IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7186 OF 2014

COMMISSIONER OF INCOME TAX -III,PUNE Appellant (s)

VERSUS

RAJASTHAN AND GUJARATI CHARITABLE FOUNDATION POONA Respondent(s)

WITH

C.A. No. 1453/2017
C.A. No. 1067/2017
C.A. No. 1565/2017
C.A. No. 3822/2017
C.A. No. 4452/2017
SLP(C) No. 8179/2014
C.A. No. 3174/2016
C.A. No. 3618/2016
C.A. No. 5153/2017
C.A. No. 6059/2017
C.A. No. 5171/2016
SLP(C) No. 17312/2015
SLP(C) No. 17629/2014
SLP(C) No. 19779/2015
SLP(C) No. 17313/2015
SLP(C) No. 17314/2015
SLP(C) No. 17315/2015
SLP(C) No. 21374/2015
C.A. No. 7012/2015
SLP(C) No. 17630/2014
C.A. No. 8368/2014
SLP(C) No. 20837/2014
C.A. No. 7376/2014
SLP(C) No. 20296/2015
SLP(C) No. 20836/2014
C.A. No. 6112/2015
C.A. No. 7173/2016
C.A. No. 6612/2015
C.A. No. 8019/2016
C.A. No. 10405/2016
SLP(C) No. 33940/2013
C.A. No. 7927/2015
C.A. No. 9722/2016
C.A. No. 9957/2016
C.A. No. 8908/2015
C.A. No. 9813/2014
SLP(C) No. 37618/2013
C.A. No. 10451/2016

C.A. No. 11027/2013
C.A. No. 10695/2016
SLP(C) No. 33757/2016
C.A. No. 11806/2016
C.A. No. 11733/2016
SLP(C) No. 34614/2016
C.A. No. 13569/2015
C.A. No. **14608-14609/2015**
C.A. No. 11734/2016
C.A. No. 11805/2016
C.A. No. 1066/2017
C.A. No. 11978/2016
C.A. No. 12280/2016
C.A. No. 14672/2015
C.A. No. 14252/2015
C.A. No. 794/2014
SLP(C) No. 30624/2017
C.A. No. 18430/2017

ORDER

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-assessees. It is a matter of record that all the assessees 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 puruposes 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 assessees 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 @2$^{1}/_{10}$% 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 ahll 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 providesfor 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 32of 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 form 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 aforesatated judgment of the Bombay High Curt, 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."

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.

..... J.
[A.K. SIKRI]

..... J.
[ASHOK BHUSHAN]

New Delhi;
December 13, 2017.

ITEM NO.101 COURT NO.6 SECTION III

S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS

Civil Appeal No. 7186/2014

COMMISSIONER OF INCOME TAX-III,PUNE Appellant (s)

VERSUS

RAJASTHAN AND GUJARATI CHARITABLE FOUNDATION POONA Respondent(s)

WITH
C.A. No. 1453/2017 (XV)
C.A. No. 1067/2017 **(XV)**
C.A. No. 1565/2017 (IV-A)
C.A. No. 3822/2017 (IV-A)
C.A. No. 4452/2017 (IV-A)
SLP(C) No. 8179/2014 (IV-B)
C.A. No. 3174/2016 **(XV)**
C.A. No. 3618/2016 **(XV)**
C.A. No. 5153/2017 (XV)
C.A. No. 6059/2017 (IV-A)
C.A. No. 5171/2016 **(**
SLP(C) No. 17312/2015 (XIV)
SLP(C) No. 17629/2014 (XIV)
SLP(C) No. 19779/2015 (IX)
SLP(C) No. 17313/2015 (XIV)
SLP(C) No. 17314/2015 (XIV)
SLP(C) No. 17315/2015 (XIV)
SLP(C) No. 21374/2015 (XIV)
C.A. No. 7012/2015 (III)
SLP(C) No. 17630/2014 (XIV)
C.A. No. 8368/2014 (III)
SLP(C) No. 20837/2014 (III)
C.A. No. 7376/2014 (III)
SLP(C) No. 20296/2015 (IX)
SLP(C) No. 20836/2014 (III)
C.A. No. 6112/2015 **(**
C.A. No. 7173/2016 (XV)
C.A. No. 6612/2015 (III)
C.A. No. 8019/2016 (IV-A)
C.A. No. 10405/2016 (IV-A)
SLP(C) No. 33940/2013 (IX)
C.A. No. 7927/2015 (III)
C.A. No. 9722/2016 (IV-A)
C.A. No. 9957/2016 **(XV)**
C.A. No. 8908/2015 (IV-A)
C.A. No. 9813/2014 (III)
SLP(C) No. 37618/2013 (IX)

