

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C'**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
AND SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.701 & 702/Bang/2017
(Asst. Year 2011-12 & 2012-13)

The Asst. Commissioner of Income-tax
(Exemptions),
Circle-1,
Mangalore.

. Appellant

Vs.

M/s G.R Education Trust (R),
S.No.17-1 A, Karavali College,
NH-17, Bangra Kulur,
Mangaluru.
PAN - AAATG4650J.

. Respondent

Appellant by : Shri M.K Biju, JCIT
Respondent by : None

Date of Hearing : 30-8-2017
Date of Pronouncement : 6-9-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER:

These appeals by the Revenue are directed against the order of the Commissioner of Income-tax (Appeals), Mangaluru dated 30/1/2017 for asst. years 2011-12 & 2012-13. Since common issues are involved, these

appeals were heard together and are disposed off by way of this combined order.

2. Briefly stated, facts of the case relevant to these appeals are as under:-

2.1 The assessee, is a charitable trust, registered u/s 12AA of the Income-tax Act 1961 (in short 'the Act'), running educational institutions. In the orders of assessment for asst. years 2011-12 and 2012-13 completed u/s 143(3) of the Act vide order dated 31/3/2013 and 30/3/2013 respectively, the Assessing Officer ('AO'), inter alia, disallowed the assessee's claim for depreciation on fixed assets to the extent of Rs.71,37,945/- and Rs.77,54,730/- respectively in these years following the decision of the Hon'ble Kerala High Court in the case of Lissie Medical Institution (384 ITR 344 (Ker)).

2.2 On appeal, the CIT(A) Mangaluru vide appellate orders dated 30/1/2017 for asst. years 2011-12 and 2012-13, allowed the assessee's claim for depreciation, on fixed assets, inter alia, following the decision of the Hon'ble Karnataka High Court in Al-Ameen Charitable Trust (383 ITR 517) and of the co-ordinate Bench of this

Tribunal in the case of ACIT Vs. City Hospital Charitable Trust in ITA No.676/Bang/2014 dated 20/3/2015.

3.1 Revenue being aggrieved by the orders of the CIT(A), Mangalore dated 30/1/2017 for both asst. years 2011-2 and 2012-13, has preferred these appeals, raising identical grounds challenging the impugned orders of the Id CIT(A) for allowing the assessee's claims of depreciation on fixed assets for these years. The common grounds raised for both asst. years concerned are as under:-

“1. The order of the Ld. CIT (A) is opposed to Law and facts of the case.

2. The Ld. CIT(A) has erred in allowing the assessee's claim of depreciation and not considering the judgment of the Hon'ble Kerala High Court in the case of Lissie Medical Institution dt. 17.02.2012.

3. The Ld. CIT(A) has also failed to appreciate the fact that depreciation is admissible only in respect of assets used by the assessee for the purpose of business or profession. Since the assessee is not engaged in business but undertaking charitable/ religious activities, the benefit of depreciation should not be available to it.

4. For these and such other grounds it is urged that the order of the Ld. CIT(A), on the above points may be set aside and the order of the Assessing Officer be restored.

5. The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of the hearing of the appeal.”

The Id DR was heard in support of the grounds raised by Revenue and placed reliance on the orders of the AO disallowing the assessee's claim for depreciation on fixed assets.

3.2.1 According to the Id AR for the assessee, the issue in respect of the claim of depreciation is covered by the decision of the Hon'ble Karnataka High Court in the case of DIT(E) Vs. Al-Ameen Charitable Trust and Others (383 ITR 517) (Kar) vide order dated 22/2/2016. The Id AR also, inter alia, placed reliance on the following decisions of the Co-ordinate Bench:

(i) Moogambigai Charitable Trust Vs. Addl. CIT (Exemption) in ITA No.1224/Bang/2015 dated 13/7/2016;

(ii) ITO Exemption Vs. Sharaddha Trust in ITA No.899/Bang/2016 dated 7/4/2017,

(iii) Jyothi Charitable Trust Vs. DCIT (Exemption) in ITA No.622/Bang/2015 dated 14/8/2015.

3.2.2 It was submitted that the issue in dispute i.e claim of depreciation is also covered by the above orders of the various Co-ordinate benches of this Tribunal.

3.3.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial

pronouncements cited. We find that the issue of claim of depreciation by a charitable trust u/s 11 of the Act has been considered and held in favour of the assessee by various Co-ordinate benches of this Tribunal as cited (Supra) and also by the Hon'ble Karnataka High Court, in the case of DIT(Exemption) Vs. Al-Ameen Charitable Fund Trust & Others (383 ITR 517) (Kar). In the case of Moogambigai Charitable and Education Trust Vs. ADIT (Exemption), the Co-ordinate bench in its order in ITA No.1224/Bang/2015 dated 13/7/2016 at para 11 thereof has held as under:-

11. We have considered the rival submissions as well as the relevant material on record. At the outset, we note that this issue has been considered by this Tribunal in a series of decisions. In the case of M/s. CMR Janardhana Trust (supra), the Tribunal has again considered and decided this issue in paras 15 to 17 as under :

