

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

ITA No.134 of 2010 (O&M)

Date of decision: 21.3.2016

The Commissioner of Income Tax, Karnal

.....Appellant

Vs.

Market Committee, Shahabad

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. Yogesh Putney, Advocate for the appellant.

None for the respondent.

Ajay Kumar Mittal, J.

1. CM No.14932 CII of 2010 in ITA No.134 of 2010 is allowed.

The amended questions of law are taken on record.

2. This order shall dispose of ITA Nos.132 and 134 of 2010 as according to the learned counsel for the appellant-revenue, the issues involved in both the appeals are similar. The facts are being extracted from ITA No.134 of 2010.

3. ITA No.134 of 2010 has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 28.5.2009, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (in short, "the Tribunal") in ITA No.471/Chd/2009, for the assessment year

2006-07. The amended substantial questions of law claimed read as under:-

- “(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in allowing depreciation on capital assets, when capital expenditure relating to acquisition of such assets had already been allowed as “application of income” for the purpose of allowing exemption under section 11 of the Income Tax Act, 1961 and as such further allowing of depreciation on these capital assets will amount to double deduction for the same expenditure?
- (ii) Whether allowing of depreciation on the capital assets by the Income Tax Appellate Tribunal is justified in the light of the Hon'ble Apex Court decision in the case of *Escorts India Limited* (199 ITR 43) wherein it has been held that in the absence of clear statutory indication to the contrary, the statute should not be read as to permit an assessee two deductions on the same expenditure?
- (iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in deleting the addition, made on account of unexplained payment to Haryana State Agricultural Marketing Board (in short HSAMB) for capital works, on the grounds that the assessee Market Committee was required to pay 30% of its income to the Board, whereas the addition had not been made on the issue of admissibility of expenditure but for the reasons that the assessee had failed to prove that the amount was actually spent?
- (iv) Whether on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal is perverse in as much as it has deleted the addition, made on account of interest accrued on advance made by the assessee to the Haryana State Electricity Board by accepting the contention of the assessee that it was maintaining cash system of accounting and no interest income was received during the year, ignoring the fact

that as it is clear from the audit report and final account, the assessee had followed mixed system of accounting and not cash system?

(v) Whether the order of the Income Tax Appellate Tribunal is perverse in deleting the addition, made on account of interest income accrued on advance made to Haryana State Electricity Board, relying on the communication dated 20.1.2003 of the Haryana Government that principal amount of FDRs of Market Committees with HSEB be returned to the concerned Market Committees, but ignoring the remaining part of the communication which says that the matter regarding interest on these deposits will be considered after repayment of principal, which means that right of interest on the advance/deposit made by the assessee with HSEB did not stand waived and as such the same had accrued to the assessee during the year?

(vi) Whether on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal is perverse as while deleting the addition, made on account of interest accrued on deposits with Market Committee, Pundri, ignoring the fact brought on record by the AO that as per standard agreement between the Market Committees, interest was payable on advances made by the Market Committees to one another?

4. A few facts relevant for the decision of the controversy involved as narrated in ITA No.134 of 2010 may be noticed. The assessee claimed depreciation of ₹ 55,75,798/- on application of income on the basis of decision of the Bombay High Court in ***CIT vs. Institute of Banking Personnel Selection***, (2003) 264 ITR 110. The Assessing Officer denied the claim in view of the order of the Commissioner of Income Tax (Appeals) [CIT(A)] for the assessment year 2005-06. Against the order of the Assessing Officer made under section 143(3) of the Act, the CIT(A) as in

the earlier years dismissed the assessee's appeal by holding that income of the assessee had been completely exempt *ab initio*. The income of the assessee was exempt from income tax upto the assessment year 2002-03 as per Section 10(20) of the Act in the status of local authority and thereafter from assessment year 2003-04, it had availed of exemption under sections 11 to 13 of the Act. The amounts expended on acquisition of depreciable capital assets were treated as application of income. It was further held that any further claim of depreciation on the assets will amount to claim for double deduction which was not allowable. Against the order passed by the CIT(A), the assessee filed appeal before the Tribunal. The Tribunal following the decision of Bombay High Court in ***Institute of Banking Personnel Selection's*** case (supra) allowed the appeal of the assessee holding that normal depreciation could be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(i)(a) of the Act. It was further held that income of a charitable trust derived from building, plant and machinery and furniture was liable to be computed in a normal commercial manner although the trust may not be carrying on any business. Further, the assessee claimed payment of ₹ 1,77,00,000/- to HSAMB as application of income. The Assessing Officer disallowed the claim of the assessee on its failure to prove that the amount was actually spent for capital purpose. The CIT(A) upheld the addition made by the Assessing Officer. The Tribunal decided the issue in favour of the revenue following its own decision dated 19.9.2008 in the case of Market Committee, Adampur. The Assessing Officer made addition of ₹ 20,10,000/- on account of accrued interest on

