

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

श्री आर. के. पांडा, लेखा सदस्य एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI R.K. PANDA, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No.1758/PN/2014
निर्धारण वर्ष / Assessment Year : 2010-11

ACIT, Central, Aurangabad

..... अपीलार्थी / Appellant

बनाम v/s

Shreyash Pratisthan,
Gut No.258, Satara Tanda,
Satara, Aurangabad
PAN : AAHTS4861L

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Anil Kumar Chaware
प्रत्यर्थी की ओर से / Respondent by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing :03.10.2016	घोषणा की तारीख / Date of Pronouncement: 05.10.2016
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आदेश / ORDER

PER R.K.PANDA, AM :

This appeal filed by the Revenue is directed against the order dated 09-06-2014 of the CIT(A), Aurangabad relating to Assessment Year 2010-11.

2. Grounds raised by the Revenue are as under :

"1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in allowing depreciation on the asset, acquisition of which has already been allowed as 'application of income'.

2. On the facts and in the circumstance of the case and in law, whether the Ld. CIT(A) erred in not appreciating the fact that allowing depreciation on the asset again, would result in double deduction, which cannot be allowed, as held in the case of Escorts Ltd., & Ors. Vs. Union of India (1993) 199 ITR 43 (SC).

3. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in not relying upon the decision of Hon'ble Kerala High Court in the case of Lissie Medical Institution Vs ACIT (76 DTR 372), whether it has been held that depreciation of the capital asset, is not allowable again.

4. The appellant craves leave to add, alter, modify, delete, and amend any of the grounds, as per the circumstances of the case.

5. The appellant prays leave to adduce such further evidence to substantiated its case, as the occasion may demand."

3. Facts of the case, in brief, are that the assessee is a Public Charitable Trust registered under Bombay Public Trust Act, 1950 and also registered u/s.12A of the I.T. Act. The predominant object of the trust is that of imparting Education in the field of Engineering and Management. It filed its return of income on 29-03-2011 declaring total income at Nil. During the course of assessment proceedings the AO noted that the assessee has claimed depreciation of Rs.2,46,56,825/- on capital assets, the cost of which had already been claimed as application of money u/s.11(1) of the I.T. Act in the preceding years. According to the AO since the cost of asset has already been allowed as application of income, therefore, its WDV was Nil and hence there was no amount left on which depreciation could be claimed. He, therefore, held that the allowance of depreciation amounts to double deduction of the same amount invested in capital asset which is not permissible under the Act. For the above proposition, the AO relied on the decision of Hon'ble Supreme Court in the case of Escorts Ltd. and others reported in 199 ITR 43 wherein it has been laid down that double deduction is not permissible in the scheme of the I.T. Act unless there is a clear statutory mandate to that effect.

4. He further noted that the law in this regard has been changed w.e.f. 01-04-1989 in view of insertion of clause (d) in sub-section (1) of section 11 by the Direct Tax Laws (Amended) Act, 1989. In view of the above amendment, the amount received by the trust towards corpus is exempt and hence the investment out of such corpus is also not allowable as application for the purpose of the trust. In such a case, the depreciation is allowable as the same will not amount to double deduction. Distinguishing the various decisions relied on before him the AO disallowed the claim of depreciation of Rs.2,46,56,925/-.

5. Before CIT(A) the assessee relying on various decisions submitted that depreciation is allowable even if the cost of the asset is claimed as application of the income for the objects of the trust in the earlier years.

6. Based on the arguments advanced by the assessee the Ld.CIT(A) in a very detailed and elaborate order allowed the claim of depreciation of Rs.2,46,56,825/- by observing as under :

“7. I have carefully considered the facts of the case and rival contentions. On perusal of the same, it has been noticed that in order to decide the issue, the various decisions relied on by the appellant and by the A.O. are to be carefully perused and hence the ratio laid down in the said decisions in brief is noted as under –

(i) CIT Vs. Framjee Cawasjee Institute (1993) 109 CTR 463 (Bombay)

In this case, it has been laid down that depreciation on depreciable assets had to be taken into account in computing income of Trust although the amount spent on acquiring such assets had been treated as application of income of the trust in the year in which assets were acquired.

(ii) CIT Vs. Institute of Banking Personnel Selection (IBPS) 264 ITR 110 (Bombay)

In this case, it has been laid down that depreciation is allowable on the assets the cost of which has been fully allowed as application of income u/s 11 in past years.