" 15. We have heard the submissions of the Id. DR, who relied on the order of CIT(A) and the decision of the Hon'ble Delhi High Court in the case of DIT(E) Vs. Charanjiv Charitable Trust (2014) 43 taxmann.com 300 (Delhi). We have considered the order of the CIT(A). Identical issue came up for consideration before ITAT Bangalore Bench in the case of DDIT(E) v. Cutchi Memon Union (2013) 60 SOT 260 Bangalore ITAT, wherein similar issue has been dealt with by this Tribunal. In the aforesaid case, the assessee claimed depreciation and the AO denied depreciation on the ground that at the time of acquiring the relevant capital asset, cost of acquisition was considered as application of income in the year of its acquisition. The AO took the view that allowing depreciation would amount to allowing double deduction and

placed reliance on the decision of Hon'ble Supreme Court in Escorts Ltd. (supra). The CIT(A), however, allowed the claim of assessee. On further appeal by the Revenue, the Tribunal held as follows:-

"20. We have considered the rival submissions. If depreciation is not allowed as a necessary deduction for computing income of charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income as it is nothing but a decrease in the value of property through wear, deterioration, or obsolescence. Since income for the purposes of section 11(1) has to be computed in normal commercial manner, the amount of depreciation debited in the books is deductible while computing such income. It was so held by the Hon'ble Karnataka High Court in the case of CIT Vs. Society of Sisters of St. Anne 146 ITR 28 (Kar). It was held in CIT vs. Tiny Tots Education Society (2011) 330 ITR 21 (P&H) , following CIT vs. Market Committee, Pipli (2011) 330 ITR 16 (P&H) : (2011) 238 CTR (P&H) 103 that depreciation can be claimed by a charitable institution in determining percentage of funds applied for the purpose of charitable objects. Claim for depreciation will not amount to double benefit. The decision of the Hon'ble Supreme Court in the case of Escorts Ltd. 199 ITR 43 (SC) have been referred to and distinguished by the Hon'ble Court in the aforesaid decisions.

21. The issue raised by the revenue in the ground of appeal is thus no longer res integra and has been decided by the Hon'ble Punjab & Haryana High Court in the case of CIT v. Market Committee, Pipli, 330 ITR 16 (P&H). The Hon'ble Punjab & Haryana High Court after considering several decisions on that issue and also the decision of the Hon'ble Supreme Court in the case of Escorts Ltd. (supra), came to the conclusion that depreciation is allowable on capital assets on the income of the charitable trust for determining the quantum of funds which have to be applied for the purpose of trusts in terms of section 11 of the Act. The Hon'ble Punjab & Haryana High Court made a reference to the decision of the Hon'ble Supreme Court in the case of Escorts Ltd. (supra) and observed that the Hon'ble Supreme Court was dealing with a case of two deductions under different provisions of the Act, one u/s. 32 for depreciation and the other on account of expenditure of a capital nature incurred on scientific research u/s. 35(1)(iv) of the Act. The Hon'ble Court thereafter held that a trust claiming depreciation cannot be equated with a claim for double deduction. The Hon'ble Punjab & Haryana High Court has also made a reference to the decision of the Hon'ble Karnataka High Court in the case of CIT v. Society of Sisters of Anne, 146 ITR 28 (Kar), wherein it was held that u/s. 11(1) of the Act, income has to be computed in normal commercial manner and the amount of depreciation debited in the books is deductible while computing such income. In view of the aforesaid decision on the issue, we are of the view that the order of the CIT(A) on the above issue does not call for any interference.

22. Consequently, ground No.5 raised by the revenue is dismissed."

16. It is no doubt true that the Hon'ble Delhi High Court in the case of Charanjiv Charitable Trust (supra) has taken a contrary view but then when two views are possible on an issue, the view favourable to the Assessee has to be followed. The decision of the Hon'ble Punjab & Haryana High Court is in favour of the Assessee and has followed the decision of the Hon'ble Karnataka High Court in the case of Society of Sisters of Anne (supra). The interpretation to the contrary given by the CIT(A) on the decision of the Hon'ble Karnataka High Court in the case of Society of Sisters of Anne (supra) cannot therefore be accepted. We may also add that the legal position has since been amended by a prospective amendment by the Finance (No.2) Act, 2014 w.e.f. 1.4.2015 by insertion of subsection (6) to section 11 of the Act, which reads as under:- "(6) In this section 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."

17. As already stated, the aforesaid amendment is prospective and will apply only from A.Y. 2015-16. In view of the above legal position, we are of the view that the order of the CIT(A) has to be reversed. Consequently grounds No.4 & 5 raised by the Assessee are allowed.”

There is no dispute that the amendment of section 11(6) of the Act by the Finance Act, 2014 is prospective w.e.f. 1.4.2015 and therefore the said amended provision is not applicable for the assessment year under consideration. Following the earlier decisions of this Tribunal, we decide this issue in favour of the assessee and against the revenue.

3.3.2 Respectfully following the decision of the Hon'ble Karnataka High Court in the case of Al-Ameen Charitable Fund Trust & Others (383 ITR 517), wherein the Hon'ble High Court has distinguished the decision of the Hon'ble Kerala High Court in Lissie Medical Institutions (Supra) and also following the decision of the co-ordinate Bench in the case of M/s Moogambigai Charitable & Educational Trust, in ITA No.1224/Bang/2015 dated 13/7/2016, we uphold the decision of the Id CIT(A) in allowing the assessee's claim for depreciation on fixed assets for both asst. years 2011-12 and 2012-13. Consequently, the grounds raised by Revenue (Supra) on this issue are dismissed.

4. In the result, Revenue's appeals for asst. years 2011-12 and 2012-13 are dismissed.

Order pronounced in the open court on **6th September, 2017.**

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore
Dated : 6/9/2017

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Sr. Private Secretary, ITAT, Bangalore.