

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.11.2016

Pronounced on:08.08.2017

Coram

The Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO
AND
The Hon'ble Dr. Justice ANITA SUMANTH

TCA. Nos.844, 845, 848, 849, 1079 of 2010,
TCA.Nos. 99 to 102, 118, 120, 125, 475 to 478 of 2011,
TCA.Nos. 457 of 2012 & TCA.No.650 of 2014,
TCA.Nos.498, 500, 509, 511, 530, 696, 727,

736, 739, 760, 993, 997, 1099 of 2015 &

(TCA.Nos.949 of 2015 and 771 of 2016-Assessee's appeal)

THE DIRECTOR OF INCOME TAX ..APPELLANT in TCA No.844 of 2010
EXEMPTION-III CHENNAI-34

THE DIRECTOR OF INCOME TAX OSD ..APPELLANT in TCA No.845 of 2010
EXEMPTION-III CHENNAI

THE DIRECTOR OF INCOME TAX ..APPELLANT in TCA No.848 of 2010
EXEMPTION II CHENNAI-34

THE DIRECTOR OF INCOME TAX ..APPELLANT in TCA No.849 of 2010
EXEMPTION II CHENNAI-34

DIRECTOR OF INCOME TAX ..APPELLANT in TCA No.1079 of 2010
EXEMPTIONS CHENNAI.

THE DIRECTOR OF INCOME TAX ..APPELLANT in TCA No.99 of 2011
EXEMPTION-I CHENNAI.

THE DIRECTOR OF INCOME TAX ..APPELLANT in TCA No.100 of 2011
EXEMPTION-I CHENNAI.

THE DIRECTOR OF INCOME TAX ..APPELLANT in TCA No.101 of 2011
EXEMPTION-I CHENNAI.

THE DIRECTOR OF INCOME TAX ..APPELLANT in TCA No.102 of 2011
EXEMPTION-I CHENNAI.

THE INCOME TAX OFFICER (OSD) ..APPELLANT in TCA No.118 of 2011
EXEMPTION III CHENNAI.

THE INCOME TAX OFFICER (OSD) ..APPELLANT in TCA No.120 of 2011
EXEMPTION III CHENNAI.

THE INCOME TAX OFFICER (OSD) ..APPELLANT in TCA No.125 of 2011
EXEMPTION III CHENNAI.

THE COMMISSIONER OF INCOME
TAX OSD (EXEMPTIONS) III
CHENNAI. ..APPELLANT in TCA No.475 of 2011

THE COMMISSIONER OF INCOME
TAX OSD (EXEMPTIONS) III
CHENNAI. ..APPELLANT in TCA No.476 of 2011

THE COMMISSIONER OF INCOME
TAX OSD (EXEMPTIONS) III
CHENNAI. ..APPELLANT in TCA No.477 of 2011

THE COMMISSIONER OF INCOME
TAX OSD (EXEMPTIONS) III
CHENNAI. ..APPELLANT in TCA No.478 of 2011

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.457 of 2012
CHENNAI

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.650 of 2014
CHENNAI

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.498 of 2015
CHENNAI

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.500 of 2015
COIMBATORE.

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.509 of 2015
COIMBATORE

COMMISSISONER OF INCOME TAX ..APPELLANT in TCA No.511 of 2015
CHENNAI

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.530 of 2015
COIMBATORE.

COMMISSIONER OF INCOME GAX ..APPELLANT in TCA No.696 of 2015
CHENNAI

COMMISSIONER OF INCOMETAX ..APPELLANT in TCA No.727 of 2015
COIMBATORE

COMMISSIONER OF INCOMETAX ..APPELLANT in TCA No.736 of 2015
COIMBATORE

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.739 of 2015
COIMBATORE.

COMMISSIONER OF INCOMETAX ..APPELLANT in TCA No.760 of 2015
CHENNAI

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.993 of 2015
COIMBATORE

COMMISSIONER OF INCOME TAX ..APPELLANT in TCA No.997 of 2015
CHENNAI

COIMMISSIONR OF INCOME TAX ..APPELLANT in TCA No.1099 of 2015
COIMBATORE.

ST.THOMAS ORTHODOX SYRIAN
CATHEDRAL PARISH TRUST
NO.33/34 SRINAGAR ST.,
BROADWAY CHENNAI 600 108 ..APPELLANT in TCA No.949 of 2015

KONGUNADU ARTS &
SCIENCE COLLEGE COUNCIL
GNANAMBIGAI MILLS POST
COIMBATORE (PAN AAAAK 1198 E) ..APPELLANT in TCA No.771 of 2016

Versus

M/S MEDICAL TRUST OF THE
SEVENTH DAY ADVENTISTS
AA/148 THIRD AVENUE
ANNA NAGAR CHENNAI-40 ..RESPONDENT in TCA No.844 of 2010

M/S THE EDUCATIONAL TRUST OF
THE SEVENTH DAY ADVENTISTS
AA/148 THIRD AVENUE ANNA NAGAR
CHENNAI-40 ..RESPONDENT in TCA No.845 of 2010