advance/FD of ₹ 2,01,00,000/- to HSEB and accrued interest of ₹ 3,75,000/- on deposits of ₹ 37,50,000/- to Market Committee, Pundri. The assessee was not showing any interest on accrual basis on such advance. The CIT(A) dismissed the assessee's appeal. The assessee filed appeal before the Tribunal. The Tribunal allowed the appeal holding that having regard to the cash system of accounting canvassed by the assessee, no income on this account had been received in this year and therefore, it was not liable to be assessed. Alternatively, even on accrual basis, no interest had actually accrued to the assessee and therefore no addition was warranted. Hence the instant appeals by the revenue.

5. We have heard learned counsel for the appellant-revenue.

6. It is not disputed by the learned counsel for the appellant-revenue that amended questions of law Nos. (i) and (ii) are covered against the revenue by judgment of this Court in ***Commissioner of Income Tax vs. Market Committee, Pipli***, (2011) 330 ITR 16 (P&H), wherein after considering the relevant case law on the point, it was held that there was no double deduction claimed by the assessee as canvassed by the revenue. As the income of the assessee being exempt, the assessee was 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. It was recorded as under:-

“6. We have considered the rival submissions. The Madras High Court in ***Rao Bahadur Calavala Cunnan Chetty Charities***’s case (*supra*) [(1982) 135 ITR 485 (Mad.)] observed:-

“.....Taking into account the purpose for which the conditions of section 11(1)(a) are imposed, it would be clear that we have to consider the income as arrived at in the

context of what is available in the hands of the assessee, subject of course to any adjustment for expenses extraneous to the trust. If the expression “income” is so understood, then we have to take the accounts of the assessee with reference to the receipts and deduct therefrom the expenses necessary for earning or looking after that income. The net amount that remains would be available for distribution or application for charitable purpose. In applying the income for charitable purposes, even capital expenditure may be incurred. Therefore, the nature of the expenditure in the hands of the entity which receives the money is not the criterion. So long as the assessee disburses the amount for charitable purposes, whether the amounts are utilised for capital or revenue purposes by the charity concerned, the assessee would have complied with that part of the requirement of section 11, namely, application of the income for charitable purposes. The authorities will have to find out as to whether they are really charitable purposes or not. Subject to such examination, the application of the income for charitable purposes will have to be excluded and it is only the balance that would require examination for finding out whether the assessee has complied with the rule of accumulation to the extent of Rs.10,000 or 25 per cent of the income, whichever is higher.”

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“In fact wherever the statute contemplated the income being computed in the manner set out in the provisions of the Act, appropriate words are used. For instance, in s.80E, which was considered by the Supreme Court in *Cambay Electric Supply Industrial Co. Ltd. v. CIT* [1978] 113 ITR 84, after the expression “total income” the following words are added in brackets: “as computed in accordance with the other provisions of this Act”. This emphasises that wherever Parliament considered that the computation should be in accordance with

the provisions of the Act, it introduced the concept by using appropriate language. In the absence of any such language in section 11(1), we consider that the computation as envisaged by the other provisions of the Act cannot be imported into section 11(1). The Tribunal has in a way mixed up the notion of total income in understanding the expression “income from property held under trust”. Section 14 occurs in the chapter “Computation of total income”. It provides that all income for the purposes of charge of income-tax and *computation of total income* be classified under certain heads. Therefore, the computation under the different categories or heads arises only for the purposes of ascertaining the total income for the purposes of charge. Those provisions cannot be introduced to find out what the income derived from the property held under trust to be excluded from the total income is, for the purpose of the exemptions under Chap.III.”

7. The Karnatka High Court in ***Commissioner of Income-Tax, Karnatka vs. Society of the Sisters of St. Anne.***[1984] 146 ITR 28 drawing support from Madras High Court in ***Rao Bahadur Calavala Cunnan Chetty Charities*** (supra) had recorded that if depreciation is not allowed as a necessary deduction for computing the income of a charitable institution then the corpus of the trust for deriving the income cannot be preserved and that the amount of depreciation debited to the account of a charitable institution is to be deducted to arrive at the income available for application to charitable and religious purposes. This decision was followed by Madhya Pradesh High Court in ***CIT v. Raipur Pallottine Society*** [1989] 180 ITR 579. Similar view was taken by Gujarat High Court in ***CIT v. Seth Manilal Ranchhoddas Vishram Bhawan Trust*** [1992] 198 ITR 598 by relying upon the aforesaid decisions. We are in respectful agreement with the view taken by Madras, M.P., Karnataka, Gujarat and Bombay High Courts referred to above. No contrary view has been brought to our notice.

