IN THE HIGH COURT OF DELHI

ITA No.140/2012

DIRECTOR OF INCOME TAX

Vs

VISHWA JAGRITI MISSION

Sanjiv Khanna and R V Easwar, JJ

Dated: March 29, 2012

JUDGEMENT

Per: R V Easwar:

The respondent-assessee is a society registered under the Societies Registration Act, 1860 vide order in Regn. No. S-24228 dated 10th May, 1993. For the purposes of assessment to income tax it is assessed in the status of “Association of persons”. It had filed an application in Form No.10A on 21st December, 2005 for grant of registration under Section 12A of the Income Tax Act, 1961 ('Act' for short). Registration was applied for from the date of incorporation of the society. The application was, however, rejected by the Director of Income Tax (Exemption), Delhi vide order passed on 22nd August, 2006 under Section 12AA(1)(b) of the Act. The registration was rejected not only for the past assessment years but also for the assessment year 2006-07 which is the year in question before us.

2. The assessee appealed to the Income Tax Appellate Tribunal ('Tribunal' for short) against the order refusing registration and the Tribunal vide its order dated 25th May, 2007 set aside the order of the refusal of registration and directed the DIT(E) to re-examine the assessee's claim. The DIT(E) again passed an order on 24th September, 2008 rejecting the claim for registration.

3. In the aforesaid factual background, the assessee's claim for exemption of its income under Section 11 of the Act was rejected by the Assessing Officer vide order passed by him under Section 143(3) of the Act on 29th December, 2008.

4. The question, however, arose as to how the taxable income of the assessee should be computed. The assessee had declared gross receipts of Rs.12,44,11,646/- on account of donations, profit on sale of land and bank interest. Against the gross receipts, the application of funds for charitable purposes was claimed on account of expenditure incurred towards the purposes of the trust.

5. In the course of the assessment proceedings, the Assessing Officer called upon the assessee to furnish the relevant details of expenses incurred for collecting the donations, bank interest etc. in response to which the assessee submitted that no specific expenses were incurred for the purpose. Taking note of the submission, the

Assessing Officer proceeded to compute the income of the assessee as it would be normally computed under the head 'profits and gains of business'. He then referred to the provisions of Section 37(1) under which any expenditure incurred wholly and exclusively for the purpose of the business was allowed as a deduction in computing the profits and gains of the business. Since the assessee itself had admitted vide its letter dated 26th November, 2008 that no specific expenses were incurred for earning the income, the Assessing Officer was not in a position to allow any deduction on account of the expenses. However, accepting the position that some expenditure would have necessarily been incurred for earning the income, the Assessing Officer estimated the same at Rs.1 lac per month and thus allowed an expenditure of Rs.12 lacs against the gross receipts of Rs.12,44,11,646/- and arrived at the net taxable income of Rs. 12,32,11,650/-.

6. The assessee appealed to the CIT(Appeals) questioning the refusal of the Assessing Officer to allow exemption under Section 11 of the Act in respect of the income. In the alternative, it was claimed that the expenses of Rs.12 lacs allowed as deduction by the Assessing Officer were insufficient to cover the actual expenses incurred by the assessee. It was, inter alia, claimed that in addition to the various expenses incurred for earning the receipts, the Assessing Officer ought to have allowed depreciation of Rs.36,53,818/- on fixed assets utilised for the charitable objects of the trust.

7. By the time the appeal came to be heard by the CIT(Appeals), it appears that the DIT(E), New Delhi had passed an order on 11th September, 2009 granting registration under Section 12AA with effect from the assessment year 1994-95. Relying upon the order, the assessee claimed before the CIT(Appeals) that its income should be allowed exemption under Section 11 of the Act and filed a working of its taxable income as under:-

“Total Receipts as per Income & Expenditure A/c	124,411,647
Less : Depreciation	3,653,818
	120,757,829
Less : 15% permitted Accumulation	18,113,674
Income to be applied	102,644,155
Less: Amounts spent/applied towards charitable	65,442,711
Add : Amount spent for acquisition of fixed	59,245,036
Total amount spent/applied during the year	124,687,747
Restricted to available surplus	102,644,155
Taxable income	NIL

On the basis of the above working, it was claimed that the entire income was exempt under Section 11. In particular it was pointed out that the claim of depreciation has to be allowed since the income of the trust should be computed on

the basis of commercial principles. In support of the claim, reliance was placed by the assessee on the following authorities:-

1) Commissioner of Income Tax v. Sheth Manilal Ranchhoddas Vishram Bhavan Trust (1992) 198 ITR 598 (Gujarat)

2) Commissioner of Income Tax v. Raipur Pallottine Society (1989) 180 ITR 579 (M.P.)

3) CIT vs. Society of the Sisters of St. Anne (1984) 146 ITR 28 (Kar.)

8. It was further pointed out that the claim of depreciation had been allowed by the Assessing Officer himself in the assessments for the assessment years 2003-04, 2004-05 and also for the assessment year 2007-08 for which year the assessment had been framed under Section 143(3).

9. The CIT(Appeals), on the basis of the order passed by the DIT(E) on 11th September, 2009, accepted the assessee's claim for exemption under Section 11 and directed the Assessing Officer accordingly. As regards the claim of depreciation on fixed assets utilised for charitable objects of the trust, he accepted the assessee's claim on the basis of the authorities cited before him as also on the strength of the following judgments of the Bombay High Court:-

1) Director of Income Tax (Exemption) vs. Framjee Cawasjee Institute (1993) 109 CTR 463.