M/S SENIOR CITIZEN SETTLEMENT
FOUNDATION 35 VEDAMALAI ST
PURASAWALKKAM
CHENNAI-7 .. RESPONDENT in TCA No.848 of 2010

M/S SENIOR CITIZEN SETTLEMENT
FOUNDATION 35 VEDAMALAI ST
PURASAWALKKAM CHENNAI-7 ..RESPONDENT in TCA No.849 of 2010

M/S COUNCIL OF SEVENTH DAY
ADVENTISTS EDUCATIONAL INSTITUTIONS
AA/148 THIRD AVENUE ANNA NAGAR
CHENNAI 600 040. ..RESPONDENT in TCA No.1079 of 2010

M/S.ST.JOHNS EDUCATIONAL TRUST
9 SOUTH CANAL BANK ROAD
MANDAVELI CH-28. ...RESPONDENT in TCA No.99 of 2011

M/S.ST.JOHNS EDUCATIONAL TRUST
9 SOUTH CANAL BANK ROAD
MANDAVELI CH-28. ...RESPONDENT in TCA No.100 of 2011

M/S.ST.JOHNS EDUCATIONAL TRUST
9 SOUTH CANAL BANK ROAD
MANDAVELI CH-28. ...RESPONDENT in TCA No.101 of 2011

M/S.ST.JOHNS EDUCATIONAL TRUST
9 SOUTH CANAL BANK ROAD
MANDAVELI CH-28. ...RESPONDENT in TCA No.102 of 2011

MEDICAL TRUST OF SEVENTH DAY
ADVENTISTS AA-148 III AVENUE
ANNA NAGAR CH-40. ...RESPONDENT in TCA No.118 of 2011

THE EDUCATIONAL TRUST OF
SEVENTH DAY ADVENTISTS
AA 148 III AVENUE
ANNA NAGAR CHENNAI 40. ...RESPONDENT in TCA No.120 of 2011

THE COUNCIL OF SEVENTH DAY
ADVENTIST EDUCATIONAL INSTITUTION
AA-148 III AVENUE ANNA NAGAR
CHENNAI. ...RESPONDENT in TCA No.125 of 2011

M/S SRI RENGALATCHUMI
EDUCATIONAL TRUST
NEW NO.58 AND OLD NO.74
6TH CROSS STREET
TRUSTPURAM CHENNAI -24. ...RESPONDENT in TCA No.475 of 2011

M/S SRI RENGALATCHUMI
EDUCATIONAL TRUST
NEW NO.58 AND OLD NO.74
6TH CROSS STREET TRUSTPURAM
CHENNAI -24.

..RESPONDENT in TCA No.476 of 2011

M/S SRI RENGALATCHUMI
EDUCATIONAL TRUST
NEW NO.58 AND OLD NO.74
6TH CROSS STREET
TRUSTPURAM CHENNAI -24.

..RESPONDENT in TCA No.477 of 2011

M/S SRI RENGALATCHUMI
EDUCATIONAL TRUST
NEW NO.58 AND OLD NO.74
6TH CROSS STREET
TRUSTPURAM CHENNAI -24.

..RESPONDENT in TCA No.478 of 2011

M/S SERVICE ASSOCIATION
OF SEVENTH DAY ADVENTISTS
P LTD AA 148 III
AVENUE ANNA NAGAR CHENNAI

..RESPONDENT in TCA No.457 of 2012

BALAMANI ARUNACHALAM EDUCATIONAL
AND CHARITABLE TRUST NO. 6/4
VAIGAI ST KALACHETRA COLONY
CHENNAI 90

..RESPONDENT in TCA No.650 of 2014

M/S.SRI RANGALATCHUMI
EDUCATIONAL TRUST
16 MARIAMMAN KOIL ST
WEST K.K.NAGAR CHENNAI 78

..RESPONDENT in TCA No.498 of 2015

..RESPONDENT in TCA No.650 of 2014

M/S THE KUPPUSWAMY NAIDU
CHARITABLE TRUST FOR EDUCATION
AND MEDICAL
RELIEF NO.88 NETHAJI RD
PAPPANAICKENPALAYAM
COIMBATORE 641 037

