

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.1115/M/2025
Assessment Year: 2020-21**

Durgadevi Sharma Charitable Trust, 3 rd Floor, Millenium Tower, Behind IOC Petrol Pump, Powai, Mumbai - 400076 PAN – AAAAD0367L	Vs.	Dy. Commissioner of Income Tax Exemption, Circle – 1, 6 th Floor, MTNL Telephone Exchange Cumballa Hills, Peder Road, Mumbai – 400026.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Satyaprakash Singh, Ld. A.R.
Revenue by : Shri Suni Mathews, Ld. Sr. Dr.

Date of Hearing : 21.01.2026
Date of Pronouncement : 10.04.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 05.02.2025, impugned herein, passed by the National Faceless Appeal Centre (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2020-21.

2. In this case, the Assessee has claimed depreciation amounting to Rs.33,03,108/- bifurcating the fixed assets into two

parts i.e. (i) fixed assets which have been acquired out of funds accumulated under section 11(2) on which depreciation is not allowable since under section 11(2), accumulation has already been considered as application of income in earlier years, secondly, the fixed assets which have been acquired with the funds other than from funds accumulated under section 11(2), cost of which have **not** been considered as application of income in the year of acquisition and therefore, the same is allowable for deduction under section 11(6) of the Act.

3. The AO though considered the said claim of the Assessee however, by observing that the Assessee's explanation was relevant before insertion of Section 11(6) of the Act vide Finance Act No.2/2014 which became effective from A.Y. 2015-16, whereas, in this case the relevant assessment year being 2020-21 which is subsequent to assessment year 2015-16, the provisions of section 11(6) of the Act is applicable. Accordingly, the said amount of claim of depreciation is not allowable. The AO thus, on the aforesaid reasons made the disallowance of Rs.33,03,108/- and added to the income of the Assessee.

4. The Assessee, thus being aggrieved, challenged the said addition/disallowance by filing first appeal before the Ld.

Commissioner and claimed inter-alia that section 11(6) clearly states that depreciation shall not be allowed on those assets, which have been treated as application of income in earlier years. Further, section 11 of the Act restricts the trust to claim application of income only to the extent of income available, unlike a commercial organization. There is a fundamental difference between charge against income and application of income. The Assessee Trust has segregated assets into two schedules, i.e., (i) assets acquired from income subject to obligation, and (ii) assets acquired from sources other than income. Therefore, the Assessee claimed depreciation against assets acquired from sources other than income, which is permissible under section 11(6). The Assessee also claimed some assets may appear in both the schedules. Further, the Assessee has claimed that it has claimed the depreciation only in respect of assets, which were not acquired through accumulation of income. Whereas, the depreciation against assets acquired by accumulation income under section 11(2) was Rs.52,04,734/-, which has not been claimed as expense and therefore, the Assessee's case was not hit by the provisions of section 11(6) of the Act.

5. The Ld. Commissioner though considered the claim of the Assessee, however, not being satisfied with the same, ultimately

affirmed the disallowance made by the AO and dismissed the appeal of the Assessee by observing and holding as under:-

5.4 The submission made by the appellant and contents of the assessment order has been considered. The appellant's submission making artificial separation of the assets into two categories viz. assets acquired from income subject to application and assets acquired from sources other than income is not correct. Whatever the assets acquired by the Trust will be out of the total receipts of the Trust only, which were claimed either as application of income or accumulation of income each year as per the convenience of the Trust. In view of that appellant's submission stating that it has only claimed depreciation against assets purchased from non-accumulation of income not against assets acquired from accumulated income is hereby rejected. Apart from that, bare reading of sec.32 clearly says that depreciation to be allowed while computing the taxable income on building, machinery, plant etc., which is owned wholly or partly by the assessee and used for the purpose of business. The Act does not provide for depreciation in respect of the asset other than the one which is used for business or profession. The charitable institution under the scheme of Act is on a different footing. The entire income of the appellant Trust from the property held under trust does not form part of the total income u/s.11 provided the same is applied for charitable objects. Sec.11 also provides for accumulation of 15% of income for future applications for the objects of the trust. Therefore, the business and charitable institutions are two different categories in the scheme of Act. The Act does not provide for allowing the depreciation other than the asset which was used for business or profession. Therefore, the claim of the appellant that the depreciation has to be allowed on commercial principle or customary principle of computation of income is contrary to the specific provisions viz. sec. 32. The section 32 will prevail over the customary practice or commercial principle. Hence the appellant is not eligible for depreciation in respect of building, plant, machinery etc., which are not used for the purpose of business or profession. Even assuming that appellant was doing business, then the appellant is not eligible for exemption u/s.11. Moreover, the assessee will not be eligible for exemption u/s.11 if it is carrying on any business activity. Therefore, the assessee is not eligible for depreciation. No business undertaking was held under trust as provided under sec. 11(4) and (4A) of the Act. The appellant is claiming depreciation in respect of the asset which were used as a tool for carrying out charitable objects of the institution.

When the asset was used as a tool for carrying out objects of charitable institution, such activity cannot be construed as a business or profession of the appellant. Therefore, sec.32 is not applicable in the appellant's case. Therefore, AO has rightly disallowed the depreciation claimed by the appellant of Rs.33,03,108/- by relying on the principles laid down by the Hon'ble Supreme Court in the Escorts Ltd case. In view of that disallowance of depreciation of Rs. Rs.33,03,108/- by AO is hereby confirmed. In view of that there is no error in order by the AO by disallowing claim of depreciation made by the appellant. The ground of appeal nos.1 & 2 of the appellant are dismissed.

