आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन,न्यायिकसदस्य एवं

श्री डि.एस. सुन्दर सिंह,लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.2129/Mds/2016**

निर्धारण वर्ष **/Assessment Year : 2010-11**

M/s.Raja Muthiah Chettiar Charitable and Educational Trust, Rani Seethai Hall, V Floor, 603, Anna Salai, Chennai – 600 006. PAN: AAATR 3208 F	v.	The Deputy Director of Income Tax (Exemptions), Chennai Circle, Chennai – 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	Shri Saroj Kumar Parida, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri A.V.Sreekanth, JCIT

सुनवाईकीतारीख/Date of Hearing	:	19.10.2016
घोषणाकीतारीख/Date of Pronouncement	:	23.11.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the CIT(A) - 17, Chennai dated 20.05.2016 and pertains to the assessment year 2010-11.

2. The only issue arises for consideration is disallowance of depreciation claimed by the assessee. Shri Saroj Kumar Parida, the learned counsel for the assessee submitted that the assessee is a charitable institution registered under Section 12A of the Act. The assessee has also claimed exemption under Section 11 in respect of the income applied for charitable activity and the assessing officer has allowed the claim of the assessee. The assessee has claimed depreciation. However, the assessing officer disallowed the claim of the assessee on the ground that the income of the assessee was already allowed as exemption under Section 11 on application. Referring to the order of this Tribunal in The Music Academy Madras Vs. The Deputy Director of Income Tax in ITA No.1098/Mds/2015 dated 22.04.2016, the learned counsel submitted that on identical circumstances, this Tribunal confirmed the order of the assessing officer.

3. We heard Shri A.V.Sreekanth, the learned department representative also. The learned department representative submitted that in view of the order of this Tribunal in The Music Academy Madras (supra), the issue is covered against the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The only issue arises for consideration is disallowance of depreciation claimed by the assessee when the claim of the assessee under Section 11 was allowed as application of income on the very same asset. This issue was examined by this Tribunal in The Music Academy Madras (supra) and found that the assessee is not eligible for depreciation under Section 32 of the Act. In fact, this Tribunal has observed as follows:

> 6. We have considered the rival submissions on either side and perused the relevant material available on record. The issue arises for consideration is whether a charitable institution is eligible for depreciation in respect of its asset, which was used as a tool for carrying out its object. Depreciation is provided under Section 32 of the Act, which reads as follows:-
>
> > "DEPRECIATION
> > 32 (1) In respect of depreciation of--
> > (i) buildings, machinery, plant or furniture being tangible assets ;
> > (ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,
> > owned, wholly or partly, by the assessee and used for the purposes of the business or profession the following deductions shall be allowed--

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed.
(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

Provided that no deduction shall be allowed under this clause in respect of--(a) any motor car manufactured outside India, where such motor car is acqired by the assessee after the 28th day of February, 1975 5but before the 1st day of April, 2001, unless it is used--(i) in a business of running it on hire for tourists; or(ii) outside India in his business or profession in another country ; and(b) any machinery or plant if the actual cost thereof is allowed as a deduction in one or more years under an agreement entered into by the Central Government under section 42:

Provided further that where any asset referred to in clause (i) or clause (ii) or clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent. of the amount calculated at the percentage prescribed for an asset under clause (i) 6or clause (ii) or clause (iia), as the case may be:

Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent. of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent. of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset :

Provided also that where an asset being commercial vehicle is acquired by the assessee on or after the 1st day of October, 1998, but before the 1st day of April, 1999, and is put to use before the 1st day of April, 1999, for the purposes of business or profession, the deduction in respect of such asset shall be allowed on such percentage on the written down value thereof as may be prescribed.

Explanation For the purposes of this proviso,--

(a) the expression "commercial vehicle" means "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle" and "medium passenger motor vehicle" but does not include "maxi cab", "motor-cab", "tractor" and "road-roller" ;

(b) the expressions "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle", "medium passenger motor vehicle", "maxi-cab", "motor-cab", "tractor" and "road-roller" shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Provided also that, in respect of the previous year relevant to the assessment year commencing on the 1st day of April, 1991, the deduction in relation to any block of assets under this clause shall, in the case of a company, be restricted to seventy-five per cent.of the amount calculated at the percentage, on the written down value of such assets, prescribed under this Act immediately before the commencement of the Taxation Laws (Amendment) Act, 1991.

Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii), clause (xiiib) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such

deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

Explanation 1.— Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work, in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.

Explanation 2.— For the purposes of this sub-section "written down value of the block of assets" shall have the same meaning as in clause (c) of sub-section (6) of section 43;

Explanation 3.— For the purposes of this sub-section, 10the expressions "assets" shall mean--

(a) tangible assets, being buildings, machinery, plant or furniture ;

(b) intangible assets, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature.