2) CIT vs. Institute of Banking (2003) 264 ITR 110

The CIT(Appeals) also distinguished the judgment of the Supreme Court in *Escorts Limited Vs. Union of India (1993) 199 ITR 43* holding that depreciation under Section 32 of the Act can be denied only in cases where the provisions of Section 35(2)(iv) are applicable. He was of the view that there was never any dispute that in the case of a charitable trust, its income should be computed on commercial principles. There was no double deduction claimed by the assessee as can happen when a claim for deduction of capital expenditure is made under Section 35 and depreciation on the very same asset created by the expenditure is claimed under Section 32. In this view of the matter, he directed the Assessing Officer to allow the claim of depreciation.

10. The revenue preferred an appeal before the Tribunal and contended that the CIT(Appeals) was wrong in allowing the depreciation. The Tribunal referred to the fact that the decision of the CIT(Appeals) to allow the depreciation was based on several authorities including some orders of the Delhi Benches of the Tribunal and felt bound by those orders. Accordingly the decision of the CIT(Appeals) was confirmed and the appeal of the revenue was dismissed vide order dated 13th May, 2011.

11. The revenue is in appeal against the aforesaid order of the Tribunal. We are not inclined to admit the appeal and frame any substantial question of law since none

arises from the order of the Tribunal. There is no dispute that the assessee has been granted registration under Section 12AA vide order dated 11th September, 2009 and, therefore, it was entitled to exemption of its income under Section 11. The only question is whether the income of the assessee should be computed on commercial principles and in doing so whether depreciation on fixed assets utilised for the charitable purposes should be allowed. On this issue, there seems to be a consensus of judicial thinking as is seen from the authorities relied upon by the CIT(Appeals) as well as the Tribunal. In CIT vs. The Society of the Sisters of St. Anme (Supra), an identical question arose before the Karnataka High Court. There the society was running a school in Bangalore and was allowed exemption under Section 11. The question arose as to how the income available for application to charitable and religious purposes should be computed. Jagannatha Setty, J. speaking for the Division Bench of the Court held that income derived from property held under trust cannot be the "total income" as defined in Section 2(45) of the Act and that the word "income" is a wider term than the expression "profits and gains of business or profession". Reference was made to the nature of depreciation and it was pointed out that depreciation was nothing but decrease in the value of property through wear, deterioration or obsolescence. It was observed that depreciation, if not allowed as a necessary deduction for computing the income of charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. The circular No.5-P (LXX-6) of 1968, dated July 19,1968 was reproduced in the judgment in which the Board has taken the view that the income of the trust should be understood in its commercial sense. The circular is as under:-

"Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word 'income' should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purpose of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax u/s. 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent. Of the latter, if the trust is to get the full benefit of the exemption u/s. 11(1)."

12. A similar view was earlier expressed by the Andhra Pradesh High Court in *Commissioner of Income-tax. v. Nizam's Suppl. Religious Endowment Trust (1981) 127 ITR 378* and by the Madras High Court in *Commissioner Of Income-Tax vs Rao Bahadur Calavala Cunnan Chetty Charities (1982) 135 ITR 485.* The Madhya Pradesh High Court in CIT vs. Raipur Pallottine Society (supra) has held, following the judgment of the Karnataka High court cited above, that in computing the income of a charitable institution/trust, depreciation of assets owned by the trust/institution is a necessary deduction on commercial principles. The Gujarat High Court, after referring to the judgments of the Karnataka, Maharashtra and Madhya Pradesh High Courts cited above, also came to the same conclusion and held that the amount of depreciation debited to the accounts of the charitable institution has to be deducted to arrive at the income available for application to charitable and religious purposes.

13. The judgment of the Supreme Court in Escorts Limited Vs. Union of India (supra) has been rightly held to be inapplicable to the present case. There are two reasons as to why the judgment cannot be applied to the present case. Firstly, the Supreme Court was not concerned with the case of a charitable trust/institution involving the question as to whether its income should be computed on commercial principles in order to determine the amount of income available for application to charitable purposes. It was a case where the assessee was carrying on business and the statutory computation provisions of Chapter IV-D of the Act were applicable. In the present case, we are not concerned with the applicability of these provisions. We are concerned only with the concept of commercial income as understood from the accounting point of view. Even under normal commercial accounting principles, there is authority for the proposition that depreciation is a necessary charge in computing the net income. Secondly, the Supreme Court was concerned with the case where the assessee had claimed deduction of the cost of the asset under Section 35(1) of the Act, which allowed deduction for capital expenditure incurred on scientific research. The question was whether after claiming deduction in respect of the cost of the asset under Section 35(1), can the assessee again claim deduction on account of depreciation in respect of the same asset. The Supreme Court ruled that, under general principles of taxation, double deduction in regard to the same business outgoing is not intended unless clearly expressed. The present case is not one of this type, as rightly distinguished by the CIT(Appeals).

14. Having regard to the consensus of judicial opinion on the precise question that has arisen in the present appeal, we are not inclined to admit the appeal and frame any substantial question of law. There does not appear to be any contrary view plausible on the question raised before us and at any rate no judgment taking a contrary view has been brought to our notice. In the circumstances, we decline to admit the present appeal and dismiss the same with no order as to costs.