

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

I.T.A. No.93 of 2010
Date of decision: 28.7.2010

Commissioner of Income Tax.

-----Appellant.

Vs.

M/s Tiny Tots Education Society.

-----Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present:- Ms. Urvashi Dhugga, Standing counsel
for the Revenue.

Mr. Ravi Shankar, Advocate
for assessee.

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, "the Act") against order dated 2.6.2009 of the Income Tax Appellate Tribunal, New Delhi in I.T.A. No.3182/Del/2008 for the assessment year 2006-07, proposing to raise following substantial question of law:-

“Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the Ld. CIT(A) in directing the Assessing Officer in allowing depreciation of Rs.15,21,994/- even though the deduction u/s 11 was already allowed in respect of the same asset, which amounts to double

deduction and is in contravention of Hon'ble Supreme Court's decision in the case of Escorts Limited and Another vs. Union of India and others 199 ITR 43."

2. The Assessee is registered under Section 12 AA of the Act as a charitable institution. In its accounts, the Assessee calculated depreciation for the purpose of showing the amount utilized. The Assessing Officer disallowed the depreciation on the ground that the Assessee being exempt, claim for depreciation will amount to taking of double benefit. However, the CIT(A) accepted the appeal of the Assessee. It was held that deduction for computing income to preserve corpus of the trust was permissible and did not amount to double benefit. This view has been upheld by the Tribunal with the following observations:-

"3. We have given careful thought to the submissions made before us. As already noted, assessee is a charitable institution and its income has been taken to be fully exempt. Assessment has been made at nil income. In our view, the assessee has not claimed any double deduction. The provision relating to compulsory application of income is altogether a different concept and would come into play only after the income is determined. Application of income is not computation of income of the charitable institution. Therefore, the question whether depreciation is to be allowed or not has nothing to do with the application of income. Income is always to be computed on commercial principles and as per

system of accounting followed by the assessee, subject always to the statutory provisions.”

3. We have heard learned counsel for the Revenue and perused the record.

4. Learned counsel for the Revenue submits that in view of judgment of the Hon'ble Supreme Court in **Escorts Ltd. and another v. Union of India and others** [1993] 199 ITR 43, the Assessee could not claim deduction when its income was exempt, as it will amount to getting double benefit.

5. We are unable to accept the submission.

6. The matter was discussed in our recent judgment dated 5.7.2010 in I.T.A. No.535 of 2009 **The Commissioner of Income Tax, Karnal. v. Market Committee, Pipli**. After referring to judgments in **CIT v. Seth Manilal Ranchhoddas Vishram Bhawan Trust** [1992] 198 ITR 598 (Guj) and **CIT v. Institute of Banking Personal Selection (IBPS)** (2003) 131 TAXMAN 386 (Bom), **CIT v. Rao Bahadur Calavala Cunnan Chetty Charities** [1982] 135 ITR 485 (Mad), **CIT v. Society of the Sisters of St. Anne** [1984] 146 ITR 28 (Kar) and **CIT v. Raipur Pallottine Society** [1989] 180 ITR 579 (M.P.), the judgment of the Hon'ble Supreme Court in **Escorts Ltd.** (*supra*), was held not to be applicable to the situation where depreciation was claimed by a charitable institution in determining percentage of funds applied for the purposes of charitable objects. It was observed:-

“9. In the present case, the assessee is not claiming double deduction on account of depreciation as has been suggested by learned counsel for the Revenue. 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 purposes of the trust. There is no double deduction claimed by the assessee as canvassed by the Revenue. Judgment of the Hon’ble Supreme Court in ***Escorts Ltd. and another*** (*supra*) is distinguishable for the above reasons. It cannot be held that double benefit is given in allowing claim for depreciation for computing income for purposes of Section 11. The questions proposed have, thus, to be answered against the revenue and in favour of the assessee.”

7. In view of above, we are unable to hold that the questions proposed by the Revenue are substantial questions of law.

8. Accordingly, the appeal is dismissed.

**(ADARSH KUMAR GOEL)
JUDGE**

**July 28, 2010
ashwani**

**(AJAY KUMAR MITTAL)
JUDGE**