IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

Tax Case Appeal No.156 of 2009

Estate of M.M.Isphani,
C/o. The Official Trustee of Tamil Nadu,
High Court Campus,
Chennai - 600 104.

.... Appellant

-vs-

The Assistant Director of Income-tax
(Exemptions) - II, Chennai - 600 034.

...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai dated 14.07.2008 in ITA No.1465/Mds/2006, for the Assessment year 2002-03, against the order of the Commissioner of Income Tax(Appeals)-XI, Chennai dated 02/02/2006 and made in ITA.Nos.361 & 365/2004-05 for the Assessment year 1997-98 & 2002-03.

against the order of the Assistant Director of Income Tax (Examption)-II, chennai-34 dated 16/02/98 and made in PAN/GIR.2612-E for the Assessment year 2002-03.

For Appellant : Mr.R.Venkat Narayanan for Subbaraya Aiyar Padmanabhan

For Respondent : Mr.Karthick Ranganathan

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the assessee is directed against the order of the Income Tax Appellate Tribunal 'A' Bench, dated 14.07.2008 in ITA No.1465/Mds/2006, for the Assessment year 2002-03.

2.Heard Mr.R.Venkat Narayan, for Subbaraya Aiyar Padmanabhan, for the appellant and Mr.Karhick Ranganathan for the respondent.

3.This Appeal has been admitted on 13.03.2009, on the following Substantial Questions of Law:

> "1.Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the conditions stipulated for availing the benefit of accumulation of income under Section 11(2) are not satisfied?
>
> 2.Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that for the purpose of accumulation of the income as provided under Section 11(2) of the Income Tax Act requires specification of the purposes?"

4.The learned counsel for the assessee as well as the learned Standing Counsel for the Revenue submitted that the Substantial Questions of Law framed for consideration were considered by this Court in the case of Estate of MKA Charities Vs. The Assistant Director of Income-tax in TCA No. 1009 of 2008 dated 01.08.2018. In the said case, this Court took note of the judgement in TCA No. 1588/2005. The operative portion of the decision reads as follows:

> "6.For better appreciation, the operative portions of the judgment in the case of Estate of Kadapakam Charities (supra) are quoted herein below:-
>
> "3.The learned counsel appearing for the appellant as well as the counsel for the respondent submits that the issue involved in this appeal is covered by the decision of this Court in the case of Estate of Kadapakam Charities Vs. The Asst. Director of Income Tax (Exemptions) II, Chennai - 34 (T.C. (A).No.281 of 2004) dated 15.12.2008, wherein it was observed as follows:
>
> "............8.The decision of the Calcutta High Court will not strictly apply to this case, since in that case in Form 10, all the objects of the trust had been enumerated and therefore, rejection of Form 10 was not justified. In this case, the purpose has

been specified viz., repair and renovation of the building, and the difficulties in immediately starting the renovation have also been brought to the notice of the authorities. But at the same time, we also see that Form 10 has not been duly filled up. Even in the matter decided by the Calcutta High Court, the assessee was allowed to adduce fresh evidence to show the specific purpose for which the trust requires accumulation of the income. In this case too, especially in view of the fact that it is AG & OT who is administering the trust, we feel that the same indulgence could be shown. We are not answering the questions of law raised, however, we remanded the matter to the Assessing Officer and the assessee shall specify the purpose in addition to renovation and repair of the building and also the amount and the period for which accumulation is required, and the Assessing Officer shall consider the same in accordance with law. ....”

4. Having regard to the submission made by the counsel on either side, the order of the Tribunal is hereby set aside and the matter is remitted back to the Assessing Officer in terms of the direction given in the order dated 15.12.2008 made in T.C. (A).No.281 of 2004 and the tax case is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.”

5.Thus, following the above decision, the appeal filed by he assessee is allowed and the order passed by the Tribunal is set aside and the matter is remitted back to the Assessing Officer in terms of directions given in the order dated 15.12.2008 in TCA No.281 of 2004. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Director of Income-tax
(Exemptions) – II, Chennai – 600 034.

2.The Income Tax Appellate Tribunal Madras 'A' Bench.

3.The Commissioner of Income(Appeals)-XI,
Chennai.

4.The Assistant Director of Income-Tax(Exemption)-II,
Chennai-34.

+1cc to Mr.Karthick Ranganathan, Advocate sr.no.77926
+1cc to Subbaraya Aiyar Padmanabhan, Advocate sr.no.772081

T.C.A.No.156 of 2009

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