(iii) CIT Vs. Society of the Sisters of St. Anne (1984) 146 ITR 28 (Karnataka)

In this case, it has been laid down that for computing income for the purposes of section 11, depreciation on building has to be allowed.

(iv) CIT Vs. Raipur Pallottine Society (1989) 180 ITR 579 (MP)

In this case, it has been laid down that the claim of the assessee Charitable Trust in respect of depreciation on asset held by it cannot be denied on the ground that it had no business income falling u/s 28 is not justified.

(v) CIT Vs. Sheth Manilal Ranchhoddas Vishram Bhavan Trust (1992) 198 ITR 598 (Gujarat)

In this case, it has been laid down that income for the purpose of 11(1)(a) has to be computed not in accordance with the provisions of the Act but in accordance with the normal rules of accountancy under which the depreciation on house property has to be allowed.

(vi) S.R.M.C.T.M. Tiruppani Trust Vs CIT 230 ITR 636 (SC)

In this case, it has been laid down that assessee could claim exemption u/s 11(1)(a) in respect of the amount applied by it for purchasing a building for hospital purposes.

(vii) CIT Vs. Munisuvrat Jain Temple Trust (1994) Tax LR 1084 (Bombay)

In this case, it has been laid down that the income of a Charitable Trust was liable to be computed in normal commercial manner although the trust might not be carrying on any business and the assets in respect where of the depreciation was claimed might not be business assets.

(viii) CIT Vs. Market Committee, Pipli (AY.2005-06) 330 ITR 16 (P&H)

In this case, it has been laid down that the depreciation is allowable on capital assets from the income of charitable trust for determining the quantum of the funds which have to be applied for the purposes of the trust in terms of section 11 and it cannot be said that double benefit is given in allowing the depreciation. In this case, the Hon'ble Court has considered and distinguished the decision in the case of Escorts Ltd. & Ors. Vs. Union of India (1993) 199 ITR 43 (SC).

(ix) CIT Vs. Vishwa Jagriti Mission (AY.2006-07) 73 DTR 195 (Delhi)

In this case, it has been laid down that depreciation' on assets utilized for the charitable purposes is to be allowed in computing income of the charitable trust on commercial principle. In this case, the Hon'ble Court has considered and distinguished the decision in the case of Escorts Ltd. & Ors, Vs. Union of India (1993) 199 ITR 43 (SC).

7.1 The A.O. has relied on the decision of Escorts Ltd. & Ors, Vs. Union of India (1993) 199 ITR 43 (SC). In this case, it has been laid down that amendment of Clause (iv) to sub section (2) of section 35 made by Finance (No.2) Act, 1980 was merely clarificatory in nature; once deduction u/s 35(2)(iv) was allowed, depreciation u/s 32 was not available qua same expenditure either in the same or any other previous year even under pre-amended provisions; the allowance of depreciation will amount to double deduction.

7.2 Now I proceed to deal with the contention raised by the A.O. mentioned in earlier paragraph.

The first contentions raised by the AO. is that the allowance of depreciation in addition to the allowance of deduction of cost of asset as application of income in earlier year shall amount to double deduction which is not permissible under the Act as laid down by Hon'ble Supreme Court in the case of Escorts Ltd. & Ors. Vs. Union of India (1993) 199 ITR 43 (SC). In this regard, it has been noticed that the decision relied on by the AO. is in respect of deduction of cost of an asset u/s 35 allowed as deduction for capital expenditure incurred on scientific research and further allowance of depreciation on the same asset whereas in the case under appeal, the appellant is a trust and has claimed cost of the asset as application of income u/s 11 and depreciation has been claimed in subsequent year on commercial principles.

The above issue has been considered by Hon'ble Delhi High Court in the case of CIT Vs. Vishwa Jagriti Mission (A.Y.2006-07) 73 DTR 195. The relevant portion of the decision in para-13 is reproduced below –

"13. The judgment of the Supreme Court in Escorts Limited Vs. Union of India (supra) has been rightly held to be inapplicable to the present case. There are two reasons as to why the judgment cannot be applied to the present case. Firstly, the Supreme Court was not concerned with the case of a charitable trust/institution involving the question as to whether its income should be computed on commercial principles in order to determine the amount of income available for application to charitable purposes. It was a case where the assessee was carrying on business and the statutory computation provisions of Chapter IV-D of the Act were applicable. In the present case, we are not concerned with the applicability of these provisions. We are concerned only with the concept of commercial income as understood from the accounting point of view. Even under normal commercial accounting principles, there is authority for the proposition that depreciation is a necessary charge in computing the net income. Secondly, the Supreme Court was concerned with the case where the assessee had claimed deduction of the cost of the asset under Section 35(1) of the Act, which allowed deduction for capital expenditure incurred on scientific research. The question was whether after claiming deduction in respect of the cost of the asset under Section 35(1), can the assessee again claim deduction on account of depreciation in respect of the same asset. The Supreme Court ruled that, under general principles of taxation, double deduction in regard to the same business outgoing is not intended unless: clearly expressed. The present case is not one of this type, as rightly distinguished by the CIT(Appeals).

Further, the above issue has also been considered by Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Market Committee, Pipli (A.Y.2005-06) 330 ITR 16. The relevant portion of the decision in para-8 & 9 is reproduced below –

“8. In all fairness to the learned counsel for the Revenue, reference is made to the judgment of the hon'ble apex court in Escorts Limited's case [1993] 199 ITR 43 (SC), on which reliance has been placed by the learned counsel for the Revenue. The hon'ble Supreme Court in that case was dealing with a case relating to two deductions both under sections 10(2)(vi) and 10(2)(xiv) of the 1922 Act or both under sections 32(1)(ii) and 35(1)(iv) of the Act. The assessee therein had incurred expenditure of a capital nature on scientific research relating to the business which resulted into acquisition of an asset. The assessee had sought to claim a specified percentage of the written down value of the asset as depreciation and at the same time claimed deduction, in five consecutive years of the expenditure incurred on the acquisition of the asset. The apex court observed (headnote) :

"Where a capital asset used for scientific research related to the business of the assessee is also ipso - facto an asset used for the purpose of the business, it is impossible to conceive of the Legislature having envisaged a double deduction in respect of the same expenditure, one by way of depreciation under section 32 of the Income-tax Act, 1961 and other by way of allowance under section 35(1)(iv) of a part of the capital expenditure on scientific research, even though the two heads of deduction do not completely overlap and there is some difference in the rationale of the two deductions.. "

9. It was further recorded that (head note) :

"There is a fundamental, though unwritten, axiom that no Legislature could have at all intended a double deduction in regard to the same business outgoing; and, if it is intended, it will be clearly expressed. In other words, in the absence of clear statutory indication to the contrary, the statute should not be read so as to permit an assessee two deductions . "

In view of the above decisions of Hon'ble Delhi & Punjab & Haryana High Courts, it is evident that the ratio laid down by Hon'ble Supreme Court in the case of Escorts Ltd. & Ors, Vs. Union of India (1993) 199 ITR 43 is not applicable to the case of the appellant trust and the depreciation claimed by the appellant is allowable deduction u/s 11 of the Act. The first contention raised by the A.O. is rejected.

The second contention raised by the A.O. is that the decisions relied on by the appellant are not acceptable and cannot be relied on as in the said decisions the ratio laid down by the decision in the case of Escorts Ltd. & Ors. Vs. Union of India (1993) 199 ITR 43 (SC) has not been considered. From the preceding paragraph it can be noted that in the above mentioned two decisions in the cases of CIT Vs. Vishwa Jagriti Mission (A.Y.2006-07) 73 DTR 195 (P&H) and CIT Vs. Market Committee, Pipli (AY.2005-06) 330 ITR 16 (Delhi), the decision in the case of

Escorts Ltd. & Ors. Vs. Union of India (1993) 199 ITR 43 (SC) has been considered and held to be not applicable to the cases of the charitable trust. The second contention raised by the AO. is rejected.