Explanation 4.— For the purposes of this sub-section, the expression "know-how" means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto) ;

Explanation 5.— For the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income ;

(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty per cent. of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii) :

Providedthatwhere an assessee, sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1st day of April, 2015 in any backward area notified by the Central Government in this behalf, in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, and acquires and installs any new machinery or plant (other than ships and aircraft) for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020 in the said backward area, then, the provisions of clause (iia) shall have effect, as if for the words "twenty per cent.", the words "thirty-five per cent." had been substituted :

Provided further no deduction shall be allowed in respect of-
(A) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person ; or
(B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house ; or
(C) any office appliances or road transport vehicles ; or
(D) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year ;
(iii) in the case of any building, machinery, plant or furniture in respect of which depreciation is claimed and allowed under clause (i) and which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof :

Provided that such deficiency is actually written off in the books of the assessee.
Explanation For the purposes of this clause,--
(1) "moneys payable" in respect of any building, machinery, plant or furniture includes--

(a) any insurance, salvage or compensation moneys payable in respect thereof ;
(b) where the building, machinery, plant or furniture is sold, the price for which it is sold,
so, however, that where the actual cost of a motor car is, in accordance with the proviso to clause (1) of section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso
(2) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is 8an Indian company or in a scheme of amalgamation of a banking company, as referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), with a banking institution as referred to in sub-section (15) of section 45 of the said Act, sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of that Act, of any asset by the banking company to the banking institution.
(2) Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years."

A bare reading of Section 32 of the Act clearly says that depreciation has 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. Depreciation is nothing but an inherent decline in the value of the asset from wear and tear. In respect of the business assets, the Parliament thought it fit in their wisdom to allow depreciation for wear and tear of the building, machinery, plant, etc. Depreciation in certain cases is treated as expenditure laid out over the years during the life time of the machinery. In other words, the value of the asset, machinery, etc. reduced *pro tanto*. This Tribunal is of the considered opinion that the depreciation is spread over during the effective life time of the machinery or asset, etc. used for business by allowing the same as deduction on notional basis. The amount of depreciation allowed in a particular year is intended to represent the life of the machinery such as expenditure during the above said period. In other words, the value of the machinery was spread over for the effective life time of the asset and a provision was made by way of notional deduction to replace the machinery after expiry of its entire life time. Therefore, the Legislature provided depreciation under Section 32 of the Act as an incentive/allowance to the asset

which was used for the business or profession. This can be construed as reduction in value in the balance sheet while computing the income from business or profession.

7. Section 32(1) of the Act clearly says that the asset owned wholly or partly by the assessee and "used for the purpose of business or profession". In view of the language employed by the Parliament, the asset used for the purpose of business or profession alone eligible for depreciation.The Income-tax Act does not provide for depreciation in respect of the asset other than the one which is used for business or profession. Therefore, it is for the assessee to establish that the assessee is carrying on any business or profession. In the case before us, the admitted case of the assessee is that the assessee is not carrying on any business or profession. Therefore, whatever be the nature of the asset, which was used as a tool for carrying out the object of the charitable institution, cannot be construed as an asset which is used for the business or profession of the assessee. Therefore, the assessee is not eligible for depreciation under Section 32 of the Income-tax Act.

8. The Ld.counsel for the assessee has also clarified that the assessee is not claiming depreciation under Section 32 of the Act.

According to the Ld. counsel, the assessee is claiming depreciation on the commercial principle. On a query from the Bench what is meant by "commercial principle"?, he clarified that computation of income of the Trust in a customary method of accountancy. On a query from the Bench, the Ld.counsel has also clarified that there is no conflict between the customary way of computation of income and provisions of Section 32 of the Act. This Tribunal is of the considered opinion that Section 32 provides for depreciation only in respect of the asset which is used for the purpose of business or profession. The commercial principle of computing income or the customary practice of computing income may also provide for depreciation only in respect of computing business or professional income.

9. Income-tax Act provides for procedure and method for computing income under different heads. Depreciation is provided under Section 32 of the Act when computing income under the head "Income from business or profession". In respect of other heads, no depreciation is provided under the scheme of the Act. The income of the trust is exempted on application and accumulation as provided under the Act. If any violation, the income of the trust is

liable for taxation, in such a case, if the income is assessed as income from business or profession, the assessee may be eligible for depreciation. The assessee is certainly not entitled for depreciation, when the income was exempted on application or accumulation as provided under the scheme of the Act. The charitable institution under the scheme of Income-tax Act is on a different footing. The entire income of the assessee-trust from the property held under trust do not form part of total income under Section 11 of the Act provided the same is applied for charitable object. Section 11 of the Act also provides for accumulation of 15% of income for future application for the object of the trust. Therefore, the business and charitable institution are two different categories in the scheme of Income-tax Act. This Tribunal is of the considered opinion that the customary way of computing income or the commercial principle of computing income cannot override the specific provision of Income-tax Act. The Income-tax Act does not provide for allowing depreciation other than the asset which was used for business or profession. There is no other provision in the Income-tax Act other than Section 32 of the Act for allowing depreciation. Therefore, the claim of the assessee that the depreciation has to be allowed on commercial principle or

customary principle of computation of income is contrary to the specific provision, namely, Section 32 of the Act.