..RESPONDENT in TCA No.500 of 2015

M/S.LAMIKA EDUCATIONAL AND
CHARITABLE TRUST S.F.NO. 806
AVINASHI RD NEELAMBUR
COIMBATORE 641 014

..RESPONDENT in TCA No.509 of 2015

M/S.BANNARIAMMAN EDUCATIONAL TRUST
NO. 1212 TRICHY RD
COIMBATORE 641 018

..RESPONDENT in TCA No.511 of 2015

M/S NIKITA CHARITABLE TRUST
NO.4/439 LAWRENCE COMPLEX
CROSS CUT RD GANDHIPURAM
COIMBATORE 641 012

..RESPONDENT in TCA No.530 of 2015

M/S. LAKSHMI SARASWATHI I
EDUCATIONAL TRUST NO. 621
1ST FLOOR SIRE MANSION
ANNA SALAI THOUSAND LIGHTS
CHENNAI 600 006

..RESPONDENT in TCA No.696 of 2015

M/S.RAMANADA ADIGALAR
FOUNDATION CHINNAVEDAMPETTI
COIMBATORE 641 006

..RESPONDENT in TCA No.727 of 2015

RANGANATHAN RAJESHWARI
CHARITABLE TRUST NO. 54 A
LAKSHMANAN NAGAR 2ND ST
EXTENTION GANDHIPURAM
COIMBATORE 641 012

..RESPONDENT in TCA No.736 of 2015

M/S KGISL TRUST KGISL CAMPUS
THUDIYALUR RD SARAVANAMPATTY
COIMBATORE 641 035

..RESPONDENT in TCA No.739 of 2015

M/S.APPOLLO HOSPITALS
EDUCATIONAL TRUST NO.21
GREAMS LANE OFF GREAMS ROAD
CHENNAI 6

..RESPONDENT in TCA No.760 of 2015

M/S.SUGUNA CHARITABLE TRUST
#5A SATYAMOORTHY ROAD RAM NAGAR
COIMBATORE - 641 009

..RESPONDENT in TCA No.993 of 2015

M/S.CENTRAL INSTITUTE OF
PLASTICS ENGINEERING & TECHNOLOGY
GUINDY INDUSTRIAL ESTATE GUINDY
CHENNAI - 32.

..RESPONDENT in TCA No.997 of 2015

M/S SREE NARAYANA GURU
EDUCATIONAL TRUST NO.95
NARAYANA GURU RD, SAIBABA MISSION P.O
COIMBATORE 641 011

..RESPONDENT in TCA No.1099 of 2015

THE JOINT COMMISSIONER OF
INCOME TAX OSD EXEMPTIONS II
CHENNAI 600 034

..RESPONDENT in TCA No.949 of 2015

THE INCOME TAX OFFICER
COMPANY WARD 1 COIMBATORE

..RESPONDENT in TCA No.771 of 2016

Prayer: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai dated 4.3.2010 in ITA.No.639/Mds/2009, 640/Mds./09, 'C' Bench, Chennai, dated 10.3.2010 in ITA.No.559/Mds./09, 'C' 560/Mds/09, 'D' Bench, Chennai, dated 20.11.2009 passed in I.T.A.No.823/Mds./2009, 'B' Bench, Chennai, dated 18.10.2010 passed in ITA.NO.987/Mds./2010, 988/Mds./2010, 989/Mds/2010, 990/Mds./2010, 'B' Bench, Chennai, dated 14.10.2010 passed in ITA.No.1012/Mds./10, ITA.No.1011/Mds./10, ITA.NO.1010/Mds./10, 'C' Bench, Chennai, dated 25.03.2011, passed in ITA.NO.681/Mds./2010 ITA.No.682/Mds./10, ITA.NO.89/Mds./2009, ITA.No.90/Mds./2009, 'A' Bench, Madras dated 18.07.2012 in ITA.No.427/Mds./2012, dated 31.01.2014 in ITA.NO.2188/Mds./2013, dated 31.10.2014 in ITA.No.1930/Mds./2014, dated 13.02.2015 in ITA.No.1968/Mds./2014, dated 11.12.2014 in ITA.NO.2234/Mds./2014, dated 12.12.2014 in ITA.No.2221/Mds./2014, dated 13.02.2015 in ITA.No.1967/Mds./2014, 'B' Bench, Madras, dated 8.8.2014 in ITA.NO.452/Mds./2014, 'A' Bench Madras, dated 11.12.2014 in ITA.NO.2230/Mds./2014, in ITA.NO.2232/Mds./2014, 'D' Bench, Madras, dated 5.3.2015 in ITA.NO.2095/Mds./2014, 'B' Bench, Madras, dated 4.3.2015 in ITA.No.1403/Mds./2013, 'A' Bench, Madras, dated 11.12.2014 in ITA.NO.2237/Mds./2014, dated 5.3.2015, in ITA.NO.1601/Mds./2014, 'D' Bench, Madras, dated 13.04.2015 in ITA.No.2536/Mds./2014, dated 12.06.2015 in ITA.NO.165/Mds./2015, dated 26.06/2015 in ITA.NO.2097/Mds./2014 respectively.

TCA.Nos.844, 845, and 1079 of 2010 and TCA.Nos.120, 125 and TCA.457 of 2012 and TCA.No.650 of 2014, TCA.No.509, 739 of 2015

For appellant : Mr.J.Narayanasamy
For Respondent: Mr.S.Sridhar

TCA.Nos.99 to 102 of 2011:

For appellant : Mr.J. Narayanasamy assisted by Mr.S. Rajesh
For respondent: M/s.Pushya Sitaraman,
Senior Counsel for Mrs. J. Shree Vidya

TCA.Nos.118 of 2011:

For appellant : Mr. J.Narayanasamy

For respondent: Mr.N.Devanathan for Mr.S.Sridhar

TCA.Nos.498, 993 of 2015:

For appellant: Mr.J.Narayanasamy

For respondent: Mr.R. Kumar

TCA.No.500 of 2015:

For appellant : Mr.J.Narayanasamy assisted by Mr.S. Rajesh

For respondent: Mr.J.Balachander

Assisted by S.Indumathi.