The third contention raised by the AO. is that the law in this regard has been changed w.e.f. 01/04/1989 in view of insertion of Clause (d) in sub-section (1) of section-11 by Direct Tax Laws (Amendment) Act, 1989. In view of the above amendment, the amount received by the trust towards corpus is exempt and hence the investment out of such corpus is also not allowable as application for the purpose of the trust; in such case, the depreciation is allowable as the same will not amount to double deduction. In this regard, it has been noticed that the said section 11(1)(d) is in respect of exemption provided in respect of voluntary contribution received by the Trust with the specific direction that it shall form part of the corpus of the trust and hence not includible in the total income. Whereas the allowability of deduction in respect of depreciation is as per provisions of section 11(1)(a) of the Act. Therefore, I am of the considered view that the insertion of section 11(1)(d) has not changed the legal position on the issue under appeal. Further, the assessment years involved in the above mentioned decisions relied on by the appellant in the cases of CIT Vs. Vishwa Jagriti Mission (AY.2006-07) 73 DTR 195 (P&H) and CIT Vs. Market Committee, Pipli (AY.2005-06) 330 ITR 16 (Delhi) are AY.2006-07 & 2005-06 which are after the insertion of section 11(1)(d) w.e.f. 01/04/1989. In view of the above facts, the third contention raised by the A.O. is also rejected.

It has also been noticed that recently the Hon'ble Kerala High Court in the case of Lissie Medical Institution Vs. CIT (2013) 76 DTR 372 has held that depreciation on the assets of a charitable trust is not allowable as the cost of asset is allowable as application of income. In support of the above proposition, the Hon'ble Kerala High Court has relied on the decision in the case of Escorts Ltd. & Ors. Vs. Union of India (1993) 199 ITR 43 (SC). The contention raised by the A.O, is supported by the above referred decision of Hon'ble Kerala High Court whereas the contention of the appellant is supported by the decisions of Hon'ble Bombay High Court, Karnataka High Court, Gujarat High Court, Madhya Pradesh High Court, Punjab & Haryana High Court and Delhi High Court. It is settled law that where two views are possible and where different decisions of separate High Courts are available then the decision of the Court in favour of the assessee is to be followed. This proposition of law is supported by following decisions –

- i. CIT Vs. Vegetable Products Ltd. (1973) 85 ITR 192 (SC)
- ii. CIT Vs. Podar Cement (P) Ltd. Etc (1997) 141 CTR 67 (SC)
- iii. CIT Vs. Shaan Finance (P) Ltd. (1998) 146 CTR 110 (SC)

Further, the decision of Hon'ble Jurisdictional High Court is in favour of the appellant.

In view of the above facts and discussion and respectfully following the ratio laid down by the above referred decisions I hold that the appellant trust is eligible for deduction in respect of depreciation amounting to Rs.2,46,56,825/-. The addition of Rs.2,46,56,825/- is deleted. The A.O. is directed accordingly.”

7. Aggrieved with such order of the CIT(A) the Revenue is in appeal before us.

8. The Ld. Counsel for the assessee at the outset filed a copy of the decision of the Tribunal in the case of DCIT Vs. Sanjeevan Vidyalaya Trust vide ITA No.692/PN/2010 order dated 27-09-2011 for A.Y. 2005-06 and submitted that the Tribunal after considering the decision of Hon’ble Supreme Court in the case of Escorts Ltd. and Others (Supra) and following the decision of Hon’ble Bombay High Court in the case of DIT(E) Vs.Framjee Cawasjee Institute (Supra) has allowed the claim of depreciation where the cost of acquisition of the asset has been claimed and allowed as an application of income for charitable purpose in the past years. Therefore, this being a covered matter the grounds raised by the Revenue should be dismissed.

9. The Ld. Departmental Representative on the other hand fairly submitted that the issue stands decided in favour of the assessee by the decision of the Tribunal in the case of DCIT Vs. Sanjeevan Vidyalaya Trust (Supra).

10. After hearing both the sides, we find the AO in the instant case disallowed the claim of depreciation on the ground that the cost of asset has already been allowed as application of income in past assessment years and allowance of depreciation on the same will amount to double deduction. For the above proposition, the AO

relied on the decision of Hon'ble Supreme Court in the case of Escorts Ltd. and Others (Supra). We find the Ld.CIT(A) relying on various decisions allowed the claim of depreciation and his observation has already been reproduced in the preceding paragraphs.

