

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

ITA No.	AY	Appellant	Respondent
1195/Hyd/2009	2006-07	Dy. Director of Income Tax(E)-I, Hyderabad	Exhibition Society, Hyderabad [PAN: AAATE1345E]
388/Hyd/2015	2006-07	Exhibition Society, Hyderabad [PAN: AAATE1345E]	Asst. Director of Income Tax(E)-1, Hyderabad

For Revenue : Shri A. Sitarama Rao, DR
For Assessee : Shri C.P. Ramaswamy, AR

Date of Hearing : 27-10-2016
Date of Pronouncement : 16-11-2016

ORDER

PER B. RAMAKOTAIAH, A.M. :

The appeal 1195/Hyd/2009 is an appeal preferred by Revenue on 16-12-2009 which was disposed-off by the ITAT vide order dt. 22-03-2012. In that appeal, with reference to Ground Nos. IV & V, the ITAT has not considered its own order in an earlier year in assessee's own case and has set aside the issue to the file of the Assessing Officer (AO), directing the AO to examine the issue afresh in accordance with law. Assessee has preferred Miscellaneous Application No. 24/Hyd/2016 which was allowed by the Bench vide order dt. 15-07-2016. In that order, the Bench has noted that there is a Co-ordinate Bench decision in favour of

assessee in its own case and the same was not noticed by the earlier Bench. Accordingly, in the interest of justice, the issue in Ground Nos. IV & V (decided in para 5 & 6 of the ITAT's order) was recalled to be re-heard afresh. Accordingly, for that limited purpose, the case is posted again and was heard.

2. Ld. Counsel placed on record the Co-ordinate Bench decision in its own case in ITA No. 941/Hyd/2004 for AY. 2001-02 dt. 22-05-2007, wherein it was held as under:

"8. We further find that the ld.CIT(A) while deleting the disallowance of depreciation has held vide penultimate para of his order as under:

"The next ground of appeal relates to disallowance of depreciation of Rs.15,73,625. It has been contended that even when the whole of the capital expenditure maybe treated as an application of income towards charitable or religious purposes. u/s 11 of the Income tax Act, the society will be eligible to claim depreciation in respect of assets used by it for its purposes on the bases of normal commercial principles following the Board's circular dt. 19th June, 1968. There is no question of double deduction on account of the grant of depreciation in such cases in view of the fact that while depreciation is allowed in respect of the assets used by the trust for the purpose of its activity following normal commercial principles, the capital expenditure is deducted from the surplus. u/s 11 of the Income tax Act treating the same as an application of income. Thus, both operate in two different fields. In my opinion, the argument of the appellant is acceptable. In the following decisions, it has been held that both depreciation as well as capital expenditure are allowable as deduction in the case of charitable trust and it does not amount to double deduction.

- 1. CIT v. Trustee of Marathi Missions 1 ITD 539 (Bom)*
- 2. CIT v. Framjee Cawasjee Institute (1993) 109 CTR 463*
- 3. CIT v. Institute of Banking Personnel Selection (2003) 131 Taxman 386*

In view of this, I direct the assessing officer to allow depreciation in accordance with the provisions of law."

In the absence of any distinguishable features brought on record by the Revenue and keeping in view that it is not the case of the Revenue that

the assets were not used by the assessee during the year under consideration, we decline to interfere with the order passed by the ld. CIT(A) on, this account and accordingly the grounds taken by the Revenue are rejected”.

2.1. The amendment to Section 11 by way of sub-section 6 has been incorporated w.e.f. 01-04-2015, thereby where any income is required to be applied or accumulated or set apart for application, then, for such purposes, the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year. Since sub-section 6 of Section 11 is applicable only w.e.f. 01-04-2015, there is no prohibition in claiming depreciation in the earlier years. This issue was also held in favour of assessee by various other Co-ordinate Bench decisions following the principles laid down by the Hon'ble Bombay High Court in the case of CIT Vs. Institute of Banking Personnel Selection (IBPS) [264 ITR 110] (Bom); and also the following case law:

- i. CIT Vs. Tiny Tots Education Society [330 ITR 21] ;
- ii. CIT Vs. Market Committee, Pipli [330 ITR 16];
- iii. CIT Vs. Society of the Sisters of St. Anne [146 ITR 28 (Kar)];
- iv. CIT Vs. Seth Marital Ranchhodda Vishram Bhavan Trust [198 ITR 598 (Guj)];
- v. CIT Vs. Rao Bahadur Calavalan Cunnan Chetty Charities [135 ITR 485] (Mad);
- vi. CIT Vs. Munisuvrat Jain [1994] Tax LR 1084 (Bom); and
- vii. CIT Vs. Raipur Pallotine Society [180 ITR 579] (MP);

2.2. The principles laid down in the above cases are that the depreciation is allowable to assessee charitable trust on assets the cost of which had been fully allowed as application of income u/s. 11 in the past years, till the amendment became effective. This principle is being held in all the cases. Therefore, respectfully following the principles laid down in the above cases, we allow the claim of depreciation of assessee, by confirming the order of the CIT(A) on this issue. The grounds of Revenue are accordingly dismissed.

3. In the result, this appeal of Revenue is partly allowed for statistical purposes.

Appeal in ITA No. 388/Hyd/2015:

4. This is an appeal by assessee against the order of Ld.CIT(A)-9, Hyderabad, dt. 23-01-2015 on the issue of claim of depreciation on the assets which were allowed as application of income u/s. 11 of the Act. This appeal is on the consequential order passed, after the ITAT has restored the issue to the file of AO for fresh examination. However, the order of ITAT in ITA No. 1195/Hyd/2009 dt. 22-03-2012 was partially recalled to re-hear the ground Nos. IV & V raised in the Revenue's appeal, as ITAT has not noticed the Co-ordinate Bench decision in assessee's own case in earlier year allowing the depreciation. Since the issue was allowed in favour of assessee in ITA No. 1195/Hyd/2009 (considered above), assessee's grounds on this issue are to be allowed.

5. In the result, this appeal of assessee is considered allowed.

6. To sum-up, Revenue appeal is partly allowed for statistical purposes and assessee's appeal is allowed.

Order pronounced in the Open Court on 16th November, 2016

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 16th November, 2016

TNMM

Copy to :

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- 8. D.R. ITAT, Hyderabad.*
- 9. Guard File.*