

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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I.T.A.No.258 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 260-A of the Income Tax Act, 1961 (for brevity, 'the Act'), is preferred against the order passed by the ITAT, Hyderabad in I.T.A.No.436/Hyd/2012 dated 13.12.2013 for the assessment year 2005-06.

The respondent herein was engaged in Scientific Research in the area of Biomedical Science. They filed their return for the assessment year 2005-06 declaring 'NIL' income after claiming exemption under Section 10 (21) of the Act. Assessment, under Section 143 (3) of the Act, was made on 12.12.2007 and it was found that the assessee had not filed Form-10. A notice, under Section 148 of the Act, was issued and a re-assessment order was passed determining the total income of the assessee at Rs.55,73,560/-. The assessing officer observed that the assessee had declared gross receipts of Rs.1,50,33,273/-; and had arrived at a surplus of Rs.55,73,560/- after claiming expenditure under various heads; as per Section 11 (2) (a) of the Act, if the assessee accumulates or sets apart more than 15% of the gross receipts, the assessee has to file Form-10 along with the return of income; and the assessee had transferred Rs.55,73,560/- to the capital fund which is more than 15% of the gross receipts. The assessing officer brought the entire surplus amount of Rs.55,73,560/- to tax.

Aggrieved thereby, the assessee carried the matter in appeal. Before the Commissioner it was contended that the assessee had a deficit of Rs.46,42,125/- for the financial year 2003-04 which had been adjusted against the surplus for the financial year 2004-05; such adjustment of deficit amounted to application of money; after such adjustment, the surplus was below 15% of the income; the excess expenditure of earlier year should be considered as application of income during the

current year; there is nothing in the language of Section 11 (1) (a) of the Act which lends support to the contention 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 amount to such income being applied for charitable or religious purposes.

The Commissioner held that the assessing officer did not consider the deficit of Rs.46,42,125/-, before concluding that there was a surplus of Rs.55,73,560/- during the year; and since the assessee had a deficit for the previous year, the surplus for the subsequent year was not in excess of 15% of the income. The Commissioner directed the assessing officer to verify the contention of the assessee and, if the claim of deficit of Rs.46,42,125/- was found to be correct, the surplus should be arrived at after setting off the same from the surplus of Rs.55,73,560/-.

Aggrieved thereby, the Revenue carried the matter in appeal to the Tribunal. The Tribunal, relying on the judgment of the Madras High Court in **Govindu Naicker Estate v. ADIT and another** and **CIT, Tamilnadu-I v. Rao Bahadur Calavala Cunnan Chetty Charities** and the judgment of the Gujarat High Court in **CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal**, confirmed the order of the Commissioner of Income Tax, directed the assessing officer to verify the records and, if the claim of deficit of Rs.46,42,125/- was found to be correct, the surplus was directed to be arrived at after setting off the deficit of Rs.46,42,125/- for the earlier year from the surplus of Rs.55,73,560/- during the current year.

Before us Sri J.V.Prasad, learned Senior Standing Counsel for the Income Tax Department, would submit that Section 11 (1) (a) of the Act does not permit set off of the deficit for the previous financial year with the surplus for the current financial year; and, in the absence of any such provision, the assessee was not entitled to claim that the deficit of the earlier financial year should be set off against the surplus for the current year.

As held by the Madras and Gujarat High Courts, in the aforesaid judgments,

Sections 11 (2) and (3) of the Act provide that the income derived from the property held under trust, wholly for charitable or religious purposes, to the extent to which such income is applied for such purposes in India, is to be excluded for the purposes of computing the income of the trust for the purpose of assessment. There are no words of limitation in the said Sections requiring that the income should be applied for charitable or religious purposes only in the year in which the income had arisen. According to the CBDT circular dated 24.01.1973, if a trust wants to spend more money for charitable and religious purposes in a particular year, it can take a loan which can be repaid out of the income of the subsequent year; payment of the said loan, from out of the income of the subsequent year, would amount to application of income for charitable and religious purposes under Section 11 (1) (a); there is nothing in the language of Section 11 (1) (a) to indicate that the expenditure incurred in the earlier year cannot be met from out of the income of the subsequent year; utilization of such income, for meeting the expenditure of the earlier year, would amount to such income being applied for charitable and religious purposes; the deficit, arising out of excess of expenditure over income, during the previous year, relevant to the assessment year, should be set off against the surplus of income over expenditure relating to subsequent year in computing the taxable income of the later assessment year.

As noted hereinabove, the CBDT circular dated 24.01.1973 enables a trust, which had taken a loan for incurring expenditure for charitable and religious purposes, to repay the said loan from out of its income in the subsequent year; and such repayment of loan is to be treated as application of income for charitable and religious purposes under Section 11 (1) (a) of the Act. Money for charitable and religious purposes, beyond the income of a trust, can be applied, for charitable and religious purposes, either by taking a loan or utilizing a part of the corpus of the Trust. As the CBDT circular dated 24.01.1973 enables repayment of a loan for the previous year utilizing the income of the subsequent year, and for such utilization to be treated as application of income under Section 11 (1) (a) of the Act, there is no reason why excess application of money, for charitable and religious purposes, (deficit) of the earlier year should not be set off against the income for the subsequent year. In the absence of any specific prohibition in the Section 11 (1) (a) of the Act in this regard, and in the light of the CBDT circular dated 24.01.1973 and

the judgments of the Gujarat and Madras High Courts as aforementioned, we find no error in the order of the Tribunal, much less a substantial question of law, necessitating interference in this appeal.

The appeals fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

12th November, 2015.

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