

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं  
श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष  
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
आयकर अपील सं./ **I.T.A. No. 2535/Mds/2014**  
(निर्धारण वर्ष / Assessment Year : 2010-2011)

The Income Tax Officer,  
Company Ward –I,  
1<sup>st</sup> Floor, 63, Race Course Road,  
Coimbatore 641 018

M/s. GRG Trust,  
Vs PSGR Krishnammal College,  
Avinashi Road,  
Peelamedu,  
Coimbatore 641 004.

(अपीलार्थी/Appellant)

[PAN:AAATG 2076N]  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ **I.T.A. No. 2536/Mds/2014**  
(निर्धारण वर्ष / Assessment Year : 2010-2011)

The Income Tax Officer,  
Company Ward –I,  
1<sup>st</sup> Floor, 63, Race Course Road,  
Coimbatore 641 018

M/s. Sree Narayana Guru  
Vs Educational Trust,  
95, Sree Narayana Guru Road,  
Sai Baba Mission,  
Coimbatore 641 011.

(अपीलार्थी/Appellant)

[PAN:AAATS 8493D]  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. N. Madhavan, IRS, JCIT.  
प्रत्यर्थी की ओर से / Respondent by : Shri. K. Raghu, C.A.

सुनवाई की तारीख/Date of hearing : 13.04.2015  
घोषणा की तारीख /Date of Pronouncement : 13.04.2015

**आदेश / O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

These two appeals by Revenue are directed against different orders of the Commissioner of Income Tax (Appeals)-I, Coimbatore in respect of above assessee for the assessment year 2010-2011.

2. The issues in these two appeals are common in nature, hence these appeals are combined, heard together, and disposed of by a common order for the sake of convenience. The common grounds in these appeals are as follows:-

“1. The Id. CIT(A)-I has erred in allowing the appeal filed by the assessee.

2. The Id. CIT(A)-I has erred in law by allowing the claim of depreciation holding it as “application of income on stated charitable objects”.

3. The Id. CIT(A)-I ought to have observed that the entire cost of the depreciable assets have already been allowed as “ application of income towards objects of the trust” and, therefore, again allowing of the depreciation on the same assets, holding it as application of income for charitable purposes would amount to allowance twice, as held by the Hon’ble Supreme Court in the case of JK Synthetics Ltd. Vs. Union of India (199 ITR 43).

4. The Id. CIT(A)-I should have appreciated the fact the judicial decisions relied upon by him were not accepted by the Department and further appeals were preferred.

5. The Id. CIT(A)-I ought to have observed that in the judgment of the Kerala High Court, in ITA No.42 of 2011 dated 17.02.2012, the Kerala High Court had sought clarification from CBDT and after that decided that such claim of depreciation cannot be allowed”.

3. The facts narrated in ITA No.2535/Mds/2014 are considered for adjudication. The assessee is a Public Charitable Trust duly registered u/s.12A of the Income Tax Act, 1961. For the assessment year 2010-11, relevant to the previous year that ended on 31.03.2010, the Trust filed a return declaring NIL total income after the due application of income as per stipulation contained in Section 11(1) of the Income Tax Act. While completing the assessment, the Assessing Officer rejected the claim of depreciation, as it falls outside the purview of sec.11(1) of the Income Tax Act. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. On appeal, the Commissioner of Income Tax (Appeals) allowed the claim of the assessee by relying on the order of the Co-ordinate bench of the Tribunal in the case of *M/s KGISL Trust, in ITA No.1813/Mds/2012, dated 7.10.2013* wherein it was held that the assessee could claim depreciation as application of income of funds while computing its eligible exemption u/s.11 and 12 of

the Income Tax Act. Against this, the Revenue is in appeal in both the cases before us.

5. We have heard both the parties and perused the material on record. A similar issue came for consideration before this Tribunal in the case of *M/s. Kovai Medical Trust in ITA No.1772/Mds/2012* dated 7<sup>th</sup> October, 2013, wherein it was observed as under:-

3. In first appeal, the Commissioner of Income tax(Appeals) held that the claim of depreciation made by the assessee should be allowed, even if capital expenditure incurred by the assessee has been treated as application of funds for charitable purposes. In order to come to the above conclusion, the Commissioner of Income-tax(Appeals) has relied on the judgments of the Hon'ble Punjab & Haryana High Court rendered in the cases of CIT vs. Market Committee, Pipli (330 ITR 16) and CIT vs. Tiny Tots Education Society (330 ITR 21). The Commissioner of Income-tax(Appeals) has also placed reliance on the decisions of Income-tax Appellate Tribunal, Chennai Benches in the cases of GKR Charities vs. DDIT (Exemptions) and Rengalatchumi Educational Trust vs. ITO.

4. The Revenue is aggrieved and, therefore, the second appeal before the Tribunal.

5. The only relevant ground raised by the Revenue is that the decisions relied on by the Commissioner of Income tax(Appeals) as rendered by the Tribunal have not been accepted by the Department and matters are being taken in appeals before the Hon'ble Madras High Court.

6. But in addition to the decisions of Income-tax Appellate Tribunal, the Commissioner of Income-tax(Appeals) has also placed reliance on the decisions of the Hon'ble Punjab & Haryana High Court referred to, in paragraph above. There is no decision of Jurisdictional High Court against the propositions argued by the Revenue. When that is the case, as held by the Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd., 88 ITR 192, the decisions favourable to the assessee rendered by the Hon'ble Courts have to be acted upon. Therefore, we find that the Commissioner of Income-tax(Appeals) is justified in accepting the contentions advanced by the assessee.

7. In result, this appeal filed by the Revenue is dismissed”.

6. Respectfully, following the said decision of this Tribunal, we affirm the order of the Commissioner of Income Tax (Appeals) on this issue in both these appeals.

7. In the result, the appeals of the Revenue in ITA Nos.2535 and 2536/Mds/2014 are dismissed.

Order pronounced on Monday, the 13<sup>th</sup> day of April, 2015, at Chennai.

Sd/-

(चल्ला नागेन्द्र प्रसाद )

(CHALLA NAGENDRA PRASAD)

न्यायिक सदस्य/ JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:13.04.2015.

**KV**

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.

Sd/-

(चंद्र पूजारी )

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER