IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

ITA.No. 152 of 2014 ()

AGAINST THE ORDER IN ITA 30/2014 OF THE INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH DATED 04-04-2014

APPELLANT:

SREE SUDHEENDRA MEDICAL MISSION
CHITTOOR ROAD, ERNAKULAM, KOCHI 682 018.

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.C.S.SULEKHA BEEVI
SMT.ROSIE ATHULYA JOSEPH
SRI.JOSE JOSEPH CHEMPLAYIL

RESPONDENT:

THE DEPUTY COMMISSIONER OF INCOME TAX (EXEMPTION)
ERNAKULAM

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 19.08.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA.No. 152 of 2014

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE – A : TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2008-09 ISSUED TO THE APPELLANT.

ANNEXURE – B : TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX.

ANNEXURE – C : CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH DATED 4.4.2014.

RESPONDENT'S ANNEXURES: NIL

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P.A. to Judge

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

I.T.A. No.152 of 2014

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Dated this the 19th day of August, 2015

<u>JUDGMENT</u>

<u>Antony Dominic,J.</u>

This appeal is filed by the assessee calling in question the order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA No.30/2014 concerning the assessment year 2008-2009. Two questions of law are framed for our consideration which read as under:

> "i. In the facts and circumstances of the case, ought not the Tribunal allowed depreciation on the assets, the cost of which has been fully allowed as application of income u/s 11 in the past years ?
>
> ii. In the facts and circumstances of the case, ought not the Tribunal allow the appellant to write back the depreciation for the relevant year and even for previous and allow the same to be carried forward for subsequent years ?"

2. Both these questions were dealt with by this Court in the judgment in **Lissie Medical Institutions v. Commissioner of**

Income-Tax [(2012)348 ITR 344]. In the said judgment, the first question of law framed by the assessee is answered against the assessee and therefore, does not merit any further consideration. In so far as the second question is concerned, that claim was rejected by the Tribunal by holding thus:

> "In the case of Lissie Medical Institution, the Hon'ble High Court has given relief with regard to the write back of the depreciation. The Ld Counsel for the assessee requested the Tribunal to give similar directions as given by the Hon'ble High Court for writing back of the depreciation in the instant cases also. However, we are doubtful whether the Tribunal is empowered to give any such direction. The accumulation of income, as submitted by Ld D.R., is governed by the provisions of Explanation 2 to sec.11(1) and also by sec.11(2) of the Act. In the above cited case, it is pertinent to note that the Hon'ble High Court has not modified the above said provisions. Instead, it has given concession to the assessee, which in our view, is applicable to that particular assessee only. The ITAT, being a creature of statute, in our view, cannot arm itself with any such power, which is vested with the High Court. Accordingly, we are of the view that the Tribunal is not entitled to give any such relief as given by the High Court, since the Tribunal

> has to act within the authority of the provisions of the Act. Accordingly, we decline to give any such direction as given by the Hon'ble High Court.”

This very relief claimed by the assessee was allowed by this Court in the judgment in **Lissie Medical Institutions** (supra) by holding thus:

> “For the forgoing reasons, we dispose of the appeal by confirming the order of the Tribunal. However, as rightly pointed out by the counsel for the assessee the system of allowing depreciation was followed by the assessee for several years and it was consistent with the view taken by several High Courts in India in the decisions above cited. We find force in this contention because the assessee cannot be taken by surprise by disallowing depreciation which was being allowed for several years and to demand tax for one year after making disallowance. We feel the assessee should be allowed to write back the depreciation for this year and even for previous and then allow the same to be carried forward for application for subsequent years. It is for the assessee to write back depreciation and if done the Assessing Officer will modify the assessment determining higher income and allow recomputed income with the depreciation written back by the assessee to be carried forward for the subsequent years for application for charitable purposes. The appeal is disposed of as above by answering the question in favour of the Revenue but by granting the relief to the assessee as above.”

3. Since the facts of these cases are exactly similar, we see no reason why the appellant should be denied the relief that was granted in **Lissie Medical Institutions** (supra). Therefore, applying the principles laid down by this Court in **Lissie Medical Institutions's** case (supra), we answer the second question of law in favour of the assessee and against the Revenue.

Accordingly, this appeal is disposed of.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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P.A. to Judge

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