TCA.No.511, 727 and 1099 of 2015:

For appellant: Mr.J.Narayanasamy

For respondent: Mr.R.Vijayaraghavan for M/s.Subbaraya Iyer

TCA.No.530 of 2015: 848, 849 of 2010 and 475 to 478 of 2011

For appellant: Mr.J.Narayanasamy

For respondent: batta due

TCA.No.696 of 2015:

For appellant: Mr.J.Narayanasamy

For respondent: served, name printed;

TCA.No.736 of 2015

For appellant: Mr.J.Narayanasamy

Respondent: served, name printed.

TCA.No.760 of 2015:

For appellant: Mr.J.Narayanasamy

For respondent: Mr.N.V.Balaji

TCA.No.997 of 2015

For appellant: Mr.J.Narayanasamy

For Respondent: Notice Served

TCA.No.949 of 2015

For appellant: Mrs.Pushya Sitaraman, Senior counsel

For J.Sree Vidya

For respondent: Mr.J.Narayanasamy assisted by Mr.S. Rajesh

TCA.No.771 of 2016

For appellant : Mr.R.Senniappan

For M/s.H.Nazirudeen

For respondent: Mr. J. Narayanasamy assisted by Mr.S. Rajesh

COMMON JUDGMENT

(Judgment of this Court was delivered by ANITA SUMANTH, J.)

These departmental appeals challenge orders of the Income Tax Appellate Tribunal in respect of various assessment years.

2. In so far as the issue is common across appeals, we set out below the question of law in T.C.A.No.475 to 478 of 2011 as representative of the issue involved in all appeals:-

'(a) Whether on the facts and circumstances of the case, the Tribunal was right in allowing double deduction without considering the principles laid down in 199 ITR 43(SC)?'

3. The issue before us relates to the grant of depreciation to an entity seeking exemption in terms of section 11 of the Income Tax Act. (in short 'Act') which deals with the assessment of Income from property held for charitable or religious purposes. The relevant parts of Section 11 read as follows:-

1. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

.....

.....

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :—

(i).....

(ii).....

.....

(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.

4. The various sub-sections of section 11 stipulate the methodology for computing the income applied to charitable and religious purposes and the 15% that may be accumulated or set apart. The section also envisages the inclusion of a business undertaking in the property held under trust and the determination of income therefrom. Sub Section 5 sets out the acceptable forms and modes of investment for the purposes of proper application. Sub-section 6, inserted by Finance II Act, 2014 with effect from 1.4.2015, states that the income to be determined for the purposes of application or accumulation shall not include a deduction or allowance by way of depreciation or otherwise in respect of any asset, the acquisition of which has been claimed as an application of an income under the provisions of section 11 in the same or any other previous year. The application of this sub-section retrospectively in regard to assessment years prior to 01.04.2015 is the subject matter of challenge in TCA.No.949 of 2015 to which we shall advert presently.

5. Section 11 was inserted in the Income Tax Act 1961 providing for an exemption in respect of income from property held under trust wholly for charitable and religious purposes. 'Charitable purposes' is defined in terms of section 2(15) of the Act to mean relief of the poor, education, medical relief and the advancement of any other object of general public utility. The clause has been modified over the years such that in its present form, it includes within its ambit yoga and the preservation of environment, monuments or places or objects of artistic or historic interest. The object of Section 11 is thus laudable and seeks to extend a benefit to entities engaging in activity of a specified nature. In the present batch of appeals there is no dispute in this regard.

6. We have heard Mr. J. Narayanaswamy appearing on behalf of the Revenue and several counsels appearing on behalf of the assessee and set out in brief the submissions advanced.

7. Mr. J. Narayanaswamy would contend that the provisions of section 32 granting depreciation have not been made specifically applicable to section 11. According to him, the provisions of Section 11 extend a benefit to an assessee by way of exemption and granting depreciation in addition would amount to a double benefit that has to be specifically conferred. He would rely on the judgment of the Supreme Court in the case of Escorts Limited and another Vs. Union of India and others (SC) (1999 ITR 43) which deals with the grant of depreciation to an assessee also claiming weighted deduction under section 35(1) of the Act in respect of expenditure incurred on scientific research.

8. The provision, as it originally stood, placed no restriction on the claim of weighted deduction simultaneous with the claim of depreciation. While this is so, it was felt that such double claim was not the intention of Legislature and the provisions of Section 35(2) (iv) were amended to provide that where a deduction was allowed for any previous year in terms of Section 35(1), no depreciation was liable to be allowed for the same or any other previous year in respect of that asset.

10. The amendment was made to operate retrospectively with effect from 1.4.1962 and the Supreme Court, while upholding the retrospective application of the provision states thus:-

'We think that all misconception will vanish and all the provisions will fall into place, if we bear in mind 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 - 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."

.....

.....