11. We find an identical issue had come up before the Tribunal in the case of DCIT Vs. Sanjeevan Vidyalaya Trust (Supra) wherein the Tribunal after considering the decision of Hon'ble Supreme Court in the case of Escorts Ltd. and Others (Supra) and following the decision of the Hon'ble Bombay High Court in the case of DCIT Framjee Cawasjee Institute (Supra) has allowed the claim of depreciation in case of relevant asset which has already been allowed as application of income for charitable purposes. The relevant observation of the Tribunal from Para 4 onwards read as under :

"4. In brief, the facts are that the respondent-assessee is a trust which is running educational institutions and is registered under section 12A(a) of the Act with the Commissioner of Income-tax. While finalising the assessment, the Assessing Officer noticed that the assessee had claimed depreciation of Rs 59,44,712/- on assets whose cost had been treated as application of income in the past years. As per the Assessing Officer, such depreciation claim was not allowable, since 100% of the corresponding capital expenditure was already allowed as application of income to the assessee in earlier year. Therefore, the assessee's claim of depreciation of Rs 59,44,712/- was disallowed.

5. In appeal before the Commissioner of Income-tax (Appeals), the assessee justified the claim, inter alia, by relying upon the judgment of the Hon'ble Bombay High Court in the case of DIT(E) v Framjee Cawasjee Institute 109 CTR 463 (Bom). The Commissioner of Income-tax (Appeals) relying upon the aforesaid decision of the jurisdictional High Court allowed the claim of the assessee for depreciation. Against the aforesaid, Revenue is in appeal before us.

6. As noted earlier, the only plea agitated before us by the Revenue is based on the proposition that the allowance of depreciation would result in double deduction, since in the past years the capital expenditure on the relevant asset has already been allowed as application of income. In response to such plea, the learned Counsel, appearing for the respondent-assessee, pointed out that similar argument from the side of the Revenue was considered by the Hon'ble

Bombay High Court in the case of CIT v Institute of Banking 264 ITR 110 (Bom) wherein the issue was decided in favour of the assessee, following the earlier judgment in the case of Framjee Cawasjee Institute (supra). Moreover, the Pune Bench of the Tribunal in the case of ACIT v Shri Agmodharak Devardhi Jain Agam Mandit Trust vide ITA No 1526/PN/07 has followed the judgment of the Hon'ble Bombay High Court in the case of Institute of Banking (supra) in upholding the stand similar to that of the assessee.

7. In this background, we have considered the rival submissions and find ourselves unable to uphold the stand canvassed by the Revenue, inasmuch as the Commissioner of Income-tax (Appeals) has decided the issue following the judgment of the Hon'ble jurisdictional High Court in the case of Framjee Cawasjee Institute (supra) which has been subsequently followed by the Hon'ble High Court in the case of Institute of Banking (supra). As per the Hon'ble High Court, merely because the cost of acquisition of an asset has been claimed as an application of income for charitable purposes in the past years, the assessee could not be denied depreciation in respect of such assets in a subsequent year.

8. In so far as the reliance placed by the learned Departmental Representative in the case of Escorts Ltd. (supra) is concerned, the same, in our view, does not help the case of the Revenue. The Hon'ble High Court of Punjab & Haryana in its decision in the case of CIT, Karnal v. Market Committee, vide ITA No 535/09 dated 5.7.2010 considered an identical issue and also dealt with the plea of the Revenue based on the judgment of the Hon'ble Supreme Court in the case of Escorts Ltd. (supra). As per the Hon'ble Punjab & Haryana High Court, the judgment of the Hon'ble Supreme Court in the case of Escorts Ltd. (supra) was distinguishable, inasmuch as there was no case of the assessee claiming double deduction on account of depreciation. Following the aforesaid judgment of the Hon'ble Punjab & Haryana High Court, we, therefore, find no merit in the plea raised by the Revenue based on the judgment in the case of Escorts Ltd. (supra).

9. In the result, following the judgment of the Hon'ble jurisdictional High Court, we hereby affirm the order of the Commissioner of Income-tax (Appeals)."

12. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal in the case of Sanjeevan Vidyalaya Trust (Supra), therefore, in absence of any contrary material brought to our notice against the said of the Tribunal, we find no infirmity in the order of CIT(A) allowing the claim of depreciation on asset, the cost of which has already been allowed as application of income for charitable purposes. Accordingly, the order of CIT(A) is upheld and the grounds raised by the Revenue are dismissed.

13. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 05-10-2016.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 05th October, 2016.

सतीश

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A), Aurangabad
4. The CIT, Aurangabad
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" पुणे / DR,
5. ITAT, "A" Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//सत्यापित प्रति //True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune