

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 19TH DAY OF JUNE 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

I.T.A. No.239/2011 C/w.

I.T.A. No.107/2017

IN I.T.A.No.239/2011:

BETWEEN :

1. THE COMMISSIONER OF INCOME-TAX
PARK VIEW BUILDING, 4TH MAIN,
P.J EXTENSION, DAVANAGERE
2. THE ASSISTANT COMMISSIONER
OF INCOME TAX, CIRCLE-1,
SHIMOGA

...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s AGRICULTURAL PRODUCE
MARKET COMMITTEE
APMC YARD, SAGAR ROAD,
SHIMOGA

...RESPONDENT

(BY SMT.SHEETAL BORKAR, ADV. FOR SRI S.PARTHASARATHI,
ADV.)

THIS ITA FILED UNDER SECTION 260-A OF I.T ACT, 1961 ARISING OUT OF ORDER DATED 08.03.2011 PASSED IN ITA NO.652/BANG/2010, FOR THE ASSESSMENT YEAR 2005-2006, PRAYING TO (I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, (II) ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA NO.652/BANG/2010 DATED 08.03.2011 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-1, SHIMOGA, IN THE INTEREST OF JUSTICE AND EQUITY.

IN I.T.A.No.107/2017:

BETWEEN :

1. THE Pr. COMMISSIONER OF
INCOME TAX, CIT (A)
2ND FLOOR, SHREE TOWERS,
NO.565/A, A1,
OPPOSITE TO DRR HOSTEL,
HADADI ROAD, DAVANGERE-577004
2. THE DEPUTY COMMISSIONER
OF INCOME TAX CIRCLE 1
2ND FLOOR, SHREE TOWERS,
NO.70, 100 FEET ROAD,
GOPALAGOWDA EXTENSION,
SHIVAMOGGA-577201

...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s AGRICULTURAL PRODUCE
MARKET COMMITTEE
APMC YARD, SAGAR ROAD,
SHIMOGA

...RESPONDENT

(BY SMT.SHEETAL BORKAR, ADV. FOR SRI S.PARTHASARATHI,
ADV.)

THIS INCOME TAX APPEAL UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED: 31.08.2016 PASSED IN ITA NO. 1268/BANG/2016, FOR THE ASSESSMENT YEAR 2005-2006, PRAYING TO (I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. (II) ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.1268/BANG/2016 DATED 31.08.2016 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-1, SHIVAMOGGA. (III) TO PASS SUCH OTHER SUITABLE ORDERS AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS COMING ON FOR ORDERS, THIS DAY, **Dr. VINEET KOTHARI, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Mr. K.V.Aravind, Adv. for Appellants - Revenue
Mrs. Sheetal Borkar, Adv. for Respondents - Assessee

Both these Appeals have been filed by the Revenue in this Court under Section 260-A of the Income Tax Act, 1961 ['Act' for short] for the Assessment Year 2005-06. The Respondent-Assessee is Agricultural Produce Market Committee, Shimoga, a Charitable Trust, duly registered under Section 12A of the Act.

2. In the first round appeal before the learned Tribunal, vide Order Annexure-C dated **8.3.2011**, the learned Tribunal held that the Revisional Order passed by the Commissioner of Income Tax under Section 263 of the Act was not sustainable on both grounds on which it was passed, namely, [i] to disallow the claim of Depreciation under Section 32 of the Act in the hands of the Assessee, being a Charitable Trust and [ii] requirement to comply with the procedure under Section 11[2] of the Act, if the accumulated income not spent for charitable purpose exceeded 15% of the income during the year.

3. The learned Tribunal found that the Assessee was entitled to claim deduction under Section 32 of the Act as the relevant provisions for computing the income did not discriminate between a Charitable Trust and other Assesseees. Secondly, the learned Tribunal found that accumulation of income of the

Assessee during the relevant Assessment Year did not exceed 15% of its income. The relevant portion in the Order of the learned Tribunal dated **8.3.2011** are quoted below for ready reference:

*“10. The above examination of the relevant provisions of the Act brings home the point that the **IT Act has not provided any separate set of Rules for computing the income of an assessee claiming exemption u/s.11 of the IT Act, 1961.***

*11. When the Act has not provided any set of Rules for computing the income of an assessee, the income has to be computed according to the generally accepted principles and practice of Accountancy. Depreciation being diminution in the value of assets caused because of the wear and tear of usage, is an essential element of deduction in computing the income of an assessee under the generally accepted accountancy principles and practices. **Therefore, so long as an assessee falling u/s.11 is not specifically prohibited by the IT Act from claiming depreciation as a deduction, it is permissible for that assessee to work out its***

income on the generally accepted principles and practice of accountancy. It is in this context the Circular No.5-P (LXXVI) of 1968 issued by the CBDT is relevant. The said circular has accepted the principles that even the whole of capital expenditure may be treated as application towards charitable activities for the purposes of section 11 depending upon the purposes for which the funds were applied. Therefore, as rightly argued by the assessee **when the entire capital expenditure is permissible to be allowed as a deduction treated it as application of funds for charitable or religious purposes, how there could be a fetter in claiming the depreciation allowance which is only a percentage of the total capital expenditure incurred by the assessee ?** When the entire capital expenditure itself is deductible as applied for charitable or religious purposes, the refusal to allow depreciation allowance which is only a small portion of the capital expenditure is nothing but an antithesis of the principles laid down by the CBDT in its above mentioned circular. **On this ground itself find that the view of the Commissioner of Income Tax is not sustainable in law.**

12. We have already stated in paragraph above the when no specific rule is suggested for computing the income of an assessee, the generally accepted principles of accountancy has to be applied for in computing its income. Therefore, the assessee being a charitable institution is entitled to work out its income as in the case of any other entity and based on generally accepted principles and practices of accountancy which provide for deduction of depreciation allowance as well. This being the case, the Commissioner of Income-tax is not justified in holding that the assessee is not entitled to claim depreciation allowance on the ground that section 32 is not applicable to the assessee. We hold that even if section 32 does not apply to the assessee, it is entitled for claiming depreciation allowance as it is entitled to follow the generally accepted principles and practice of accountancy in computing its income.

13. In his order, the Commissioner of Income-tax has mentioned that the assessee is deriving income from other sources like Market Fees, Leave and Licence Fees, Interest on Bank Deposits and other receipts, marketing of

agricultural commodities etc. The law has prescribed specific rules for computation of income from other sources in Part 'F' under Chapter IV of the IT Act, 1961 running from sections 56 to 59. Section 57 provides for deduction allowable in computing income under other sources. Clause (ii) of section 57 provides for depreciation u/s 32(2). **It shows that even in computing the income from other sources, the assessee is entitled to claim depreciation u/s 32(2). This crucial aspect also was not examined by the Commissioner of Income-tax in the right perspective.** Therefore, we find that the Assessing Officer has rightly allowed the deduction of Rs.2,26,57,709/- as depreciation allowance in computing the income of assessee trust.

14. xxxx xxxx xxxx

15. xxxx xxxx xxxx

16. In result, we cancel the revision order passed by the Commissioner of Income-tax and allow the appeal filed by the assessee.”

4. The second and subsequent Income Tax Appeal filed by the Revenue, namely, **I.T.A.**

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No.107/2017 arises out of the Order passed by the learned Tribunal dated **31.08.2016** because the Assessing Officer had passed the consequential Assessment Order in pursuance of the Order passed by the Commissioner of Income Tax u/s. 263 of the Act, against which the Commissioner of Income Tax [Appeals] granted relief to the Assessee and the Revenue took the matter further before the learned Tribunal, which appeal of Revenue also came to be dismissed. I.T.A. No.107/2017 has been filed by Revenue in this Court.

5. Learned Counsel at the Bar submitted that so far as the issue regarding claim of Depreciation under Section 32 of the Act is concerned, the controversy is no longer *res integra*, having been settled by the Hon'ble Supreme Court in the case of '**Commissioner of Income Tax-III, Pune v. Rajasthan & Gujarati Charitable Foundation Poona**' [2018] 89

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taxmann.com 127 [SC], by which the Hon'ble Supreme Court has affirmed the view taken by the Bombay High Court in '**Commissioner of Income Tax v. Institute of Banking Personnel Selection (IBPS)**' [2003] 131 **Taxman 386 [Bom.]**. The relevant portion of the said Judgment of Bombay High Court as quoted by the Hon'ble Supreme Court and affirmed is quoted below for ready reference.

"In the said judgment, [Bombay High Court] the contention of the Department predicated on double benefit was turned down in the following manner:

3. *As stated above, the first question which requires consideration by this court is : whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as*

*follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner, Pune. **The assessee derived income from the temple property which was a Trust property.** During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, **the assessee claimed depreciation on the value of the building at the rate of 2.5 per cent** and they also claimed depreciation on furniture at the rate of 5 per cent. The question which arose before the court for determination was: whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income Tax Act makes provision in respect of computation of income of the Trust from the properly held for charitable or religious purposes and it*

also provides for application and accumulation of income. On the other hand, section 28 of the Income Tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C, That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for the business purposes. It further provides for deduction subject to section 34. 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.

4. *Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income Tax (Exemption) v. Framjee Cawasjee Institute (1993) 109 CTR 463 (Bom). In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. **The Income Tax Officer held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets.** The assessee went in appeal before the Assistant Appellate Commissioner. The appeal was rejected. The Tribunal, however, took the view*

*that when the Income Tax Officer stated that full expenditure had been allowed in the year of acquisition of the assets, what **he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account.** This view of the Tribunal has been confirmed by, the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above judgment. Consequently, Question No. 2 is answered in the affirmative i.e., in favour of the assessee and against, the department.*

*After hearing learned counsel for the parties,
**we are of the opinion that the aforesaid
view taken by the Bombay High Court
correctly states the principles of law and
there is no need to interfere with the
same.***

6. Since the issue regarding claim of Depreciation in the hands of the Charitable Trust is no longer *res integra*, We are of the opinion that no substantial question of law now arises in the present Appeals filed by the Revenue.

7. As far as the other issue sought to be raised before us is concerned, from the aforesaid quotes portion of the order of the learned Tribunal, it is clear that the said finding of the learned Tribunal of the accumulation of income not exceeding 15% of the income is concerned, the same is a pure finding of fact and does not give rise to any substantial question of law.

8. Accordingly, We are of the opinion that the Appeals filed by the Revenue are devoid of any merits and no substantial question of law arises in the present case.

Both the Appeals filed by Revenue are therefore liable to be dismissed and the same are accordingly dismissed. No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AN/-