THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

ITTA.No.656 of 2015

JUDGMENT: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri J.V.Prasad, learned Senior Standing Counsel for Income Tax, and Mrs.K.Vijaya Lakshmi, learned counsel for the respondent-assessee and, with their consent, the writ petition is disposed of at the stage of admission. This appeal is preferred by the Revenue against the order passed by the Income Tax Appellate Tribunal, Hyderabad in I.T.A.No.1195/Hyd/2009 dated 22.03.2012 for the assessment year 2006-07.

In the order under appeal, the Tribunal directed the assessing officer to verify, in respect of each asset on which depreciation was claimed, whether the value of such asset was in fact allowed under Section 11 of the Income Tax Act, 1961 (for short "the Act"); and, if it was so allowed, whether depreciation should not be allowed in respect of such asset. The Tribunal held that it is only if the value of the asset was not allowed as expenditure under Section 11 of the Act, was the assessing officer required to allow depreciation thereon as per the rate applicable to those assets. The assessing authority was directed to consider the matter afresh in the light of the observations in the order.

While the assessee's application under Section 10(23C)(iv) of the Act was rejected, the order of the Tribunal required their claim for exemption under Section 11 of the Act to be considered by the assessing authority independent thereof. Sri J.V.Prasad, learned Senior Standing Counsel for Income Tax, would submit that, in the absence of the assessee having obtained a notification under Section 10(23C) of the Act, they were not entitled to claim exemption under Section 11 of the Act.

As Section 11 of the Act operates in a field distinct from Section

10(23C) of the Act, even though the criteria prescribed for exemption overlaps to a certain extent, rejection of an application under Section 10(23C)(iv) of the Act would not disentitle the assessee from claiming exemption under Section 11 of the Act. A similar question regarding the assessee's claim for exemption under Section 11 of the Act, in the absence of a notification under Section 10(23C)(vi) of the Act, fell for consideration in ITTA.No.635 of 2015 and this Court, after taking into consideration the CBDT Circular dated 17.08.2015, dismissed the appeal holding that the absence of a notification, under Section 10(23C)(vi) of the Act, would not disentitle the assessee from claiming exemption under Section 11 of the Act on their fulfilling the criteria prescribed therefor.

Absence of a notification under Section 10(23C)(iv) of the Act would not bar the assessee from claiming exemption under Section 11 of the Act. As the matter has merely been remanded to the assessing authority for his consideration, as to whether the assessee was eligible for exemption under Section 11 of the Act, we are satisfied that no substantial question of law arises for consideration necessitating the appeal being entertained under Section 260-A of the Act.

The appeal 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)

13th July 2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

ITTA.No.656 of 2015

-

-

-

Date: 13.07.2016

JSU