

(2017) 12 SC CK 0091

Supreme Court Of India

Case No: Civil Appeal No. 11027 Of 2013, 794, 7186, 7376, 8368, 9813 Of 2014, 6112, 6612, 7012, 7927, 8908, 13569, 14608, 14609, 14252, 14672 Of 2015, 3174, 3618, 5171, 7173, 8019, 9722, 9957, 10405, 10451, 10695, 11806, 11733, 11734, 11805, 11978, 12280 Of 2016,

Commissioner Of Income Tax
-III,Pune

APPELLANT

Vs

Rajasthan And Gujarati
Charitable Foundation Poona

RESPONDENT

Date of Decision: Dec. 13, 2017

Acts Referred:

- Income Tax Act, 1961 - Section 11, 11(1)(a), 11(6), 12A, 28, 29, 30, 32, 32(1), 34, 43C

Citation: (2018) 7 SCC 810 : (2018) 300 CTR 1 : (2018) 402 ITR 441 : (2018) 253 Taxman 165

Hon'ble Judges: A.K. Sikri, J; Ashok Bhushan, J

Bench: Division Bench

Advocate: Pinky Anand, Yashank Adhyaru, Arijit Prasad, Rajiv Nanda, Snidha Mehra, Rupesh Kumar, D. L. Chidanand, Gargi Khanna, Sadhna Sandhu, Kriti Dua, Hemant Arya, Mrs. Anil Katiyar, Shashi M. Kapila, Pravesh Sharma, Siddharth Kapila, Malvika Kapila, Sushil Kumar, Vikas Mehta, Amit Anand Tiwari, Vishakha, Shadan Farasat, Rudrakshi Deo, Ved Jain, Pranjal Srivastava, Praveena Gautam, Jitesh Prakash Gupta, Anusueya, Dhanish Kumar, T. R. B. Sivakumar, Senthil Jagadeesan, Shruti Iyer, Sonakshi Malhan, Suriti Chowdhary, Rameshwar Prasad Goyal, Salil Agarwal, Madhur Agarwal, Bhargava V. Desai, Akshat Malpani, Vikas Mehta, Shadan Farasat, Jatin Zaveri, H. D. Thanvi, Preeti Thanvi, Rishi Matoliya, S. C. Tiwari, Jatin Zaveri, Neel Kamal Mishra, B. P. Sarangi, S. Sarfaraz Karim, Simanta Kumar, Ambar Qamaruddin, Roni O John, Van ta Bhargava, Ajay Bhargava, Abhisar Bairagi, Gagan Gupta, Prateek K. Chadha, Mihira Sood, Vinodh Kanna B., Arti Singh, Pooja Singh, Parag P. Tripathi, A. V. Rangam, Buddy A. Ranganadhan, Mishika Bajpai, Ajay Vohra, Kavita Jha, Bhuwan Dhoopar, Sanjay Bansal, Aljo K. Joseph, Sheln K.

Final Decision: Allowed

Judgement

These are the petitions and appeals filed by the Income Tax Department against the orders passed by various High Courts granting benefit of depreciation on the assets acquired by the respondents-assesseees. It is a matter of record that all the assesseees are charitable institutions registered under Section 12A of the Income Tax Act (hereinafter referred to as 'Act'). For this reason, in the previous year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under Section 11(1)(a) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under Section 32 of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assesseees had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the assessee. Though it appears that in most of these cases, the CIT (Appeals) had affirmed the view, but the ITAT reversed the same and the High Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department. From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'Commissioner of Income Tax v. Institute of Banking Personnel Selection (IBPS)' [(2003) 131 Taxman 386 (Bombay)]. In the said judgment, 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 of Income Tax, 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

@2½% and they also claimed depreciation on furniture @ 5%. 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 property 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 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

aforesaid 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. 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 ITO 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 ITO

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.â€

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.

It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has

taken a contrary view in 'Lissie Medical Institutions v. Commissioner of Income Tax'.

It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income Tax Act, has made

amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High

Court has taken the view and rightly so, that the said amendment is prospective in nature.

It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters.