

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1995/Mds/2013

&

C.O. No.194/Mds/2013

(in I.T.A. No.1995/Mds/2013)

निर्धारण वर्ष / Assessment Year : 2009-10

The Income Tax Officer,
Company Ward – I, 1st floor,
63, Race Course,
Coimbatore – 641 018.

v. M/s Ranganathan Rajeswari
Charitable Trust,
No.54-A, Lakshmanan Nagar,
Gandhipuram,
Coimbatore – 641 012.

PAN :
(अपीलार्थी/Appellant)

PAN : AABTR 2441 P
(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Shri A.B. Maurya, CIT

प्रत्यर्थी की ओर से/Respondent by : Shri K.R. Ramasamy, FCA

सुनवाई की तारीख/Date of Hearing : 30.08.2016

घोषणा की तारीख/Date of Pronouncement : 07.10.2016

आदेश /O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) –I, Coimbatore, dated 04.09.2013 and pertaining to assessment year 2009-10. The

assessee has filed cross-objection against the same order of the CIT(Appeals). Hence, we heard both the appeal and the cross-objection together and disposing of the same by this common order.

2. Shri A.B. Maurya, the Ld. Departmental Representative, submitted that the assessee - charitable institution was registered under Section 12A of the Income-tax Act, 1961 (in short 'the Act'). During the year under consideration, according to the Ld. D.R., the assessee disclosed a gross receipt of ₹3,79,46,888/-. The assessee claimed before the Assessing Officer that a sum of ₹8,25,99,229/- was applied for charitable purpose. Out of this amount of ₹8,25,99,229/-, the assessee claimed ₹72,12,041/- towards depreciation on the value of asset on which the assessee claimed exemption under Section 11 of the Act. The Assessing Officer found that the depreciation was claimed by the assessee on the asset, which was allowed earlier as application of income for charitable purpose. Therefore, the Assessing Officer found that the claim of depreciation in respect of the asset on which the expenditure was already allowed as application of income amounts to double deduction. Accordingly, by placing reliance on the judgment of Apex Court in Escorts Ltd. v Union of India (199 ITR

43), the Assessing Officer disallowed the claim of the assessee. On appeal by the assessee the CIT(Appeals), however, allowed the claim of the assessee. According to the Ld. D.R., the assessee is not carrying on any business activity. Section 32 of the Act is applicable only in respect of computing the income from business and profession. The activity of the assessee is charitable nature. Therefore, according to the Ld. D.R., the exemption claimed by the assessee has to be considered under Section 11 of the Act. Hence, the provisions applicable for computing the income from business and profession cannot be applied for computing the income of the charitable institution. According to the Ld. D.R., the matter may be different if the assessee was not claiming exemption under Section 11 of the Act. The Ld. D.R. placed his reliance on the order of this Tribunal in *Anjuman-E-Himayath-E-Islam v. ADIT* in I.T.A. No.2271/Mds/2014 dated 02.06.2015.

3. On the contrary, Shri K.R. Ramasamy, the Ld. representative for the assessee, submitted that the assessee is admittedly a charitable institution, which claimed depreciation on the capital asset. The Ld. representative clarified that the amount invested in the capital asset was claimed as application of income under

Section 11 of the Act. However, the capital asset acquired by the assessee on application of its income was used for carrying on the charitable object of the trust, therefore, the same is eligible for depreciation. On enquiry from the Bench, the Ld. representative clarified that the assessee is not carrying on any business activity.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee is admittedly a charitable institution registered as such under Section 12A of the Act. The assessee acquired the capital asset by utilizing the income of the trust. In respect of the investments made by the assessee on the capital asset, the assessee claims the same as application of income under Section 11 of the Act. It is also an admitted fact that the claim made by the assessee on the investments made on the capital asset was allowed as application of income. Now the assessee claims depreciation on the capital asset, which was acquired by the assessee by the income which was allowed as application of income under Section 11 of the Act. The question arises for consideration is when the cost of the asset was allowed as application of income under Section 11 of the Act, whether the assessee is entitled for depreciation on the very same

asset? This Tribunal examined this issue in *The Anjuman-E-Himayath-E-Islam* (supra) and found that the assessee is not eligible for depreciation under Section 32 of the Act. In fact, this Tribunal placed its reliance on the judgment of Kerala High Court in *Lissie Medical Institution v. CIT* (2012) 348 ITR 344.

5. We have carefully gone through the scheme of Income-tax Act, 1961. Chapter III of the Act provides for method of computation of income which do not form part of total income. Section 11 of the Act, which falls in Chapter III of the Act, clearly says that the income derived from the property held under trust, for charitable or religious purpose, shall not be included in the total income to the extent to which the income is applied to such purposes in India. The assessee, in fact, applied the income of the assessee, which was derived from the property held under trust, for acquiring the capital asset. Therefore, the income to the extent to which it was applied for acquiring the capital asset, was excluded already from the total income of the assessee. Section 32 of the Act, which provides for depreciation, falls under Chapter IV of the Act which provides for computation of business income. Admittedly, the assessee is not carrying on any business activity. If the assessee claims that it was

carrying on business activity, then in view of the proviso to Section 2(15) of the Act, it has to lose its character as charitable institution. So long as the assessee claims that it is a charitable institution, the provisions of Chapter IV of the Act which provides for computation of business income, cannot be applied to the assessee. This Tribunal is of the considered opinion that since the assessee is carrying on charitable activity and not business, the provisions of Section 32 of the Act which provides for depreciation, is not applicable to the assessee-trust.

6. Moreover, the provisions of Section 32 of the Act, which falls under Chapter IV of the Act, cannot override Section 11 of the Act which falls under Chapter III of the Act. When the Parliament in their wisdom provides method of computation in respect of different kind of assessees with reference to their activity, this Tribunal is of the considered opinion that the charitable institution cannot claim depreciation under Section 32 of the Act. When an individual assessee is computing its taxable income, he cannot claim depreciation under Section 32 of the Act in respect of the asset, which was not used in the business. In the case before us, admittedly, the asset on which the depreciation was claimed under

Section 32 of the Act, is not used for any business activity at all. Therefore, there is no question of allowing any depreciation to the assessee under Section 32 of the Act. A similar view was taken by this Tribunal in The Anjuman-E-Himayath-E-Islam (supra). In view of the above, this Tribunal is unable to uphold the order of the lower authority. Accordingly, the order of the lower authority is set aside and that of the Assessing Officer is restored.

7. In the result, the appeal filed by the Revenue is allowed and the cross-objection filed by the assessee is dismissed.

Order pronounced on 7th October, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 7th October, 2016.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-I, Coimbatore
4. आयकर आयुक्त/CIT-I, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.