Income Tax, Exemption Circle – 1(1), Hyderabad.
3	CIT(Appeals), National Faceless Assessment Centre – Delhi.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order