8. In all fairness to the learned counsel for the Revenue, reference is made to the judgment of the Hon'ble Apex Court in *Escort Limited's case (supra)*, on which reliance has been placed by the learned counsel for the Revenue. The Hon'ble Supreme Court in that case was dealing with a case relating to two deductions both under Sections 10(2)(vi) and 10(2)(xiv) of the 1922 Act or both under Sections 32(1)(ii) and 35(1)(iv) of the Act. The assessee therein had incurred expenditure of a capital nature on scientific research relating to the business which resulted into acquisition of an asset. The assessee had sought to claim a specified percentage of the written down value of the asset as depreciation and at the same time claimed deduction, in five consecutive years of the expenditure incurred on the acquisition of the asset. The apex Court observed:-

“Where a capital asset used for scientific research related to the business of the assessee is also ipso facto an asset used for the purpose of the business, it is impossible to conceive of the Legislature having envisaged a double deduction in respect of the same expenditure, one by way of depreciation under section 32 of the Income Tax Act, 1961 and other by way of allowance under section 35 (1) (iv) of a part of the capital expenditure on scientific research, even though the two heads of deduction do not completely overlap and there is some difference in the rationale of the two deductions.....”

It was further recorded that:-

“There is a fundamental, though 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.....”

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.”

In view of the above, questions (i) and (ii) are answered against the revenue.

7. Question No.(iii) is decided against the revenue as it was fairly stated by learned counsel for the revenue that the issue is covered by the judgment of this Court rendered in ITA No.151 of 2010, *Commissioner of Income Tax, Hisar vs. Market Committee, Narwana*, decided on 5.7.2010.

8. So far as question Nos.(iv) (v) and (vi) are concerned, the issue is regarding the taxability of income accrued on amount of deposits made by the assessee with Haryana State Electricity Board and also Market Committee, Pundri. The relevant findings recorded by the Tribunal read thus:-

“5. We have considered the rival submissions and also perused the orders of the lower authorities. The income tax is charged on the total income of the assessee in terms of sections 4 and 5 of the Act. The income so computable is as per method of accounting provided under section 145 of the Act. In this case, the claim of the assessee is that it is following cash system of accounting, we find such averment of the assessee is not without

any basis. The Assessing Officer has also so noted in the cause title of the assessment order itself. In relation to the interest income in question, the assessee contends that no such income has been received and therefore, no amount was offered for taxation on this count. On the other hand, the Assessing Officer has added the income by way of interest on deposit with HSEB on accrual basis. The reason advanced is that the assessee is not following the pure cash system of accounting but is following a mixed system of accounting. In our view, there is no case made out by the Assessing Officer as to how the mixed system of accounting affects the position stated by the assessee. Even if it is accepted that the assessee is following the mixed system of accounting, there is no reason as to why the income from the deposits in question is liable to be assessed on accrual basis. However, even if we accept the plea of the Assessing Officer on the system of accounting, yet the assessee has placed on record material to show that no interest income has actually accrued to it. The communication from the Government of Haryana, which has also been referred to by the CIT(A) in para 10 of his order, clearly points out that payment of interest to the assessee is not decided by the government. Thus, to say that any income by way of interest has accrued to the assessee is factually wrong. Therefore, firstly, having regard to the cash system of accounting canvassed by the assessee, no income on this account has been received in this year and therefore, it was not liable to be assessed. Alternatively, even on accrual basis, as our aforesaid discussion shows, no interest has actually accrued to the assessee and, therefore, no addition is warranted. Thus, on this issue also, the assessee succeeds.

In the result, appeals of the assessee are allowed.”

9. It has been recorded by the Tribunal that the assessee was following cash system of accounting. Moreover, section 145 of the Act was

amended w.e.f 1.4.1997 whereby only one out of the two systems could be followed i.e. either mercantile or cash. The finding recorded by the Assessing Officer and the Tribunal that as the assessee was following cash system of accounting, no income on this account had been received in the year in question and therefore, it was not liable to be assessed, has not been shown to be illegal or perverse in any manner by the learned counsel for the revenue. Consequently, the amended substantial questions of law are answered against the revenue and the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

March 21, 2016
'gs'

(Raj Rahul Garg)
Judge