10. The next question arises for consideration is when there is a conflict between customary practice, commercial principle and provisions of Section 32, which one will prevail? The obvious answer to this question is the statutory provision, namely, Section 32 of the Act will prevail over the customary practice and commercial principle. Therefore, even on customary practice or commercial principle whereby the assessee claims depreciation while computing the income, Section 32 of the Act is a specific provision under Income-tax Act, which is contrary to commercial principle or customary practice. Therefore, this Tribunal is of the considered opinion that Section 32 will prevail over the customary practice or commercial principle. Hence, the assessee is not eligible for depreciation in respect of building, plant, machinery, etc. which are not used for the purpose of business or profession.

11. Even assuming for argument sake that the assessee was doing business, then the assessee is not eligible for exemption under Section 11 of the Act and as rightly submitted by the Ld. Departmental Representative, the registration under Section 12AA

of the Act has to be cancelled under Section 12AA(3) of the Act. Moreover, the assessee will not be eligible for exemption under Section 11 of the Act if it is carrying on any business activity. Therefore, this Tribunal is of the considered opinion that the assessee is not eligible for depreciation.

12. As rightly submitted by the Ld. Departmental Representative, in view of Section 11(4) & (4A) of the Act, if the property held under trust is a business undertaking, then the income of the business undertaking, which was so held as property held under trust, has to be computed by applying the provisions of Income-tax Act under Chapter IV. While computing income of the business undertaking, all expenditure, including depreciation, has to be allowed and the income of such business undertaking which was held under Trust has to be allowed as exemption under Section 11 on application and accumulation. In this case, as rightly submitted by the Ld. D.R., no business undertaking was held under trust as provided under Section 11(4) & (4A) of the Act. The assessee is claiming depreciation in respect of asset which was used as tool for carrying out charitable object of the institution. When the asset was used as tool for carrying out the object of the charitable institution, such

activity cannot be construed as a business or profession of the assessee. Therefore, Section 32 of the Act is not applicable in this case.

13. We have carefully gone through all the judgments and decisions cited by the Ld.counsel for the assessee, which are as under:-

1.	DIT v. VishwaJagriti Mission	(2012) 73 DTR (Del) 195
2.	CIT v. Market Committee, Pipli	(2011) 330 ITR 16 (P&H)
3.	CIT v. Society of Sisters of St.Anne	(1984) 146 ITR 28 (Kar)
4.	CIT v. Bhoruka Public Welfare Trust	(1999) 240 ITR 513 (Cal)
5.	CIT v. Tiny Tots Education Society	(2011) 330 ITR 21 (P&H)
6.	CIT v. ShethManilalRanchhoddasVishramBhavan Trust	(1992) 198 ITR 598 (Guj)
7.	CIT v. Raipur Pallottine Society	(1989) 180 ITR 579 (MP)
8.	CIT v. Institute of Banking Personnel Selection	(2003) 264 ITR 110 (Bom)
9.	DIT(E) v. FramjeeCawasjee Institute	(1993) 109 CTR (Bom) 463
10.	DDIT v. Lakshmi Saraswathi Educational Trust	ITA No.452/Mds/2014 Chennai ITAT
11.	Apollo Hospitals Educational Trust v. DCIT	ITA No.2090/Mds/2012 Chennai ITAT
12.	Services Association of Seventh Day Adventists Pvt. Ltd. v. ITO	ITA No.1853/Mds/2011 -

		Chennai ITAT
13.	Services Association of Seventh Day Adventists Pvt. Ltd. v. ITO	ITA No.427/Mds/2012 Chennai ITAT
14.	ACIT v. Mamallan Educational Trust	ITA No.1808/Mds/2012 Chennai ITAT
15.	DCIT v. Mamallan Educational Trust	ITA No.91/Mds/2013 Chennai ITAT
16.	ITO v. Sri Ranganathar Trust	ITA No.1954/Mds/2012 Chennai ITAT
17.	ITO v. KGISL Trust	ITA No.1813/Mds/2012 Chennai ITAT
18.	CIT v. Rao Bahadur CalavalaCunnanChetty Charities	(1982) 135 ITR 485 (Mad)
19.	Devi Karumariamman Educational Trust v. DCIT (Exemptions)	(2015) 60 taxmann.com 439 (Madras)
20.	ITO v. The GRD Trust	ITA No.2537/Mds/2014 Chennai ITAT

After going through all the judgments / decisions, we find that the conflict between the commercial principle or customary practice in computing income and the provisions of Section 32 were not brought to the notice of the Courts / Tribunal. Therefore, those judgments / decisions are not applicable to the facts of the case.

5. In view of the above, we do not find any reason to interfere with the order of the lower authority and accordingly, the same is confirmed.

6. In the result, the appeal of the assessee stands dismissed.

Order pronounced on 23rd November, 2016 at Chennai.

Sd/-	Sd/-
(डि.एस. सुन्दर सिंह)	(एन.आर.एस. गणेशन)
(D.S. Sunder Singh)	**(N.R.S. Ganesan)**
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 23rd November, 2016.

sp.

आदेश की प्रतिलिपि अग्रेषित/Copy 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.