

## Provision allowing trust to either claim depreciation or cost of asset is applicable prospectively

**Summary – The High Court of Karnataka in a recent case of Al- Ameen Charitable Fund Trust., (the Assessee) held that Section 11(6) inserted by Finance (No. 2) Act, 2014 denying depreciation while computing income of charitable trust, is prospective in nature and operates with effect from 1-4-2015**

### Facts

- The assessee was a charitable institution registered under section 12AA. In course of assessment, the Assessing officer denied exemption under section 11, read with section 10(23C) and also made an addition of income on account of disallowance of depreciation.
- The Commissioner (Appeals) as well as the Tribunal allowed assessee's claim for depreciation.
- On revenue's appeal:

### Held

- It is to be noticed that while in the year of acquiring the capital asset, what is allowed as exemption is the income out of which such acquisition of asset is made and when depreciation deduction is allowed in the subsequent years, it is for the losses or expenses representing the wear and tear of such capital asset incurred if, not allowed then there is no way to preserve the corpus of the trust for deriving its income.
- As such, the arguments advanced by the revenue apprehending double deduction is totally misconceived.
- Section 11(6) was inserted with effect from 1-4-2015 by Finance Act No. 2/2014.
- The plain language of the amendment establishes the intent of the legislature in denying the depreciation deduction in computing the income of charitable trust is to be effective from 1-4-2015. This view is further supported by the Notes on Clauses in Finance [No. 2] Bill 2014, memo explaining provisions and circulars issued by the Central Board of Direct Taxes in this regard.
- The said amendment shall take effect from 1-4-2015 and will accordingly apply in relation to the assessment year 2015-16 and subsequent assessment years.
- Further, keeping in view the principles enunciated by the Apex Court, in *CIT v. Vatika Township (P.) Ltd.* [2014] 367 ITR 466/227 Taxman 121/49 taxmann.com 249, it could be safely held that section 11(6) is prospective in nature and operates with effect from 1-4-2015. This is further clarified when compared with certain other provisions which have been made effective retrospectively in the same Finance Act.
- In view of above, it is held that the Tribunal is correct in holding that depreciation is allowable under section 11 and there is no double claim of capital expenditure as held by the Assessing Officer.