

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 518/CHNY/2019
निर्धारण वर्ष / Assessment Year: 2014-15

**M/s. Rama Naick Charitable
Trust,**
274, T.H. Road,
Washermanpet,
Chennai – 600 021.

The Income Tax Officer
v. **(Exemptions),**
Ward 2,
Chennai – 34.

PAN: AAATT 0484B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri A. Kanagaraj, CA
: Shri G. Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.07.2021

घोषणा की तारीख/Date of Pronouncement

: 23.07.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-17, Chennai, dated 29.01.2019 and pertains to assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:-

1. The CIT (Appeals) is not justified in confirming the assessed income of the trust at Rs.11,38,210 as assessed by the assessing officer which is against the facts and circumstances of the case.

2. The CIT (Appeals) is not justified in confirming the exclusion of depreciation of Rs. 9,98,190 from application of the trust.

3. The CIT (Appeals) has erred in holding that the assessee's trust is not entitled to claim depreciation if there is no business activity.

4. The CIT (Appeals) is not justified in ignoring the fact that in the assessee's own case for the Asst.Year 2013-14, the CIT (Appeals) -17 has allowed the depreciation claim of the assessee as per his order dated 14.09.17 in ITA .No.280/2015-16.

5. The CIT (Appeals) has failed to appreciate the fact that the application of income u/s 11 and depreciation claimed u/s 32 are two different issues in the case of charitable trust and cannot be treated as double deduction.

6. The CIT (Appeals) is not justified in ignoring the contention of the appellant that the trust should be allowed the adjustment of excess amount spent towards charitable purposes in the earlier years against current income to determine the funds available with the appellant trust for the purpose of section 11(1) of the act and confirming the decision of the assessing officer in not allowing the setting off of the excess application / unabsorbed depreciation of earlier years against the income determined in the current assessment year.

7. For these and other reasons that may be adduced at the time of hearing, it is prayed that Justice may be rendered to the appellant by deleting the additions made by the Assessing officer and allowing the set off of excess application in the earlier years.

3. The brief facts of the case are that the assessee M/s. Rama Naick Charitable Trust is a registered trust u/s.12AA of the Income Tax Act, 1961 (hereinafter the 'Act') as a public charitable trust, filed its return of income for the assessment year 2014-15 on 28.09.2014 admitting nil total income after claiming benefit of exemption u/s.11 of the Act. The case was taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has claimed depreciation on asset, the cost of which was claimed as application of income in earlier assessment years and hence, by following the decision of the ITAT, Chennai in assessee's own case for assessment year 2009-10 held that once acquisition of capital asset was considered as application of income in the year of acquisition, then depreciation on such asset tantamount to double deduction which is not permissible under the Act. Therefore, he opined that depreciation claimed by the assessee as application of income on the assets which was claimed as application of income in earlier year cannot be allowed. Hence, disallowed depreciation claim of Rs.9,89,891/- Similarly, the AO has disallowed carry forward of excess application of income for charitable purpose on the ground that

there is no provision under the Act, to carry forward and set off of excess expenditure in case of trusts, like carry forward and set off business loss in other cases. The assessee carried the matter in appeal before the first appellate authority, but could not succeed.

4. The CIT(A) for the reasons stated in his appellate order and also by following decision of the ITAT, Chennai in assessee's own case for assessment year 2009-10, confirmed additions made by the AO towards disallowance of depreciation on fixed assets and carry forward of excess application of income by holding that the assessee did not claim or did not bring any material on record to establish that it has carried out business in the relevant assessment year and further, there is no provision under the Act to carry forward and set off of excess application of income for charitable purpose in earlier years against income of the trust in subsequent years. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Id.AR for the assessee at the time of hearing submitted that the issue of disallowance of depreciation on fixed assets and carry forward of excess application of income to subsequent years and set off against income derived from property held under the trust is squarely covered in favour of the assessee by the decision of the Hon'ble High Court of Madras in the case of DIT v. Medical Trust of the Seventh Day Adventist, [2017] 84 Taxamnn.com 202, where it was held that provisions of section 11(6) of the Act inserted by the Finance Act, 2014 w.e.f. assessment year 2015-16 cannot be applied retrospectively prior to assessment year 2015-16. He further argued that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT v. Rajasthan and Gujarati Charitable Foundation, [2018] 402 ITR 441 (SC), where it was categorically held that income of an institution was to be computed on commercial principles after providing for allowances for normal depreciation and held that the trusts are entitled to depreciation u/s.32 of the Act, on assets whose cost has been allowed as application to charitable purpose u/s.11(1)(a) of the Act.

