

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 Nos.533, 1045 & 1046/Mds/2017

निर्धारण वर्ष / Assessment Years : 2010-11, 2011-12 & 2012-13

M/s Nethra Jyothi Trust,
C/o M/s Subbaraya Aiyar
Padmanabhan & Ramamani
Advocates,
New No.75 (Old No.105),
"Windsor Towers",
Dr. Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

v. The Deputy Commissioner of
Income Tax (Exemptions),
Coimbatore.

PAN : AAATN 2170 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 20.09.2017

घोषणा की तारीख/Date of Pronouncement : 27.10.2017

आदेश / O R D E R

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

All the three appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) -2, Coimbatore, for the assessment years 2010-11, 2011-12 and 2012-13. Since common issues arise for consideration in these

appeals, we heard these appeals together and disposing of the same by this common order.

2. The first issue arises for consideration is disallowance of depreciation.

3. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed the claim of the assessee on the ground that the cost of asset was allowed as application of income. The Ld.counsel further submitted that the income of the trust has to be computed in a commercial manner, therefore, depreciation is one of the items to be allowed while the income was computed commercially. Hence, both the authorities below are not justified in disallowing the claim of the assessee.

4. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the computation of income of the trust was governed by the provisions of Sections 11 to 13 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., it is a self-contained code, therefore, the income of the trust has to be computed under Sections 11 to 13 of the Act. The Ld. D.R. further submitted that Income-tax Act provides for depreciation

under Section 32 of the Act in respect of the asset which is used for business or profession. While computing income from business or profession, the cost of the asset at the time of acquisition is not allowed since investment in the asset is considered to be a capital expenditure. However, according to the Ld. D.R., while computing income of the trust, the cost of asset was allowed as application of income under Section 11 of the Act. Moreover, a trust which is claiming as charitable trust cannot claim that they are doing business, therefore, eligible for depreciation under Section 32 of the Act also. According to the Ld. D.R., the moment the assessee claims depreciation under Section 32 of the Act, it has to be considered as if the assessee is doing business activity and the benefit under Section 11 of the Act is not available to such assessees. Moreover, depreciation is a notional deduction. It is not a cash expenditure. In other words, according to the Ld. D.R., depreciation is not an outgoing. The notional allowance of depreciation always remains with trust itself, hence, such depreciation notionally computed cannot be deducted for the purpose of computing the trust income. According to the Ld. D.R., such notional allowance of depreciation cannot be allowed while computing the income of the trust, therefore, the Assessing Officer

by placing reliance on the judgment of Kerala High Court and CBDT clarification, has disallowed the claim of the assessee which was rightly confirmed.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The claim of depreciation in respect of asset which is used in charitable activity was examined by this Tribunal in Music Academy Madras v. DDIT(E) in I.T.A. No. 1098/Mds/2015 dated 22/4/2016. In fact, this Tribunal has observed as follows:-

“9. Income-tax Act provides for procedure and method for computing income under different heads. Depreciation is provided under Section 32 of the Act when computing income under the head "Income from business or profession". In respect of other heads, no depreciation is provided under the scheme of the Act. The income of the trust is exempted on application and accumulation as provided under the Act. If any violation, the income of the trust is liable for taxation, in such a case, if the income is assessed as income from business or profession, the assessee may be eligible for depreciation. The assessee is certainly not entitled for depreciation, when the income was exempted on application or accumulation as provided under the scheme of the Act. The charitable institution under the scheme of Income-tax Act is on a different footing. The entire income of the assessee-trust from the property held under trust do not form part of total income under Section 11 of the Act provided the same is applied for charitable object. Section 11 of the Act also provides for accumulation of 15% of income for future application for the object of the trust. Therefore, the business and charitable institution are two different categories in the scheme of

Income-tax Act. This Tribunal is of the considered opinion that the customary way of computing income or the commercial principle of computing income cannot override the specific provision of Income-tax Act. The Income-tax Act does not provide for allowing depreciation other than the asset which was used for business or profession. There is no other provision in the Income-tax Act other than Section 32 of the Act for allowing depreciation. Therefore, the claim of the assessee that the depreciation has to be allowed on commercial principle or customary principle of computation of income is contrary to the specific provision, namely, Section 32 of the Act.

10. The next question arises for consideration is when there is a conflict between customary practice, commercial principle and provisions of Section 32, which one will prevail? The obvious answer to this question is the statutory provision, namely, Section 32 of the Act will prevail over the customary practice and commercial principle. Therefore, even on customary practice or commercial principle whereby the assessee claims depreciation while computing the income, Section 32 of the Act is a specific provision under Income-tax Act, which is contrary to commercial principle or customary practice. Therefore, this Tribunal is of the considered opinion that Section 32 will prevail over the customary practice or commercial principle. Hence, the assessee is not eligible for depreciation in respect of building, plant, machinery, etc. which are not used for the purpose of business or profession.

11. Even assuming for argument sake that the assessee was doing business, then the assessee is not eligible for exemption under Section 11 of the Act and as rightly submitted by the Ld. Departmental Representative, the registration under Section 12AA of the Act has to be cancelled under Section 12AA(3) of the Act. Moreover, the assessee will not be eligible for exemption under Section 11 of the Act if it is carrying on any business activity.

