
**Commissioner of Income Tax-1, Indore Vs Shri Gujrati Samaj (Regd.),
Indore**

Income Tax A. No. 21 of 2011

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: July 8, 2011

Acts Referred:

Income Tax Act, 1961 " Section 11(1), 143(3), 260A, 32

Citation: (2013) 257 CTR 397 : (2011) ILR (MP) 2916 : (2012) 349 ITR 559

Hon'ble Judges: S.S. Kemkar, J; S.C. Sharma, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shantanu Kemkar, J.

This order shall govern disposal of ITA Nos.22 and 23 of 2011 as common questions of law are involved in all

these appeals and they arise out of the common order.

2. All these appeals u/s 260-A of the Income Tax Act, 1961 (for short, the Act) are against the order dated 31.01.2011 passed by the Income

Tax Appellate Tribunal, Indore Bench (for short, the Tribunal) by which the Tribunal has decided I.T.A. No. 171 /Ind/2010 for the assessment

year 2004-05, I.T.A. No.172/Ind/2010 for the assessment year 2005-06 and I.T.A. No. 173/Ind/2010 for the assessment year 2006-07.

3. Briefly stated, the respondent assessee is a charitable trust formed with the main object to run educational institutions for the benefit of public. In

the course of assessment u/s 143(3) of the Act the A.O. vide order dated 8.12.2006 disallowed assessee's claim for depreciation on the fixed

assets. The AO also denied the claim of the assessee to carry forward deficit in the application of funds. The said order of the AO was challenged

before the CIT (A). The CIT (A) vide order dated 4.01.2010 partly allowed the assessee's appeal to the extent it held that the assessee shall be

entitled for claim of depreciation on the assets owned by it. About the claim to carry forward deficit, the CIT (A) affirmed the decision of the AO

of not allowing the carry forward of loss. Aggrieved by the said order of the CIT (A) the Revenue and the assessee had approached the Tribunal

by filing their respective appeals.

4. The Tribunal vide impugned order dated 31.01.2011 allowed the assessee's appeal and dismissed the appeals of the Revenue. Aggrieved the

revenue has filed the present appeal.

5. Having heard learned counsel for the appellant, we find no ground to interfere into the impugned order passed by the Tribunal.

6. We find that the question, whether a charitable trust is entitled to depreciation u/s 32 of the Act in respect of assets owned by it, was dealt with

by a Division Bench of this Court in COMMISSIONER OF Income Tax Vs. RAIPUR PALLOTTINE SOCIETY., by placing reliance on a

Division Bench Judgment of Karnataka High Court in Commissioner of Income Tax, Karnataka-I Vs. Society of the Sisters of St. Anne, and has

held that depreciation is nothing but decrease in value of property through wear, deterioration or obsolescence and allowance is made for this

purpose in book keeping, accountancy, etc. It is the exhaustion of the effective life of a fixed asset owing to "use" or obsolescence. It may be

computed as that part of the cost of the asset which will not be recovered 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; the amount of the provision, made in respect of

an accounting period, is intended to represent the proportion of such expenditure, which has expired during that period. If depreciation is not

allowed as a necessary deduction in computing the income of a charitable trust, then there would be no way to preserve the corpus of the trust. A

charitable trust is, therefore, entitled to depreciation in respect of the assets owned by it. (Also see Spicer and Pegler's Book Keeping and

Accounts, 17th edn. Pp 44,45 and 46)

7. Having regard to the aforesaid settled legal position in our considered view, the Tribunal has rightly decided the issue about disallowance of

claim of depreciation while computing the income of charitable trust and has rightly held that the assessee being a charitable trust is entitled for

claim of depreciation on the assets owned by it We, accordingly, affirm the view taken by the Tribunal in that regard.

8. Coming to the next question as to whether the order of the Tribunal holding that the assessee is entitled for carry forward and set off excess [of

expenditure incurred during the year over its income. We find that in view of section 11(1)(a) of the Act, it can not be said that the expenditure

incurred in the earlier year cannot be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the

earlier year would not amount to such income being applied for charitable or religious purposes. Having regard to Section 11(1)(a) of the Act in

our view when the income of the trust is used or put to use to meet the charitable or religious purposes it is applied for charitable purpose and the

said application of the income for charitable or religious purposes takes place in the year in which the income is adjusted to meet the expenses

incurred for charitable or religious purposes. Thus even if the expenses for charitable and religious purposes have been incurred in the earlier year

and the said expenses are adjusted against the income of a subsequent year, the income of that year can be said to have been applied for charitable

and religious purposes in the year in which expenses incurred for charitable and religious purposes had been adjusted. There are no words of

limitation in section 11(1)(a) of the Act explaining that the income should have been applied for charitable or religious purposes only in the year in

which the income had arisen. [See Commissioner of Income Tax Vs. Maharana of Mewar Charitable Foundation, In our considered view the

Tribunal has rightly applied the ratio of the judgment and order passed by the Division Bench of Rajasthan High Court in Commissioner of income

tax vs. Maharana of Mewar Charitable Foundation (supra) and has committed no error in holding this issue in favour of the assessee.

9. In the circumstances, in our considered view, no case is made out to interfere into the order passed by the Tribunal. Accordingly, the appeal

fails and is hereby dismissed.