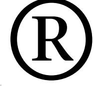
IN THE HIGH COURT OF KARNATAKA AT BENGALURU 

DATED THIS THE 22ND DAY OF FEBRUARY, 2016

PRESENT

THE HON'BLE MR. JUSTICE N.K. PATIL

AND

THE HON'BLE MRS.JUSTICE S. SUJATHA

ITA No. 62/2010
C/w.
ITA Nos.233-234/2013,1/2013,431/2013,
430/2013,414/2010,56/2013,108/2014

IN ITA No.62/2010:

BETWEEN

1. The Director of Income-tax
   Exemptions,
   C R Building
   Queens Road
   Bangalore.

2. The Deputy Director of Income-tax
   Circle-17(1)
   Exemptions, C R Buildings
   Queens Road, Bangalore. ...Appellants

(By Sri.K.V.Aravind, Advocate)

AND

Al-Ameen Charitable Fund Trust
No.3, Miller Tank Bund Road
Off Cunningham Road
Bangalore. ...Respondent

Not An Official Copy

(By Sri. A. Shankar, for
S.Sukumar and Gurumurthy, Advocates)

This Appeal is filed under Section 260-A of Income tax Act, 1961, to set aside the order passed by the ITAT, Bangalore in ITA No.404/Bang/2009 dated 21.08.2009 and confirm the order passed by the Deputy Director of Income tax (Exmp), Circle-17(1), Bangalore in the interest of justice and equity.

IN ITA Nos. 233-234/2013:

BETWEEN

1. The Commissioner of Income-tax
   No.55/1, Shilpashree
   Vidyaranyapura Complex
   Vishveswara Nagar
   Mysore-570 008.

2. Assistant Commissioner
   of Income-tax
   Circle-1(1), Mysore ...Appellants

(By Sri. E.I.Sanmathi, Advocate)

AND

Sri. Adichunchungiri
Mahasamsthana Math
Adichunchungiri Ksshetra
Nagamangala Taluk
Manndya District. ...Respondent

(By Sri. A. Shankar & M.Lava, Advocates)

This Appeal is filed under Section-260-A of Income tax Act 1961, to set aside the order passed by the ITAT, 'C' Bench Bangalore in ITA No.775/Bang/2011 dated 03.08.2012, as sought for in the respondent-assessee's case.

IN ITA No. 1/2013:

BETWEEN

1. The Commissioner of Income-tax
   Mysore.

2. Assistant Commissioner
   of Income-tax
   Circle-1(1), Mysore. ...Appellants

(By Sri.E.I.Sanmathi, Advocate)

AND

Sri. Adichunchanagiri
Shikshana Trust
Adichunchanagiri Kshethra
Nagamangala Taluk
Mandya District. ...Respondent

(By Sri. A. Shankar & M. Lava, Advocates)

This Appeal is filed under Section 260-A of Income tax Act 1961, to set aside the appellate order dated 03.08.2012 passed by the ITAT, 'C' Bench Bangalore as sought for in the respondent-assessee's case, in appeal proceedings ITA No.774/Bang/2011.

IN ITA No. 431/2013:

BETWEEN

1. The Director of Income-tax
   Exemptions, C.R. Buildings
   Queens Road, Bangalore.

2. Additional Director of Income-tax
   (Exemption), C.R. Buildings
   Queens Road, Bangalore. ...Appellants

Not A Official Copy

(By Sri.K.V.Aravind, Advocate)

AND

M/s. Gokula Education Foundation
M S Ramaiah Nagar
MSRIT Post
Bangalore-560 054. ...Respondent

(By Sri. A. Shankar & M.Lava, Advocates)

This Appeal is filed under Section 260-A of Income tax Act 1961, to set aside the order passed by the ITAT, Bangalore in ITA No.600/Bang/2012 dated 05.04.2013 and confirm the order of the Appellate Commissioner confirming the order passed by the Director of Income tax (Exemption), Bangalore.