6. The Id.DR on the other hand fairly accepted that the issue is now squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court of Madras in the case of DIT vs. Medical Trust of the Seventh Day Adventist, *supra*, however, he strongly supported order of the Id.CIT(A).

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the issue of depreciation on asset, whose cost has been allowed as application of income to charitable purpose u/s.11(1)(a) of the Act, and carry forward of excess application of income to subsequent years and set off against income of the trust is decided against the assessee by the Tribunal in assessee's own case for assessment year 2009-10. But, fact remains that, while deciding the issue the Tribunal has failed to consider binding judgments of various High Courts including the decision of the Hon'ble Jurisdictional High Court of Madras in the case of DIT vs. Medical Trust of the Seventh Day Adventist, which renders the order of the Tribunal *per incuriam*. Therefore, we proceed to decide the issue without following the decision of the ITAT in assessee's own case,

because both issues are squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court of Madras and further supported by the decision of the Hon'ble Supreme Court in the case of CIT v. Rajasthan and Gujarati Charitable Foundation, *supra*. We further noted that Hon'ble Jurisdictional High Court in the case of DIT vs. Medical Trust of the Seventh Day Adventist, *supra*, has considered the provisions of section 11(6) inserted by the Finance Act (2) of 2014 w.e.f. AY 2015-16 and held that said amendment cannot be applied retrospectively to assessment years prior to AY 2015-16. The amendment inserted specifically w.e.f. AY 2015-16 seeks to disturb a vested right that has accrued to the assessee and the amendment does not purport to be clarificatory. We, further noted that in the said judgement, the Hon'ble High Court after considering the decision of the Hon'ble Supreme Court in the case of Escorts Limited and another vs. Union of India, 1999 ITR 43 held that depreciation on assets whose cost has been allowed as application of income to charitable purpose u/s.11(1)(a) of the Act, has to be allowed while computing income of the trust. The Hon'ble Supreme Court further held that the trust is entitled to carry forward

excess application of income for charitable purpose to subsequent years and set off against income of the trust. This proposition is further supported by the decision of Hon'ble Supreme Court in the case of CIT v. Rajasthan and Gujarati Charitable Foundation, *supra*, where the Hon'ble Supreme Court after considering the amendment in section 11(6) of the Act, by the Finance Act, 2014 held that the assessee is entitled to depreciation u/s. 32 of the Act on assets whose cost has been allowed as application to charitable purpose. The court further observed that once the assessee is allowed depreciation, it shall be entitled to carry forward depreciation as well. The Hon'ble Karnataka High Court in the case of Pr.CIT (Exemptions) vs. Shushrutha Educational Trust, [2018] 408 ITR 536, had considered an identical issue and by following the decision of the Hon'ble Supreme Court in the case of CIT v. Rajasthan and Gujarati Charitable Foundation held that charitable institutions are entitled to depreciation on assets whose cost has been allowed as application of income. The court further noted that excess application of income for charitable purpose can be carry forward to subsequent years

and further set-off against income of the trust in the subsequent years.

8. In this view of the matter and by respectfully following decision of the Hon'ble Supreme Court and High Courts, we are of the considered view that the AO as well as the Id.CIT(A) were erred in not allowing depreciation on assets and further carry forward of excess application of income to subsequent years. Hence, we set aside the order of the Id.CIT(A) and direct the AO to allow depreciation as claimed by the assessee and further direct him to allow carry forward of excess application of income to subsequent years and set off against income of the trust.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 23rd July, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd July, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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