C.A. No. 10451/2016 (III)
C.A. No. 11027/2013 (III)
C.A. No. 10695/2016 (IV-A)
SLP(C) No. 33757/2016
(IX) C.A. No.
11806/2016 (XV) C.A.
No. 11733/2016 (IV-A)
SLP(C) No. 34614/2016
(IV-A)
C.A. No. 13569/2015 (XV)
C.A. No. 14608-14609/2015 (III-A)
C.A. No. 11734/2016 (IV-A)
C.A. No. 11805/2016 (III)
C.A. No. 1066/2017 (XV)
C.A. No. 11978/2016 (XV)
C.A. No. 12280/2016 (XV)
C.A. No. 14672/2015 (III)
C.A. No. 14252/2015 (XV)
C.A. No. 794/2014 (IV-A)
SLP(C) No. 30624/2017 (XIV)
(With IA No.110544/2017-CONDONATION OF DELAY IN FILING, IA **No.110546/2017-EXEMPTION FROM FILING** C/C **OF** THE IMPUGNED JUDGMENT and IA No.110545/2017-CONDONATION OF DELAY IN REFILING)
C.A. No. 18430/2017 (XV)
(With IA No.106430/2017-CONDONATION OF DELAY IN FILING)

Date : 13-12-2017 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For parties
Ms. Pinky Anand, ASG.
Mr. Yashank Adhyaru, Sr. Adv.
Mr. Arijit Prasad, Adv.
Mr. Rajiv Nanda, Adv.
Ms. Snidha Mehra, Adv.
Mr. Rupesh Kumar, ADV.
Mr. D. L. Chidanand, Adv.
Ms. Gargi Khanna, Adv.
Ms. Sadhna Sandhu, Adv.
Ms. Kriti Dua, Adv.
Mr. Hemant Arya, Adv.
Mrs. Anil Katiyar, AOR
Mr. Shashi M. Kapila, Adv.
Mr. Pravesh Sharma, Adv.
Mr. Siddharth Kapila, Adv.
Ms. Malvika Kapila, Adv.
Mr. Sushil Kumar, Adv.
Mr. Vikas Mehta, Adv.

Mr. Amit Anand Tiwari, Adv.
Ms. Vishakha, Adv.
Mr. Shadan Farasat, Adv.
Ms. Rudrakshi Deo, Adv.
Mr. Ved Jain, Adv.
Mr. Pranjal Srivastava, Adv.
Ms. Praveena Gautam, AOR
Mr. Jitesh Prakash Gupta, Adv.
Ms. Anusueya, Adv.
Mr. Dhanish Kumar, Adv.
Mr. T. R. B. Sivakumar, AOR
Mr. Senthil Jagadeesan, AOR
Ms. Shruti Iyer, Adv.
Ms. Sonakshi Malhan, Adv.
Ms. Suriti Chowdhary, Adv.
Mr. Rameshwar Prasad Goyal, AOR
Mr. Salil Agarwal, Adv.
Mr. Madhur Agarwal, Adv.
Mr. Bhargava V. Desai, AOR
Mr. Akshat Malpani, Adv.
Mr. Vikas Mehta, AOR
Mr. Shadan Farasat, AOR
Mr. Jatin Zaveri, AOR
Mr. H. D. Thanvi, Adv.
Ms. Preeti Thanvi, Adv.
Mr. Rishi Matoliya, AOR
Mr. S. C. Tiwari, Adv.
Mr. Jatin Zaveri, Adv.
Mr. Neel Kamal Mishra, Adv.
Mr. B. P. Sarangi, Adv.
Mr. S. Sarfaraz Karim,
Adv. Mr. Simanta Kumar,
Adv. Mr. Ambar Qamaruddin, AOR
Mr. Roni 0 John, Adv.
Ms. Vanita Bhargava, Adv.
Mr. Ajay Bhargava,
Adv. Ms. Abhisaar Bairagi,
Adv. M/S. Khaitan & Co., AOR
Mr. Gagan Gupta, AOR
Mr. Prateek K. Chadha, Adv.
Ms. Mihira Sood, AOR
Mr. Vinodh Kanna B., AOR
Ms. Arti Singh, AOR

Ms. Pooja Singh, Adv.
Mr. Parag P. Tripathi, Sr. Adv.
Mr. A. V. Rangam, AOR
Mr. Buddy A. Ranganadhan, Adv.
Ms. Mishika Bajpai, Adv.
Mr. Ajay Vohra, Sr. Adv.
Ms. Kavita Jha, AOR
Mr. Bhuwan Dhoopar, Adv.
Mr. Sanjay Bansal, Sr. Adv.
Mr. Aljo K. Joseph, Adv.
Ms. Shelna K., Adv.

UPON hearing the counsel the Court made the following

O R D E R

The matters are dismissed in terms of the signed order.

(NIDHI ABUJA)
COURT MASTER

MLA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]