6. In the result, appeal is dismissed.

6. Thus, the Assessee, being aggrieved, has preferred instant appeal.

7. As observed above, the Assessee has bifurcated its fixed assets into two parts, such as (a) fixed assets which have been acquired out of funds accumulated under section 11(2), on which no depreciation has been claimed, and (b) fixed assets which have been acquired out of funds other than funds accumulated under section 11(2), the cost of which has not been considered as application of income in the year of acquisition, and therefore, depreciation on the same has been claimed as allowable deduction under section 11(6) of the Act.

7.1 The Assessee before this court has demonstrated that in Schedule (E), depreciation of fixed assets acquired out of funds other than funds accumulated under section 11(2) has been shown

at Rs. 33,03,108/-, which has been claimed as depreciation in the computation of income and charged to the income and expenditure account, whereas depreciation on assets acquired from funds accumulated under section 11(2) amounting to Rs. 52,04,734/- hasnot been claimed as deduction in the computation of income as well as expenditure account for the year. The Assessee further demonstrated that depreciation of the assets acquired out of accumulation under section 11(2) has been charged to income and expenditure, bearing on reserve and surplus account in the balance sheet, in line with the accounting policies followed by the Assessee respectively from year to year, as detailed below:

Financial Year	Depreciation on Fixed Assets acquired out of funds other than funds accumulated u/s.11(2) – charged to Income and Expenditure Account for the year	Depreciation on Fixed Assets acquired out of funds accumulated u/s.11(2) charged to Reserves and Surplus Account - Income and Expenditure Account for the year	Total Depreciation	Depreciation claimed as application of Income in Computation/ Return of Income restricted to Depreciation on Fixed Assets acquired out of funds other than funds accumulated u/s.11(2)
2016-17	51,63,568	14,15,511	65,79,079	51,63,568
2017-18	44,82,506	36,38,860	81,21,366	44,82,506
2018-19	38,99,350	50,54,371	89,53,721	38,99,350
2019-20	33,03,108	52,04,734	85,07,842	33,03,108

8. The Assessee at last claimed that, it has claimed deduction for depreciation on fixed assets acquired out of funds other than funds

accumulated under section 11(2) amounting to Rs. 33,03,108/- in the computation of income, out of the total depreciation charged to its income and expenditure amounting to Rs. 85,07,842/-, in total, which also includes depreciation of fixed assets acquired out of funds accumulated under section 11(2) amounting to Rs.52,04,734/- and has not been claimed as deduction. The Assessee further demonstrated the treatment given by AOs to the identical claims lodged by the Assessee, in the previous and subsequent years, as detailed below:

Assessment Year	Status	Remark	Remark
2016-17	Accepted in Assessment Order passed u/s 143(3) dated 02.12.2018	Discussed at para no 5 page no 8 and 9	Copy of Assessment order is enclosed from page no 7 to 10
2017-18	Accepted in Assessment Order passed u/s 143(3) dated 05.12.2019		Copy of Assessment order is enclosed from page no 11 to 14
2018-19	Accepted in Assessment Order passed u/s 143(3) dated 02.12.2018		Copy of Assessment order and rectification order is enclosed from page no 15 to 22
2019-20	Accepted in Intimation passed u/s 143(1) dated 29.04.2020	Not picked for Scrutiny Assessment	Copy of Intimation is enclosed from page no 23 to 34
2020-21	Disallowed in Assessment Order passed u/s 143(3) dated 08.09.2022.	Pending before Hon'ble ITAT for disposal	
2021-22 to 2023-24	Accepted in Intimation passed u/s 143(1) of the Act	Not picked for Scrutiny Assessment	

9. On the contrary, the Ld. DR refuted the claim of the Assessee and relied on the orders passed by the authorities below.

10. This court observe that the Assessee has bifurcated the fixed assets into two parts as mentioned above and claimed depreciation

in the previous and subsequent assessment years. Further, the then AO in the Assessee's own cases for A.Ys. 2016-17, 2017-18 and 2018-19 allowed the same treatment qua depreciation claimed by the Assessee in a similar pattern. Further, in the A.Ys. 2019-20, 2021-22, 2022-23 and 2023-24, the returns filed by the Assessee were processed vide intimations under section 143(1) of the Act and the cases of the Assessee have not been picked for scrutiny assessment. Therefore, on the aforesaid peculiar facts and circumstances, the question emerges, as to whether the Assessee deserves same treatment as accepted by the Revenue in the previous and subsequent assessment years. This Court observe that the aforesaid facts remained to be examined by the Authorities below, whereas the same are essential and therefore requires to be examined in the context of the related provisions of section 11(6) and thus for just and proper decision of the case and substantial justice, this court deem it appropriate to remand the issue under consideration to the file of the Jurisdictional Assessing Officer for decision afresh, suffice it to say by considering the aforesaid aspects as observed above, in para **6 to 10** of this order and in the context of the relevant provisions of law, as applicable to the issue involved .

11. In the result, Assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 10.04.2026.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**(Tarun Kushwaha)
Sr. Private Secretary**

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

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By Order

Dy/Asstt. Registrar, ITAT, Mumbai.