

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

श्री ए.मोहन अलंकामणी, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

आयकर अपील सं. / **I.T.A. No. 2233/Mds/2014**

निर्धारण वर्ष / Assessment Year : 2010-11

Income Tax Officer,
Company Ward-I,
1st Floor, 63,
Race Course Road,
COIMBATORE-641 018

Vs

M/s.ARC Charities,
26E, Bharathi Colony,
Peelamedu,
COIMBATORE-641 004

[PAN: AABTA 1284 H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Revenue by : Shri P. Radhakrishnan, JCIT

Assessee by : Shri Saroj Kumar Parida, Advocate

सुनवाई की तारीख / Date of hearing : 03-12-2014

घोषणा की तारीख / Date of Pronouncement : 11-12-2014

आदेश / O R D E R

PER VIKAS AWASTHY, J.M:

The appeal has been filed by the Revenue against the order of the Commissioner of Income Tax(Appeals)-I, Coimbatore dated 02-06-2014 for the Assessment Year (AY) 2010-11. The only issue raised by the Revenue in appeal is claim of depreciation of the assessee, allowed by the CIT(Appeals).

2. The assessee is a trust registered u/s.12A of the Income Tax Act, 1961 (herein after referred to as 'the Act'). The assessee filed its

return of income for the AY. 2010-11 on 21-01-2011. In scrutiny assessment, the Assessing Officer held that the assessee is not eligible for claiming depreciation on assets. U/s.11 of the Act, capital expenditure incurred by the trust is allowable as deduction. Any further allowance by way of depreciation amounts to double deduction. The Assessing Officer further held that depreciation is not a cash expenditure, the amount of depreciation remains with the trust itself and hence not utilized for the charitable purposes of the trust. Accordingly, the claim of ₹19,53,434/- on account of depreciation was dis-allowed.

Aggrieved by the assessment order dated 31-12-2012, the assessee preferred an appeal before the CIT(Appeals). The CIT(Appeals) by following the decision of the Tribunal in the following cases:

- i. *M/s.Ramanandha Adiglar Foundation in ITA No.1790/Mds/2012 for the AY.2009-10 decided on 14-02-2013;*
- ii. *M/s.Ellen Charitable Trust in ITA No.1910/Mds/2013 decided on 13-02-2014;*
- iii. *M/s.Vidya Vikasini Society in ITA No.1935/Mds/2013 decided on 07-03-2014.*

allowed the claim of assessee. Now, the Revenue has come in appeal before the Tribunal impugning the order of CIT(Appeals).

3. Shri P.Radhakrishnan, representing the Department supported the assessment order and submitted that the depreciation cannot be considered as application/expenditure in case of trusts as no cash out flow is involved. The entire cost of fixed assets in case of trust is considered as application of funds. The claim of depreciation would amount to double deduction which is not permissible under the provisions of the Act. In order to support his submissions, the ld.DR placed reliance on the decision of the Hon'ble Supreme Court of India rendered in the case of *J.K. Synthetics Ltd., Vs. Union of India* reported as *199 ITR 43 (SC)*.

4. On the other hand, Shri Saroj Kumar Parida, appearing on behalf of the assessee vehemently supported the order of the CIT(Appeals). The ld.Counsel for the assessee submitted that identical issue had come up in *M/s.Ramanandha Adiglar Foundation* (supra) for the AY.2009-10 decided on 14-02-2013. The Tribunal placed reliance on the decision of co-ordinate bench in the case of *M/s. Grand Lakes Institute of Management in ITA Nos. 931 & 932/Mds/2012* decided on 22-06-2012, decision of the Hon'ble Delhi High Court in the case of *DIT Vs. Vishwa Jagriti Mission* reported as [2012] TIOL-271-HC-DEL and the judgment of Hon'ble Punjab & Haryana High Court in the case of *CIT Vs. Market Committee, Pipli* reported as *330 ITR 16 (P&H)* and decided the issue in favour of the assessee.

5. We have heard the submissions made by the Id.DR and have perused the orders of the authorities below. The Revenue has come in appeal impugning the findings of CIT(Appeals) in allowing the claim of depreciation of the assessee. It is an un-disputed fact that the issue in appeal has already been adjudicated in favour of the assessee by the co-ordinate bench of the Tribunal in the cases of :

- i. *M/s.Ramananda Adiglar Foundation* in ITA No.1790/Mds/2012 for the AY.2009-10 decided on 14-02-2013;
- ii. *M/s.Ellen Charitable Trust* in ITA No.1910/Mds/2013 decided on 13-02-2014;
- iii. *M/s.Vidya Vikasini Society* in ITA No.1935/Mds/2013 decided on 07-03-2014.

The Tribunal while allowing the claim of the assessee in case of *M/s.Ramananda Adiglar Foundation* (supra) has placed reliance on the decisions of Hon'ble Delhi High Court in the case of *DIT Vs. Vishwa Jagriti Mission* reported as [2012] TIOL-271-HC-DEL, the judgment of Hon'ble Punjab & Haryana High Court in the case of *CIT Vs. Market Committee, Pipli* reported as 330 ITR 16 (P&H) and the decision of the co-ordinate bench of the Tribunal in the case of *M/s. Grand Lakes Institute of Management* in ITA Nos. 931 & 932/Mds/2012 decided on 22-06-2012. In the aforesaid decision of co-ordinate bench, catena of judgments were referred and discussed

to conclude that in case of trusts registered u/s.12A, the claim of depreciation does not amount to double deduction.

The Hon'ble Punjab & Haryana High Court in the case of *CIT Vs. Market Committee, Pipli* (supra) has held that the income of the assessee being exempt, the assessee is only claiming that depreciation should be reduced from the income for determining the percentage of funds which have to be applied for the purpose of the trust. This does not amount to double deduction as contemplated by the Revenue.

In view of the settled position, we do not find any infirmity in the order of CIT(Appeals).

6. The Revenue in support of its stand has placed reliance on the decision of the Hon'ble Apex Court in the case of *J.K. Synthetics Ltd., Vs. Union of India* (supra). The Hon'ble Court in the said case was dealing with the expenditure u/s.35(2)(iv) on Scientific Research. The assessee had also claimed the benefit of Section 32(1)(ii). The Hon'ble Court in the facts and circumstances of that case held that it amounts to double deduction in respect of same expenditure which is not permissible under the provisions of the Income Tax Act. The facts in the present case are entirely different. Thus, the decision rendered in the case of *J.K. Synthetics Ltd., Vs. Union of India* (supra) by the Hon'ble Supreme Court of India is distinguishable.

The Hon'ble High Courts in various decisions have unambiguously held that in such cases, the claim of depreciation does

not amount to double deduction. The Tribunal has also been consistently following similar view.

We do not find any infirmity in the order of CIT(Appeals) and the same is upheld. The appeal of the Revenue is dismissed for the aforesaid reasons.

Order pronounced on Thursday, the 11th December, 2014 at Chennai.

Sd/-
(ए. मोहन अलंकामणी)
(A. MOHAN ALANKAMONY)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(विकास अवस्थी)
(VIKAS AWASTHY)
न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 11th December, 2014

TNMM

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 |