Bombay High Court Cit vs Institute Of Banking Personnel ... on 9 July, 2003 Equivalent citations: 2003 131 TAXMAN 386 Bom Author: S Kapadia JUDGMENT S.H. Kapadia, J. This reference is made at the instance of the revenue under section 256(1) of the Income Tax Act, 1961 under which following three questions have been referred to us for our opinion : "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the assessing officer to allow depreciation on the assets the cost of which has been fully allowed as application of income under section 11 in the past years? 2. Without prejudice to the ground No. 1, whether on the facts and in the circumstances of the case, the Tribunal was justified in law in directing the assessing officer to allow depreciation of Rs. 49,453 on assets received on transfer, when the assessee had not incurred the cost of acquiring the assets? 3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law forward the deficit of earlier year and set it off against the surplus of subsequent years when the same was not allowable in the case of assessee trust in whose case income exempted under section 11 of the Income Tax Act, 1961 ?" Facts 2. The assessee is a Charitable Trust. For Accounting year ending 31-12-1984 (assessment years 1984-85), a return of income was filed on 28-6-1985 by the assessee declaring a deficit of Rs. 74.97 lakhs. In the revised return filed by the assessee on 3-4-1986, the deficit was increased to Rs. 89.18 lakhs. This revision of accounts was authorised by the Bombay Public Trust Registration Office. The assessee is a Charitable Trust registered under the Bombay Public Trust Act. It is also registered under section 12A of the Income Tax Act. The assessee Institute is governed by a Board consisting of Executive Officers of RBI, Central Recruitment Board, Banking Services Recruitment Board, etc. The object of the assessee is charitable in nature. The income of the assessee is exempt under section 11 of the Income Tax Act. The assessee had claimed depreciation which was rejected by the assessing officer on the ground that capital expenditure incurred during the accounting year was allowed as a deduction from the income of the assessee and, therefore, the claim of the assessee for depreciation on buildings was disallowed. 2. The assessee is a Charitable Trust. For Accounting year ending 31-12-1984 (assessment years 1984-85), a return of income was filed on 28-6-1985 by the assessee declaring a deficit of Rs. 74.97 lakhs. In the revised return filed by the assessee on 3-4-1986, the deficit was increased to Rs. 89.18 lakhs. This revision of accounts was authorised by the Bombay Public Trust Registration Office. The assessee is a Charitable Trust registered under the Bombay Public Trust Act. It is also registered under section 12A of the Income Tax Act. The assessee Institute is governed by a Board consisting of Executive Officers of RBI, Central Recruitment Board, Banking Services Recruitment Board, etc. The object of the assessee is charitable in nature. The income of the assessee is exempt under section 11 of the Income Tax Act. The assessee had claimed depreciation which was rejected by the assessing officer on the ground that capital expenditure incurred during the accounting year was allowed as a deduction from the income of the assessee and, therefore, the claim of the assessee for depreciation on buildings was disallowed. Further, the assessee had claimed depreciation on furniture and fixtures to the tune of

Rs. 49,453 at 10 per cent of the written down value which was disallowed by the assessing officer on the ground that the said assets have been received by the assessee on transfer from National Institute of Bank Management. That Institute was also a Charitable Trust. Its income was also exempt under section 11 of the Income Tax Act. The assessing officer did not allow depreciation on fixtures and furnitures on the ground that full deduction had been allowed in respect of capital cost of furniture and fixtures and if the depreciation is allowed, as claimed by the assessee, it would result in double deduction. Further, during the assessment year in question the assessee had carried forward the deficit of the earlier years and had adjusted the deficit of the earlier years against the surplus of the subsequent years which was disallowed by the assessing officer on the ground that such carry forward was applicable only to income assessable under the head 'Profits & Gains of Business" and such carry forward and adjustment was not permissible in case of income assessable under section 11 to section 13 of the Income Tax Act as the income of the Charitable Trust was not assessable under the head "Profits & Gains of Business". Therefore, the assessee carried the matter in appeal on all the three points which are inter-related to the appellate authority which decided the matter in favour of the assessee. The decision of the appellate authority was confirmed by the Tribunal. Hence, this Reference has come before the court at the instance of the department. Findings 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, 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 at the rate of 2.5 per cent and they also claimed depreciation on furniture at the rate of 5 per cent. 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 properly 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 the 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 aforestated 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. 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, 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 at the rate of 2.5 per cent and they also claimed depreciation on furniture at the rate of 5 per cent. 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 properly 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 the 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 aforestated 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 (Bom). 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 Income Tax Officer 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 Income Tax Officer 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. 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 (Bom). 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 Income Tax Officer 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 Income Tax Officer 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. 5. Now coming to question No. 3, the point which arises for consideration is : whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the assessing officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a Charitable Trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income Tax Act and that the income of the Charitable Trust was not assessable under the head “profits and gains of business” under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the department. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the Trust for charitable and religious purposes in the earlier years against the income earned by the Trust in the subsequent year will have to be regarded as application of income of the Trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the Trust under section 11(1)(a) of the Act. Our view is also supported by the judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal (1995) 211 ITR 293 (Guj). Accordingly, we answer question No. 3 in the affirmative i.e., in favour of the assessee and against the department. 5. Now coming to question No. 3, the point which arises for consideration is : whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the assessing officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a Charitable Trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income Tax Act and that the income of the Charitable Trust was not assessable under the head "profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the department. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the Trust for charitable and religious purposes in the earlier years against the income earned by the Trust in the subsequent year will have to be regarded as application of income of the Trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the Trust under section 11(1)(a) of the Act. Our view is also supported by the judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal (1995) 211 ITR 293 (Guj). Accordingly, we answer question No. 3 in the affirmative i.e., in favour of the assessee and against the department. 6. Accordingly, reference is disposed of with no order as to costs. 6. Accordingly, reference is disposed of with no order as to costs.