'15. For the reasons discussed above, we are of the view that, even before the 1980-amendment, the Act did not permit a deduction for depreciation in respect of the cost of a capital asset acquired for purposes of scientific research to the extent such cost has been written off under S.10(2)(xiv)/35(1) & (2). Prior to 1968, such assets qualified for an allowance of one-fifth of the cost of the asset in five previous years starting with that of its acquisition and during these years the assessee could not get any depreciation in relation thereto. In respect of assets acquired in previous year relevant to assessment year 1968-69 and thereafter, their cost was written off in the previous year of acquisition and no depreciation could be allowed in that year. This is clear from the statute. Equally, it is not envisaged, and indeed, it would be meaningless to say, that depreciation could be allowed on them thereafter with a further absurdity that it could be allowed starting with the original cost of the asset despite its user for scientific research and the allowances made under the 'scientific research' clause. In our view, there was no difficulty at all in the interpretation of the provisions. The mere fact that a baseless claim was raised by some over-enthusiastic assesseees who sought a double allowance or that such claim may perhaps have been accepted by some authorities is not sufficient to attribute any ambiguity or doubt as to the true scope of the provisions as they stood earlier.'

10. Reliance was placed by Mr. Narayanaswamy on paragraph 7 of the judgment that reads as follows:-

'I find it difficult to agree with the reasoning of the assesseees. Acceding to it would amount to placing an unreasonable interpretation upon the relevant provisions and to negating the intention of Parliament. I find it difficult to agree that the

Indian Legislature - as also the Parliament made a conscious departure from the English Amendment with the idea of providing an additional benefit to induce the Indian assesseees to invest more in scientific research. I find the argument rather convoluted. If the intention of the Legislature/Parliament was to provide more than 100% deduction, they would have said so, as they have done in cases where they provided for what is called weighted deduction'. (For example, See section 35(B) of 1961 Act). A double deduction cannot be a matter of inference, it must be provided for in clear and express language regard having to its unusual nature and its serious impact on the Revenues of the State.'

.....

.....

'That the Parliament never intended to provide for a double deduction is also the opinion of the Direct Tax Law Committee. In its interim report, (December, 1977) the Committee (popularly known as 'Choksi Committee') had this to say in para 3.29 of its report:

"3.29.- Our attention has also been drawn to certain anomalous situations in the matter of allowance of depreciation. In certain cases where a full deduction has been allowed in relation to a capital asset under other sections (as for example, section 35 which permits a deduction in respect of capital expenditure for scientific research), the tax payers have contended that such deduction is independent of the allowance by way of depreciation. In our view, the intention of the legislature is not to allow a double deduction (of 20%) in respect of the same asset, once under section 35 and, again, by way of depreciation under section 35. If and to the extent that there is any anomaly or contrary view possible on a construction of section 35, we recommend that the law should be clarified to provide that no depreciation under section 35 shall be allowable in respect of capital expenditure for scientific research qualifying for deduction under section 35.'

11. He would argue that that granting depreciation simultaneous with exemption under section 11 would result in a relief over and above 100 % of the income which was not permissible under statute.

12. Our attention was drawn to the decision of the Kerala High Court in the case of Lissie Medical Institutions Vs. Commissioner of Income Tax, Kochi, (348 ITR 344) which had concluded the issue in favour of the Revenue. The Kerala High Court had this to say;

'In fact the net effect is that after writing off full value of the capital expenditure on acquisition of assets as application of income for charitable purposes and when the assessee again claims the same amount in the form of depreciation, such notional claim becomes cash surplus available with the assessee, which goes outside the books of accounts of the Trust unless it is written back which is not done. "

.....

.....

" We have no doubt in our mind that business income of charitable trust also has to be computed in the same manner as provided u/s 29 of the Income Tax Act. However, the issue that requires consideration is when the expenditure incurred for acquisition of depreciable assets itself is treated as application of income for charitable purposes u/s 11(1)(a) of the Act, should not the cost of such assets to be treated as nil for the assessee and in that situation depreciation to be granted turns out to be nil. However, if depreciation provided is claimed on notional cost after the assessee claims 100% of the cost incurred for it as application of income for charitable purposes, the depreciation so claimed has to be written back as income available. In fact, going by the several decisions of the various High Courts, we are sure that based on these decisions all the charitable institutions will be generating unaccounted income equal to the depreciation amount claimed on an year to year basis which is nothing but black money. This aspect is not seen considered in any of these decisions. '

13. The contentions of the learned counsels for the assesseees are as follows:

(i) Mr. Sridhar would state that in computing the income of an entity attracting the provisions of section 11, the principles of commercial accounting were liable to be followed. He would rely on the decision of the jurisdictional High Court in Commissioner of Income Tax Vs. Rao Bahadur Calavala Cunnan Chetty Charities (1982) (135 ITR 485) and Bombay High Court in Commissioner of Income Tax Vs. Institute of Banking Personnel Selection (2003) (264 ITR 110). A distinction was sought to be made between computation in terms of Section 2(45) defining 'total income', and computation of 'income' in terms of section 11 of the Act. Referring to the scheme of section 11, he would contend that the provisions thereof constituted a complete code which took into account the application of depreciation as a commercial principle and not necessarily one of accountancy.

14. Mr. J. Balachander would refer to the decisions of the Kerala High Court in Catholic Diocese of Tiruvalla V. State of Kerala (209 ITR 596) and Andhra Pradesh High Court in CIT v. Trustee of H.E.H. Nizamm's Supplemental Religious Endowment Trust (127 ITR 378), in support of his submission that commercial principles of accounting are to be applied in computing income for the purposes of section 11. He would refer to the Accounting Standards issued by the Institute of Chartered Accountants of India (in short ICAI) to the effect that depreciation was a mandatory charge in the computation of income of a Trust.

15. Mr. N. Devanathan would distinguish the facts of Escorts (supra) from the present case on the ground that by virtue of granting weighted deduction under section 35, the asset itself was effaced which is not the case in an assessment under section 11 of the Act. He would also point out that the Department had filed petitions for Special Leave challenging the decisions of the Punjab and Haryana High Court favouring the assessee that had been dismissed whereas, the Special Leave Petitions filed by the assessee challenging the decision of the Kerala High Court and other cases following the decision of the Kerala High Court in Lissie Medical Institutions (supra) had been admitted by the Supreme Court. Thus according to him, the Supreme Court had clearly recognized the error in the decision of the Kerala High Court.

16. Mr. R. Kumar, appearing for the assessee/respondent in TCA.No.993 of 2015 would point out that the orders of the Income Tax Appellate Tribunal in the same assessee's case for the previous years on the identical issue, had considered the judgment of the Supreme Court in Escorts and had distinguished the same. The aforesaid orders of the Tribunal dated 25.03.2011 have attained finality. Thus, while adopting the arguments of

other counsels, he would add that the principle of consistency stood violated in his case.

17. Mr.N.V.Balaji, would address us specifically on Accounting Standard 6 dealing with Depreciation Accounting issued by the Institute of Chartered Accountants of India and made mandatory on or after 1.4.1995 in the following terms:

'The reference to commercial, industrial or business enterprises in the aforesaid paragraph is in the context of the nature of activities carried on by the enterprise rather than with reference to its objects. It is quite possible that an enterprise has charitable objects but it carries on, either wholly or in part, activities of a commercial, industrial or business nature in furtherance of its objects. The Board believes that Accounting Standards apply in respect of commercial, industrial or business activities of any enterprise, irrespective of whether it is profit oriented or is established for charitable or religious purposes. Accounting Standards will not, however, apply to those activities which are not of commercial, industrial or business nature, (e.g., an activity of collecting donations and giving them to flood affected people.) It is also clarified that exclusion of an entity from the applicability of the Accounting Standards would be permissible only if no part of the activity of such entity was commercial, industrial or business in nature. For the removal of doubts, it is clarified that even if a very small proportion of the activities of an entity was considered to be commercial, industrial or business in nature, then it could not claim exemption from the application of Accounting Standards. The Accounting Standards would apply to all its activities including those which were not commercial, industrial or business in nature.'

18. This was clarified by the 'Technical Guide on Internal Audit for not-for-profit organizations' issued by the Internal Audit Standards Board of the ICAI recommending that the Accounting Standards setting out wholesome principles of accounting including depreciation should be followed by all non-profit organisations irrespective of whether any part of their activity might be commercial, industrial or business in nature.

19. We have heard the arguments in detail and carefully perused the documents relied upon as well as case law cited.

20. Depreciation, as defined in Spicer and Pegler's Book-Keeping and Accounts is the measure of the exhaustion of the effective life of a fixed asset owing to use or obsolescence during a given period. It may be regarded as that part of the cost of the asset which will not be recoverable 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, and the amount of provision made in respect of an accounting period is extended to represent the proportion of such expenditure which has expired during that period.

21. The necessity of providing for depreciation emanates from the fact that once an asset ceases to be effective, it will have to be replaced. Providing for depreciation would ensure setting aside out of the revenue of an accounting period, the estimated amount by which the capital investment has expired during that period. This provision, incurred for the use of that asset for the purpose of earned profit should be charged against those profits as and when earned. Spicer, and Pegler, at page 45, states as follows:-

'If depreciation is not provided for, the books will not contain a true record of revenue or capital. If the asset were hired instead of purchased, the hiring fee would be charged against the profits; having been purchased, the asset is, in effect, then hired by capital to revenue, and the true profit cannot be ascertained until an analogous charge for the use of the asset has been made. Moreover, unless provision is made for depreciation, the Balance Sheet will not present a true and fair view of the state of affairs, since the assets will be shown at an amount which is in excess of the true amount of the unexpired expenditure incurred on their acquisition.'

22. The claim of depreciation is thus part of standard accounting practice which is required for fair presentation of a company's financials. The computation of income in the case of an entity to which section 11 is applicable would be in two stages. Firstly, the determination of the profit arrived at, which would be the total receipts net of expenditure and depreciation incurred in earning the receipts, and secondly the stage of application to Charitable/Religious objects. The two stages are distinct and are required to be complied with consecutively in order to determine the correct income and its application.

23. The question before the Supreme Court in the matter of Escorts related to dual claims under section 35 of the Act in relation to the same asset - the first, weighted deduction and the second, depreciation. Thus, two benefits were extended in respect of the very same asset. We are faced with an entirely different and distinct position in the present batch of appeals - one that involves a claim for exemption in respect of income earned from property held for charitable or religious purposes. We see no double benefit that is extended to the assessee in this regard.

24. Truth to tell, this Court in the matter of Calavala Cunnan Charities, has decided the question now under consideration in favour of the assessee and we could well have decided this Batch of appeals simply on the strength of the aforesaid decision. We are however persuaded to proceed further with the discussion since a conflicting view has been expressed by the Kerala High Court in the case of Lissie Medical Institutions (supra). Though the attention of the Division Bench of the Kerala High court was drawn to the decision in Rao Bahadur Calavala Cunnan Chetty Charities (supra) and several decisions along similar lines, the court was persuaded to take a contrary view preferring to follow the rationale of the judgment of the Supreme Court in the case of Escorts (supra).

25. As noted by us earlier, the judgment of the Supreme Court in escorts turns on an entirely different position of law and would not impact the issue being discussed in the present case.

26. We are supported in our view by a plethora of decisions of various High Courts - the Bombay High Court in the case of CIT v. Munisuvrat Jain (1994 Tax Law Reporter 1084) and DIT (Exem) Vs. Framjee Cawasjee Institute (109 CTR 463); Karnataka High Court in CIT Vs. Society of the Sisters of St. Anne (146 ITR 28); Madhyapradesh High Court in CIT Vs. Raipur Pallottine Society (180 ITR 579); Gujarath High Court in CIT Vs. Sheth Manilal rachhnoddas Vishram Bhavan Trust 198 ITR 598; Punjab and Haryana High court in CIT Vs. Market Committee Pipli (330 ITR 16) and CIT Vs. Tiny Tots Education Society (330 ITR 21); Madhyapradesh High Court in CIT Vs. Devi Sakuntala Tharal Charitable Foundation (358 ITR 452) and the Calcutta High Court in CIT Vs. Silluguri Regulated Market Committee (366 ITR 51). In addition, the Delhi High Court in DIT Vs. Vishwa Jagriti Mission 262 CTR 558 and the Karnnataka High Court in DIT (Exem) Vs Al-Ameen Charitable Fund Trust (2016) 67 taxmann.com 160 have accepted the claim of the assessee distinguishing both the judgment of the Supreme Court in Escorts as well as that of the Kerala High Court.

27. In view of the discussion above, the question of law is answered in favour of the assessee and against the revenue.

TCA.No.949 of 2015

28. T.C.A.No.949 of 2015 has been filed by the assessee raising the following two substantial questions of law.

'1. Whether on the facts and circumstances of the case, the Tribunal was right in disallowing the claim of depreciation on assets acquired by way of application of funds in the earlier years, contrary to judgments of several High Courts?

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the excess application of the earlier year could not be set off against the income of the current year contrary to the judgment of this Honourable Court in the case of *Matriseva Trust* (2000) 242 ITR 20 (Mad)?'

29. Learned senior counsel appearing for M/s.St. Thomas Orthodox Syrian Cathedral Parish Trust, the assessee, Mrs. Pushya Sitaraman would contend that the excess application of earlier years was liable to set off against the income of the current year and relied on the decision of the jurisdictional High Court in the case of *Commissioner of Income Tax Vs. Matriseva Trust* (242 ITR 20). While Sri.J.Narayanaswamy, learned counsel appearing for the Department does not seriously object to the argument advanced on merits, he would raise a technical objection to the effect that in the present case, the claim was made under a revised return. The original return of income was filed only on 31.10.2007 beyond 31.10.2006 when it was due and as such would debar the consideration of the claim made in the revised return.

30. Records reveal that the original return was filed on 31.10.2007 and a revised return was filed on 19.2.2008. Notice under Section 148 was issued on 13.9.2010, in response to which, the assessee filed the original return dated 31.10.2007. In the course of re-assessment, the assessing authority rejects the revised return on the ground that it is inadmissible in view of the provisions of section 139(5) requiring the original return to have been filed within time. He thus, does not take cognizance of the revised return and proceeds on the basis of the original return which had omitted to take into account the excess application of previous years as application for the present year and the assessment was completed on the basis of the original return alone. The Commissioner of Income Tax (Appeals), adjudicated the issue on merits, deciding the same

against the assessee which order was confirmed by the Income Tax Appellate Tribunal.

31. A recent amendment to section 139(5) reads thus;

'Following sub-section (5) shall be substituted for the existing sub-section(5) of section 139 by the Finance Act, 2016 w.e.f. 1.4.2017.

(5) If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.'

32. The import of the above amendment is that a return may be revised both in cases of original returns filed under sub section (1) or under sub section (4) within the extended period of one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier. The amendment is intended to confer a benefit on an assessee and the retrospective application thereof has to be examined by the assessing authority. We remand this issue to the file of the assessing authority for the limited purpose of examining the applicability of the amendment extracted above. If the amendment is found applicable to the assessee, the rationale of the decision of this Court in *Matriseva* (supra) shall be applied on merits.

33. Adverting to question No.1, the Tribunal has, in denying the benefit of depreciation to the assessee, applied the provisions of sub section 6 of section 11 reading as follows;

'(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.'

....