IN ITA No. 430/2013:

BETWEEN

1. The Director of Income-tax
   Exemptions, C.R. Buildings
   Queens Road, Bangalore.

2. The Director of Income-tax
   (Exemption), C.R. Buildings
   Queens Road, Bangalore. ...Appellants

(By Sri.K.V.Aravind, Advocate)

AND

M/s. Gokula Education Foundation (Medical)
M S Ramaiah Nagar
MSRIT Post
Bangalore-560 054. ...Respondent

(By Sri. A. Shankar & M.Lava, Advocates)

Not A Certified Copy

This Appeal is filed under Section 260-A of Income tax Act 1961, to set aside the order passed by the ITAT, Bangalore in ITA No.601/Bang/2012 dated 05.04.2013 and confirm the order of the Appellate Commissioner confirming the order passed by the Director of Income Tax (Exemption) Bangalore.

IN ITA No. 414/2010:

BETWEEN

The Director of Income-tax
Exemptions, C.R. Buildings
Queens Road, Bangalore ...Appellant

(By Sri. K.V.Aravind, Advocate)

AND

International Institute of
Information Technology
No.26/C, Electronic City
Hosur Road
Bangalore-560 100. ...Respondent

(By Sri. S.Parthasarathy, Advocate for C/R)

This Appeal is filed under Section 260-A of Income tax Act 1961, to set aside the order passed by the ITAT, Bangalore in ITA No.889/Bang/2009 dated 30.06.2010 confirming the order passed by the Income tax Officer, Exemption-1, Bangalore, in the interest of justice and equity.

IN ITA No. 56/2013:

BETWEEN

1. The Commissioner of Income-tax
   Exemption, C.R. Buildings
   Queens Road, Bangalore.

Not A Certified Copy

2. The Director of Income-tax [Exemption],
C.R. Buildings, Queens Road,
Bangalore. ...Appellants

(By Sri.K.V.Aravind, Advocate)

AND

M/s. Karnataka Reddy Janasangha
No.73, Reddy Building
J C Road
Bangalore - 2. ...Respondent

(By Sri. S.Parthasarathy, Advocate)

This Appeal is filed under Section 260-A of Income tax Act 1961, to set aside the order passed by the ITAT, Bangalore in ITA No.220/Bang/2011 dated 07.09.2012 and confirm the order of the Appellate commissioner confirming the order passed by the Director of Income tax (Exemptions) Central Revenue Building, Bangalore, in the interest of justice and equity.

IN ITA No. 108/2014:

BETWEEN

The Director of Income-tax[Exemptions],
C.R. Buildings, Queens Road,
Bangalore. ...Appellant

(By Sri.E. I.Sanmathi, Advocate)

AND
Karnataka State Muslim
Federation
No.22/1, Arabic College Post
Nagawara
Bangalore-560 045. ...Respondent

(By Sri. S.Parthasarathy, Advocate)

This Appeal is filed under Section 260-A of Income tax Act 1961, to set aside the appellate order dated 09.10.2013 passed by the Income tax Appellate Tribunal, 'A' Bench, Bangalore as sought for, in the respondent-assessee's case, in appeal proceedings ITA No.37/Bang/2013 for Assessment year 2009-10.

These Appeals coming on for Hearing having been heard and reserved for Judgment on 9th February 2016, coming on for pronouncement of Judgment this day, **S. Sujatha J.,** delivered the following:

JUDGMENT

These appeals are filed by the revenue under Section 260-A of the Income Tax Act, 1961('the Act' for short) challenging the orders passed by the Income Tax Appellate Tribunal, Bangalore Bench.

2. Since, common question of law is raised in all these appeals, the matters are heard together and disposed of by this common Judgment.

3. The assessees in all these appeals are the charitable institutions registered under Section 12AA and 10(23)(c) of the Act. The question herein revolves around Section 11 of the Act. For the purpose of narrating the facts, we are considering ITA

Not Authenticated

No.62/2010. The assessments for the assessment year 2005-06 were concluded under Section 144 of the Act denying exemption under Section 10(23) of the Act. The addition of income was made on account of disallowance of depreciation by the Assessing Officer.

4. Being aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Bangalore. The CIT(A) after calling for the remand report from the Assessing Officer, allowed the appeal on merits and deleted all the additions made by the Assessing Officer.

5. Aggrieved by the same, revenue preferred appeal before the Tribunal. The Tribunal after hearing the parties, dismissed the appeal of the revenue.

6. Being aggrieved by the said order of the Tribunal, the revenue is in appeal.

7. Similarly, in ITA Nos.233-234/2013, ITA No.1/2013, ITA No.433/2013, ITA No.414/2010, on the assessment orders denying exemption under Section 11 read with Section 10(23c) of the Act and making an addition of income on account of disallowance of depreciation, the assessee preferred appeals which were allowed in favour of the assessee. Revenue challenged the said orders of the CIT(Appeals) before the Tribunal unsuccessfully. The orders passed by the Tribunal are challenged in these appeals.

8. ITA No.431/2013, ITA Nos.56/2013 and 108/2014 are filed by the revenue challenging the orders passed by the Tribunal whereby, the orders passed by Revisional Authority under Section 263 of the Act are set-aside, restoring the assessment order, thus, allowing the depreciation under Section 11 of the Act as claimed by the assessee.

9. In all these appeals, the common substantial question of law that arises for our consideration is as under:

> *"Whether the Tribunal is correct in holding that depreciation is allowable under Section 11 of the Act, and there is no double claim of capital expenditure as held by the Assessing Officer and the principles enunciated by the Apex Court in escorts Ltd., 199 ITR 43 was not applicable and the principles enunciated by this Hon'ble Court in Society of Sisters St.Ann's 146 ITR 18 was applicable?"*

10. Heard the learned counsel appearing for the parties and perused the material on record.

11. Learned counsel Sri. K.V. Aravind appearing for the revenue would contend that the depreciation is not allowable as deduction in computing the total income of a charitable trust under Section 11 of the Act, as the amount spent on the capital asset is already allowed as application of income in the year of such acquisition. Claim of deduction by way of depreciation on the same capital asset in the subsequent years results in allowing

double deduction contrary to the scheme of the Act. It is further contended that depreciation has to be computed in terms of Section 32 of the Act. He also places reliance on Section 37 of the Act to point out that any expenditure not being expenditure of the nature described in Sections 30 to 36, not being in the nature of capital expenditure or personal expenses of the assessee expended wholly and exclusively for the purposes of business or profession shall be allowed in computing the income chargeable under the head 'Profit and gains of business or profession'. Applying the same analogy if, application of income is allowed under Section 11 of the Act, no depreciation can be allowed under Section 32 of the Act. Reliance is placed on Section 11(6) of the Act inserted by the Finance Act No.2, Act 14 with effect from 01.04.2015 to contend that the said amendment applies retrospectively being clarificatory in nature. Learned counsel for the revenue placed reliance on the following Judgments:

(1) [A] COMMISSIONER OF INCOME TAX vs. SOCIETY OF THE SISTERS OF ST.ANNE ((1984) CTR 9)

(2) LISSIE MEDICAL INSTITUTIONS vs. COMMISSIONER OF INCOME TAX ((2012) 348 ITR 0344)

(3) ESCORTS LTD. vs. UNION OF INDIA ((1993) SC ITR Vol. 199)

12. On the other hand, learned counsel appearing for the assessee Sri.A.Shankar would contend that Chapter – III of the Act and Chapter – IV of the Act play in different fields. Sections 11 to 13(B) covered under Chapter – III of the Act, governs the manner of computation of total income and exemption by Charitable Trusts. Sections 14 to 59 governed by Chapter – IV of the Act deals with the income under the five heads of income enumerated under Section 14. The exemption entitlement under Section 11 of the Act is based on application of income and 'permissible accumulations' and the 'balance of income', if any, is treated as income which is not applied for objects of the Trust and is brought to tax under Chapter III of the Act. Chapter – IV in

no way is applicable to Section 11, the claim of depreciation is not under Section 32 of the Act but under normal commercial principles as laid down by the Courts. It is further contended that allowing exemption on the application of income on the capital asset acquired during the relevant year and further, allowing depreciation in the subsequent years, at any stretch of imagination, could not be construed as double deduction.

13. Mr.Parthasarthy, learned counsel appearing for the assessee in some of the appeals adopts the arguments advanced by Mr. A.Shankar.

