IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.01.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

T.C.A. NOS. 1071 & 1072 OF 2014

The Commissioner of Income Tax
Salem. .. Appellant/Respondent in both the appeals

- Vs -

M/s.Indian Educational Trust
Gopinathapuram Cross Road
Parayampatty Pudur
Harur, Dharmapuri District. .. Respondent/Appellant in both the appeals

Appeals filed under Section 260-A of the Income Tax Act against the common order dated 4.8.2011 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, made in ITA Nos.1177 & 1178/Mds/2009 against the separate orders of the Commissioner of Income Tax Salem 7 dated 08.06.2009 C.No.9755(80) SlM/ 2008-2009.

Against the Separate orders of the Commissioner of Income Tax No.3. Gandhi Road, Salem & dated 29.05.2009 C.No.9755(80)/SlM 2008-2009.

For Appellant : Mr.J.Narayanaswamy

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeal filed by the assessee/respondent herein, the Revenue is before this Court by filing the present appeal by raising the following questions of law for consideration:-

> “a) Whether on the facts and circumstances of the case was the Tribunal right in remanding the issue back to the CIT especially when the document available on record and that the accounts of the assessee had not been properly maintained and the

returns of income filed were belated and when wrong claims have been made by the assessee?

b) Whether on the facts and circumstances of the case was the Tribunal right in not considering the fact that under Section 12AA Commissioner is empowered to reject the application after perusing the documents produced before him which he did?

c) Whether on the facts and circumstances of the case was the Tribunal right in remanding the issue back to the CIT, when application under Section 12AA dated 7.11.08 was properly rejected as per law since the applicant had failed to provide documentary evidences sought for?"

2. These appeals are a consequence of the order passed by the Commissioner of Income Tax, Salem, dated 23.11.07 and 29.5.09, whereby the respondent/assessee's application for registration under Section 12AA was denied and exemption sought for under Section 80G was also rejected.

3. The brief facts, shorn of unnecessary details, are that the assessee filed application in Form 10A on 7.11.08 under Section 12 AA (1) (aa) of the Income Tax Act for registration and also filed application for exemption under Section 80 G (5) (vi) of the Income Tax Act. Along with Form 10A, certified copy of trust deed and deed of amendment were also filed. Initially the Trust had applied for registration and exemption, which was rejected by the Commissioner. Thereafter, the Trust, once again on 7.11.08, applied for registration and exemption. Hearing notices were issued by the Department on several dates and since none appeared on behalf of the Trust, the registration under Section 12AA was dismissed for default and, consequently, exemption under Section 80G (5) (vi) was also rejected. Though the assessee contended that they were under the bona fide belief that the registration sought for under Section 12AA originally dated 14.8.02 was not rejected and, therefore, presumed the same has been granted notwithstanding the subsequent rejection on 23.11.07, however, the said contention was not accepted by the Commissioner due to the fact that two subsequent applications for registration were filed by the assessee.

4. Aggrieved by the said orders of the Commissioner of Income Tax, the assessee filed appeals before the Tribunal. The Tribunal, on a consideration of the matter and on perusal of the documentary evidences produced before it, remanded the matter back to the Commissioner of Income Tax for fresh consideration. Aggrieved against the said order of the Tribunal, the Revenue is before this Court by filing the present appeals.

5. Heard Mr.Narayanaswamy, learned standing counsel appearing for the appellant/Department.

6. It is evident from the records that the main plea taken by the assessee/respondent herein before the Tribunal appears to be on violation of principles of natural justice stating that documents and evidence produced by the assessee/respondent have not been considered by the authority. In such view of the matter, the Tribunal, on going through the documents and typed set of papers, was of the view that the case requires reconsideration of the entire issues by the Commissioner of Income Tax and, accordingly, remanded the matter back for reconsideration. For better clarity, para-4 of the order of the Tribunal, is extracted hereinbelow :-

> "We have visualized the rival stands and have also carefully treaded through the Trust Deed and other relevant documents enclosed in the paper book. We are convinced that this is a fit case for remanding back to the file of the ld. CIT so that he can re-examine the entire issue(s) in the light of the evidence(s) available before him as well as the oral submissions, if any, which can be made. Consequently, we restore both these appeals to the file of the ld. CIT for his fresh decision. Consequently, both the appeals are allowed for statistical purposes."

7. It is clear from the order passed by the Tribunal that it is an open remand without any fetters on the department and, therefore, no grievance can be addressed in these appeals. The questions of law raised by the appellant, in the facts of the present cases, are not required to be adjudicated upon.

8. In the result, the appeals fails and the same are dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Commissioner of Income Tax No.3 Gandhi Road,
   Salem.7

2. The Income Tax Appellate Tribunal
   'C' Bench, Chennai.

+ 1 cc to Mr.J. Narayanasamy, Advocate SR.4194

MG(CO)
Eu 21.02.15