34. The short point that arises for decision is whether the provisions of Section 11(6) inserted by Finance (No.2) Act, 2014 w.e.f. 1.4.2015, operate prospectively with effect from assessment year 2015-16 or retrospectively with respect to earlier years as well. In this regard, M/s. Pushya Sitaraman,

learned senior counsel and other learned counsels appearing for the assessee refer to the provisions of Circular 1 of 2015 dated 21.1.2015 (371 ITR (St) 0022) containing explanatory notes to the provisions of Finance (No.2) Act, 2014. The relevant portion of the circular reads as follows;

7.3 Several issues had arisen in respect of the application of exemption regime to trusts or institutions in respect of which clarity in law was required.

7.4 The first issue was regarding the interplay of the general provision of exemptions which are contained in section 10 of the Income-tax Act vis-à-vis the specific and special exemption regime provided in sections 11 to 13 of the said Act. As indicated above, the primary objective of providing exemption in case of charitable institution is that income derived from the property held under trust should be applied and utilized for the object or purpose for which the institution or trust has been established. In many cases it had been noted that trusts or institutions which are registered and have been availing benefits of the exemption regime to not apply their income, which is derived from property held under trust, for charitable purposes. In such circumstances, when the income becomes taxable, a claim of exemption under general provisions of section 10 in respect of such income is preferred and tax on such income is avoided. This defeats the very objective and purpose of placing the conditions of application of income, etc., in respect of income derived from property held under trust in the first place.

7.4.1 Sections 11, 12 and 13 of the income-tax Act are special provisions governing institutions which are being given benefit of tax exemption. It is therefore imperative that once a person voluntarily opts for the special dispensation it should be governed by these specific provisions and should not be allowed flexibility of being governed by other general provisions or specific provisions at will. Allowing such flexibility has undesirable effects on the objects of the regulations and leads to litigation.

...

....

7.6 Applicability.—These amendments take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-2016 and subsequent assessment years.

35. Para 7.6 of the Circular states that the amendment would apply to assessment year 2015-16 and subsequent assessment years. Reliance was placed on the judgment of the Supreme Court in CIT Vs. Alom Extrusions Ltd (2009) and CIT vs Vatika Township (367 ITR 466) for the proposition that an amendment that increases the liability of an assessee is liable to be applied only prospectively. Mr. Narayanaswamy would object stating that the amendment had been inserted to correct an existing anomaly and thus was clearly clarificatory, and consequently retrospective in operation.

36. We do not agree with the Revenue. The amendment, inserted specifically with effect from Assessment Year 2015-2016 seeks to disturb a vested right that has accrued to the assessee. The amendment does not purport to be clarificatory, on the other hand the Explanatory Memorandum makes it applicable only w.e.f. A Y 2015-16 and application of the amendment retrospectively would certainly lead to a great deal of hardship to the assessee. We are thus of the view that the provisions of section 11(6) of the Act inserted with effect from 1.4.2015 shall operate prospectively with respect to assessment year 2015-2016 only.

37. Substantial question of law 1 is answered in favour of the assessee and question 2 is answered in favour of the assessee by way of remand. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

msr

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To

1. THE DIRECTOR OF INCOME TAX
EXEMPTION-III CHENNAI-34
2. THE DIRECTOR OF INCOME TAX OSD
EXEMPTION-III CHENNAI
3. THE DIRECTOR OF INCOME TAX
EXEMPTION II CHENNAI-34
4. THE DIRECTOR OF INCOME TAX
EXEMPTION CHENNAI-34
5. THE DIRECTOR OF INCOME TAX
EXEMPTIONS-I CHENNAI.
6. THE INCOME TAX OFFICER (OSD)
EXEMPTION III, CHENNAI.
7. THE COMMISSIONER OF INCOME
TAX OSD (EXEMPTIONS) III
CHENNAI.
8. THE COMMISSIONER OF INCOME TAX
CHENNAI
9. THE COMMISSIONER OF INCOME TAX
COIMBATORE
10. THE JOINT COMMISSIONER OF
INCOME TAX OSD EXEMPTION-II,
CHENNAI-34.
11. THE INCOME TAX OFFICER,
COMPANY WARD-1, COIMBATORE

- + 11 ccs to Mr. S. Sridhar, Advocate Sr.57556 to 57566
- + 33 ccs to Mr. J. Narayanasamy, Advocate Sr.57538 & 57540 and 57542
- + 2 ccs to Mr. J. Srividhya, Advocate SR.57044 & 57045
- + 2 ccs to Mr. T.N. Seetharaman, Advocate SR.57550, 57551,

- + 1 cc to Mr.J. Balachandar, Advocate SR.57990
- + 3 ccs to Mr. Subburaya Aiyer Padmanabhan, Advocate SR.57539
- + 1 cc to Mr.N.V. Balaji, Advocate Sr.57553
- + 1 cc to Mr. P. Haribabu, Advocate SR.57524

TCA. Nos.844, 845, 848, 849, 1079 of 2010,
TCA.Nos. 99 to 102, 118, 120, 125, 475 to 478 of 2011,
TCA.Nos. 457 of 2012 & TCA.No.650 of 2014,
TCA.Nos.498, 500, 509, 511, 530, 696, 727,
736, 739, 760, 993, 997, 1099 of 2015
&(TCA.Nos.949 of 2015 and 771 of 2016

AD&MR (CO)
EU (04/01/2018)



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