14 Learned counsel appearing for the assessee has placed reliance on the following Judgments:

[1] COMMISSIONER OF INCOME-TAX vs. VATIKA TOWNSHIP P.LTD., [(2014) 367 ITR 466 (SC)]

[2] COMMISSIONER OF INCOME-TAX vs. INSTITUTE OF BANKING [(2003) 264 ITR 110]

[3] COMMISSIONER OF INCOME-TAX, TAMIL NADU-I vs. RAO BAHADUR CALAVALA CUNNAN CHETTY CHARITIES [1982) ITR 485 (MAD)]

[4] COMMISSIONER OF INCOME-TAX vs. MARKET COMMITTEE PIPLI [(2011) 238 CTR (P&H) 103

[5] COMMISSIONER OF INCOME-TAX vs. SOCIETY OF THE SISTERS OF ST. ANNE [(1984) 39 CTR (KAR) 9]

[6] DIRECTOR OF INCOME TAX [EXEMPTION] Vs. COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH in ITA No.331/2013 DD 27.11.2013

15. The question involved in this case is no more *res integra.* This question was considered by this Court as far back as in the year 1984, in the case of ***Society of the Sister's of St.Anne*** (supra) wherein the Division Bench of this Court has held thus:

> *"9. It is clear from the above provisions that the income derived from property held under trust cannot be the total income because s. 11(1) says that the former shall not be included in the latter, of the person in receipt of the income. The expression "total income" has been defined under s. 2(45) of the Act to mean "the total amount of income referred to in s. 5 computed in the manner laid down in this Act". The word "income" is defined under s. 2(24) of the Act to include profits and gains, dividends, voluntary payment received by trust, etc. It may be noted that profits and gains are generally used in terms of business or profession as provided*

u/s. 28. The word "income", therefore, is a much wider term than the expression "profits and gains of business or profession". Net receipt after deducting all the necessary expenditure of the trust (sic).

10. There is a broad agreement on this proposition. But still the contention for the Revenue is that the depreciation allowance being a notional income (expenditure ?) cannot be allowed to be debited to the expenditure account of the trust. This contention appears to proceed on the assumption that the expenditure should necessarily involve actual delivery of or parting with the money. It seems to us that it need not necessarily be so. The expenditure should be understood as necessary outgoings. The depreciation is nothing but decrease in value of property through wear, deterioration or obsolescence and allowance is made for this purpose in book keeping, accountancy, etc. In Spicer & Pegler's Book-keeping and Accounts, 17th Edn., pp. 44, 45 & 46, it has been noted as follows :

"Depreciation is the exhaustion of the effective life of a fixed asset owing to 'use' or obsolescence. It may be computed as that part of the cost of the asset which will not be recovered when the asset is finally put out of use. The object of providing for depreciation is to spread the expenditure, incurred in acquiring the asset, over its effective lifetime; the amount of the provision, made in respect of an accounting period, is intended to represent the

proportion of such expenditure, which has expired during that period."

16. Similar view is taken by the other High Courts viz., Gujarat, Punjab and Haryana, Delhi, Madras, Calcutta and Madhya Pradesh in the following judgments.

[1] COMMISSIONER OF INCOME-TAX, vs FRAMJEE CAWASJEE INSTITUTE, 109 CTR 463 [GUJ];

[2] COMMISSIONER OF INCOME-TAX, vs RAIPUR PALLOTTINE SOCIETY,. 180 ITR 571 [MP]

[3] COMMISSIONER OF INCOME-TAX, vs SETH MANILAL RANCHODDAS VISHRAM BHAVAN TRUST 198 ITR 598 [GUJ];

[4] COMMISSIONER OF INCOME-TAX, vs BHORUKA PUBLIC WELFARE TRUST [1999] 240 ITR 513 [CAL];

[5] COMMISSIONER OF INCOME-TAX, vs RAO BAHADUR CALAVALA CUNNAN CHETTY CHARITIES 135 ITR 485 (MAD)]