Therefore, this Tribunal is of the considered opinion that the assessee is not eligible for depreciation.

12. As rightly submitted by the Ld. Departmental Representative, in view of Section 11(4) & (4A) of the Act, if the property held under trust is a business undertaking, then the income of the business undertaking, which was so held as property held under trust, has to be computed by applying the provisions of Income-tax Act under Chapter IV. While computing income of the business undertaking, all expenditure, including depreciation, has to be allowed and the income of such business undertaking which was held under Trust has to be allowed as exemption under Section 11 on application and accumulation. In this case, as rightly submitted by the Ld. D.R., no business undertaking was held under trust as provided under Section 11(4) & (4A) of the Act. The assessee is claiming depreciation in respect of asset which was used as tool for carrying out charitable object of the institution. When the asset was used as tool for carrying out the object of the charitable institution, such activity cannot be construed as a business or profession of the assessee. Therefore, Section 32 of the Act is not applicable in this case."

6. In view of the above, the assessee is not eligible for depreciation when the cost of asset was allowed as application of income.

7. The next ground of appeal is with regard to income from leasing of medical equipments.

8. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee leased out some of the medical

equipments to another hospital. According to the Ld. counsel, the medical equipments purchased by the assessee were used for two to three years. Subsequently, whenever the equipments were not required for the assessee, instead of keeping idle, that were leased out to a hospital which is doing similar medical service to the society. According to the Ld. counsel, the lease amount received from the hospital was applied for charitable activity by the assessee. According to the Ld. counsel, the assessee is doing charitable activity, carrying on medical relief to the poor and needy. The machines leased out were acquired by the assessee for providing medical relief to the poor and needy. The equipments were not procured for the purpose of doing leasing business. According to the Ld. counsel, the idle machines were leased out and the income from lease was utilized for charitable activity. However, the Assessing Officer found that leasing of medical equipments would come under the activity of advancement of any other object of public utility, therefore, the assessee is not a charitable institution within the meaning of Section 2(15) of the Act.

9. The Ld.counsel for the assessee further submitted that the assessee is registered as charitable institution providing medical

relief to the poor. Merely because the medical equipments which are surplus or idle were leased out and the lease amount was utilised for charitable activity, it does not mean that the assessee was carrying on any commercial activity and it has to be classified as “advancement of any other object of public utility”. The assessee continues to be a charitable institution providing medical relief to the poor and needy. Therefore, according to the Ld. counsel, letting of medical equipments in the course of carrying on charitable activities has to be treated as charitable activity for the purpose of providing medical relief to the poor, hence, both the authorities below are not justified in denying exemption under Section 11 of the Act.

10. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that no doubt, the assessee was registered under Section 12AA of the Act as a charitable institution providing medical relief to the poor. However, according to the Ld. D.R., in the course of its activity, the assessee-trust leased out some machines to another hospital in which the assessee-trustee is a Director. The assessee could not explain before the Assessing Officer how the leasing of equipments is incidental to the object of the trust which provides medical relief to the poor. According to the

Ld. D.R., leasing of medical equipments of a trust to another hospital amounts to business activity, therefore, it has to be necessarily considered as advancement of any other object of public utility. Since the lease amount exceeded ₹25,000/- as provided under Section 2(15) of the Act, according to the Ld. D.R., the Assessing Officer found that the assessee is not eligible for exemption under Section 11 of the Act. Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that in respect of charitable activity namely providing medical relief to the poor, the assessee was granted exemption. What was disallowed by the Assessing Officer is in respect of lease amount which was taxed as business income. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the same.

11. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee-trust is admittedly registered as charitable institution under Section 12AA of the Act. The assessee-trust is providing medical relief to the poor. In order to carry out its object of providing medical relief to the poor, the assessee-trust procured certain medical equipments. After using the same for 2-3 years, the unused equipments, which

are kept idle, were leased out to another hospital in which the trustee is a Director. The question now arises for consideration is when the assessee-trust leased out the medical equipments, which were kept idle, and received lease rentals, whether the activity of the assessee would amount to advancement of object of general public utility? This Tribunal is of the considered opinion that when the assessee-trust instead of keeping medical equipments idle, leased out the same and utilised the lease amount for charitable activity, it cannot be said that the assessee was carrying on business activity. Therefore, it cannot be said that the activity of the assessee amounts to advancement of any other object of public utility.

12. The matter would stand differently in case the lease rental was not used for charitable activity in providing medical relief to the poor. In this case, the lease amount was again applied back for providing medical relief to the poor. Therefore, this Tribunal is of the considered opinion that leasing of medical equipments in the course of carrying on charitable activity is incidental to the main activity of providing medical relief to the poor. Hence, this Tribunal is unable to uphold the orders of the authorities below. Accordingly,

the orders of the authorities below are set aside and the Assessing Officer is directed to allow exemption under Section 11 of the Act of the income which is applied for charitable activity.

13. In the result, all the three appeals of the assessee are partly allowed.

Order pronounced on 27th October, 2017 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 27th October, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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