[6] COMMISSIONER OF INCOME-TAX vs. MARKET COMMITTEE PIPLI [(2011) 238 CTR (P&H) 103

Allowing depreciation in subsequent years, on the capital asset, which has already availed the benefit of deduction in computing the income of the trust in the year of its acquisition is considered by the Punjab

and Haryana High Court in the case of ***Market Committee, Pipli*** (supra) and held thus:

> *"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., & Anr. (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.*

17. High Court of Bombay in the case of ***Institute of Banking*** (supra) after placing reliance on the Judgment of ***CIT vs Muniswarat Jain (1994 TLR 1084)*** on an identical issue, held:-

> *"In that matter also, a similar argument, as in the present case, was advanced on behalf of the revenue, namely, that depreciation can be allowed as deduction only under section 32 of the Income Tax Act and not under general*

> *principles. The court rejected this argument. It was held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income Tax Act. The court rejected the argument on behalf of the revenue that section 32 of the Income Tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income Tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. In view of the aforestated Judgment of the Bombay High Court, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the department."*

18. The Judgment in ***Escorts Limited*** (supra) was rendered by the Apex Court in the context of Section 10(2)(vi) and Section 10(2)(xiv) of the 1922 Act or under Section 32(1)(ii) and Section 35(2)(iv) of

the 1965 Act. It was the case of the assessee claiming a specified percentage of the written down value of the asset as depreciation besides claiming deduction in 5 consecutive years of the expenditure incurred on the acquisition of the capital asset used for scientific research. In such circumstances, the Apex Court held thus:

> *"There is an apparent plausibility about these arguments, particularly in the context of the alleged departure in the language used by S.10(2)(xiv) from that employed in S.20 of the U.K. Finance Act, 1944. We may, however, point out that the last few underlined words of the English statute show that there is really no difference between the English and Indian Acts; the former also in terms prohibits depreciation only so long as the assets are used for scientific research. In our opinion, the other provisions of the Act to which reference has been made - some of which were inserted after the present controversy started - are not helpful and we have to construe the real scope of the provisions with which we are concerned. We think that all misconception will vanish and all the provisions will fall into place, if we hear in mind a fundamental, through unwritten, axiom that no legislature could have at all intended a double deduction in regard to the same business outgoing, and if it is intended it will be clearly expressed. In other words, in the absence of*

clear statutory indication to the contrary, the statute should not be read so as to permit an assessee two deductions both under S.10(2)(vi) and S.10(2)(xiv) under the 1922 Act or under S.32(1)(ii) and 35(2)(iv) of the 1922 Act - qua the same expenditure. Is then the use of the words "in respect of the same previous year" in clause (d) of the proviso to S.10(2) (xiv) of the 1922 Act and S. 35(2) (iv) of the 1961 Act contra-indication which permits a disallowance of depreciation only in the previous years in which the other allowance is actually allowed. We think the answer is an emphatic `no' and that the purpose of the words above referred to is totally different. If, as contended for by the assessees, there can be no objection in principle to allowances being made under both the provisions as their nature and purpose are different, then the interdict disallowing a double deduction will be meaningless even in respect of the previous years for which deduction is allowed under S.10(2) (xiv) /S.35 in respect of the same asset. If that were the correct principle, The assessee should logically be entitled to deduction by way of depreciation for allprevious years including those for which allowance have been granted under the provision relating to scientific research. The statute does not permit this. The restriction imposed would, therefore, be illogical and unjustified on the basis suggested by the assessees. On the other hand, if we accept the principle we have outlined earlier viz. that, there is a basic legislative scheme, unspoken but clearly underlying the Act, that two allowances cannot be, and are not intended to be, granted in

> *respect of the same asset or expenditure, one will easily see the necessity for the limitation imposed by the quoted words. For, in this view, where the capital asset is one of the nature specified, the assessee can get only one of the two allowances in question but not both."*

19. Section 11 of the Act deals with application of income different from revenue expenditure or allowance. Thus, the Judgment of the Apex Court in the case of ***Escorts Ltd.,*** [supra] is distinguishable and as such is not applicable to the Charitable Trusts where income is to be computed under Chapter III of the Act. Accordingly, the judgment of ***Lissie Medical Institutions*** [supra] based on ***Escorts Ltd.,*** [supra], is not applicable to the facts of the present case.

20. It is also to be noticed that while in the year of acquiring the capital asset, what is allowed as exemption is the income out of which such acquisition of asset is made and when depreciation deduction is allowed in the subsequent years, it is for the losses or expenses representing the wear and tear

of such capital asset incurred if, not allowed then there is no way to preserve the corpus of the Trust for deriving its income as held in ***Society of Sisters of St.Anne*** [supra]. This judgment of co-ordinate Bench of this Court is binding on us and we have no reasons to disturb the settled position of law at this length of time/depart from the said reasoning. As such, the arguments advanced by the Revenue apprehending double deduction is totally misconceived.

21. Section 11[6] inserted with effect from 1.4.2015 by Finance Act No.2/2014, reads as under:

> *"(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year."*

22. The plain language of the amendment establishes the intent of the legislature in denying the

depreciation deduction in computing the income of Charitable Trust is to be effective from 1.4.2015. This view is further supported by the Notes on Clauses in Finance [No.2} Bill, 2014, memo explaining provisions and circulars issued by the Central Board of Direct Taxes in this regard. Clause No.7 of the Notes on Clauses reads thus:

> *"Clause 7. of the Bill seeks to amend section 11 of the Income-tax Act relating Income from property held for charitable or religious purposes. The existing provisions of the aforesaid section contain a primary condition that for grant of exemption in respect of income derived from property held under trust, such income should be applied for the charitable purposes in India, and where such income cannot be so applied during the previous year, it has to be accumulated in the prescribed modes. It is proposed to insert sub-sections (6) and (7) in the said section so as to provide that-*
>
> *(i) where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without, any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in any previous year, and*

Not Approved

(ii) where a trust or an institution has been granted registration under clause (b) of sub-section (1) of section 12AA or has obtained registration at any time under section 12A [as it stood before is amendment by the Finance (No.2) Act, 1996] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause(1) and clause (23C) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years".

The Memo explaining the provisions in Finance [No.2] Bill, 2014 reads thus:

" The second issue which has arisen is that the existing scheme of section 11 as well as section 10(23C) provides exemption in respect of income when it is applied to acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. is claimed and such amount of notional deduction remains to be applied for charitable purpose. Therefore, double benefit is claimed by the trusts and institutions under the existing law. The provisions need to be rationalized to ensure that double benefit is not claimed and such notional

amount does not excluded from the condition of application of income for charitable purpose".

23. Paragraphs 7.5, 7.5.1, 7.6 of Central Board of Direct Taxes Circular reported in ***371 ITR 22*** makes it clear that the said amendment shall take effect from 1.4.2015 and will accordingly apply in relation to the assessment year 2015-16 and subsequent assessment years.

24. The Constitution Bench of the Apex Court in ***Vatika Township [P] Ltd.,'s*** case [supra], had laid down general principles concerning retrospectivity in Paragraphs 33 and 34, and the same is extracted hereunder:

> *"33. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural*

Not An Official Copy

provisions as retrospective. In Government of India & Ors. v. Indian Tobacco Association, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra & Ors. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.

34. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors".

25. The Apex Court in the said judgment, while interpreting the proviso, whether to be applied retrospectively or prospectively, has considered the Notes on Clauses appended, the Finance Bill and the understanding of the Central Board of Direct Taxes in this regard. The Apex Court has also taken cognizance of the fact that the legislature is fully aware of 3 concepts in so far as amendments made to a statute:

> *(i) prospective amendments with effect from a fixed date;*
>
> *(ii) retrospective amendments with effect from a fixed anterior date; and*
>
> *(iii) clarificatory amendments which are prospective in nature.*

Keeping in view, the aforesaid principles enunciated by the Apex Court, in ***Vatika Township [P] Ltd.,'s*** case [supra], it would be safely held that Section 11[6] of the Act is prospective in nature and operates with effect from 01.04.2015. This is further clarified when compared with certain other provisions which have been made retrospectively in the same Finance Act.

26. For the foregoing reasons, we answer the question of law in favour of the Assessee and against the Revenue.

27. In the result, all the appeals are dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

Brn, AN/-

Not An Official Copy