IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.06.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.18 of 2015
and MP No.1 of 2015

1. The Chief Commissioner of
Income Tax-III
121, Mahatma Gandhi Road,
Chenni 600 034.

2. The Director of Income Tax (Exemptions)
121, Mahatma Gandhi Road,
Chennai 600 034.

3. The Additional Director of Income Tax
(Exemptions) IV,
121, Mahatma Gandhi Road,
Chennai 600 034. ... Appellants

versus

Tamil Nadu KalviKapu Arakkattalai,
77, Bazullah Road,
T.Nagar, Chennai 600 017. ... Respondent

Appeal filed under clause 15 of the letters patent against the order passed by this Court dated 06.11.2014 passed in W.P.No.4320 of 2011.

Prayer in WP.No.4320/2011:Writ petition filed under Article 226 of the Constitution of India seeking for the issuance of a writ f certiorarified mandamus to call for the records of the Petitioner on the file of the First Respondent to quash the impugned order dated 5.8.2010 issued in C.No.CC III/3/10(23C)/ 2010-11 in refusing/rejecting the renewal of recognition sought for in terms of section 10 (23C)(Vi) of the Income Tax Act 1961 for the assessment year 2009-2010 and consequently direct the Respondent to grant such recognition as prayed for.

For Appellants : Mrs.Hema Muralikrishnan
For Respondent : Mr.Sridhar

J U D G M E N T
(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dated 06.11.2014 made in WP No.4320 of

2011, in and by which, the learned Single Judge allowed the Writ Petition filed by the respondent directing the 1st appellant to furnish a copy of the Report submitted by the DIT (E), dated 08.07.2010 and thereafter, proceed to hear the respondent and determine the issue afresh in accordance with law.

2. The issue that was raised before the Department was as to the entitlement of the respondent to the benefits of Section 10 (23C) (vi) of the Income Tax Act. Though, originally the appellants granted the benefits of Section 10 (23C) (vi) of the Income Tax Act, to the respondent Trust, subsequently, at the time of renewal the benefits were refused on the ground that the objects of the respondent Trust are not solely for the purpose of Education.

3. According to the Department, the benefits of Section 10 (23C) (vi) of the Income Tax Act will be available, only if it is shown that the objects of the Trust are solely for the purpose of Education and if the Trust has some other object, the same would disentitle it from claiming the benefits of Section 10 (23C) (vi) of the Income Tax Act. While considering the request of the respondent Trust for exemption of its income from the Educational activities in computing the total income of the Trust, for the purposes of Section 10 (23C) (vi) of the Income Tax Act, the first appellant viz. the Chief Commissioner of Income Tax had obtained the reports of the Assessing Officer, the Joint Director (Exemptions) and the Director (Exemptions) and had based his conclusions on the said report. Admittedly, the copy of those reports had not been furnished to the respondent Trust. The learned Single Judge found fault with the Department for not having furnished copies of the Report to the appellant inasmuch as the decision was based on those reports.

4. On the above said conclusion, the learned Single Judge remitted the matter to the 1st appellant with a direction to the 1st appellant to furnish copies of the Report of the Director (Exemptions) DIT (E) dated 08.07.2010 and deciding the matter afresh after giving an opportunity to the respondent to put forth its contentions. It is this order of the remand which is challenged by the Department in this intra Court Appeal.

5. We have heard Mrs.Hema Muralikrishnan learned counsel for the appellants/Department and Mr. Sridhar, learned counsel appearing for the respondent.

6. Mrs. Hema Muralikrishnan, learned Standing counsel appearing for the Department would strenuously contend that the Report is only a replica of the application made by the respondent Trust, seeking benefits of Section 10 (23C) (vi) of the Income Tax Act. She would also further contend that while remanding the matter, the learned Single Judge had made certain observations which amounted to a direction to the 1st appellant as to the manner in which he should go about deciding the entitlement of the respondent Trust to the benefits of Section 10 (23C) (vi) of the Income Tax Act. The learned counsel would further submit that while remanding the matter for fresh consideration, the learned Single Judge should not have made those observations that would amount to a direction to decide the matter in the particular manner.

7. Per contra Mr. Sridhar, learned counsel appearing for the respondent Trust would contend that the very scope of Section 10 (23C) (vi) of the Income Tax Act, have been misunderstood by the Department. According to him, Section 10 relates to computation of income and certain provisions are made so as to enable certain persons to claim exclusion of certain income from the total income, while computing the taxable income. Therefore, according to the learned counsel, the premise on which the Department had rejected the claim of the respondent Trust itself is not correct.

8. We have heard the rival submissions. We do not propose to go into the merits of the matter as the learned Single Judge has not gone into the merits. The learned Single Judge had only directed the Department to furnish the copy of the report on 08.07.2010 and decide the matter afresh after giving an opportunity to the respondent Trust. During the hearing of the present Appeal, the copy of the report dated 08.07.2010 had been furnished to the learned counsel for the respondent.

9. Therefore, the only deficiency pointed out by the learned Single Judge now stands cured. However, the respondent should be given an opportunity to make its submissions or objections based on the Report dated 08.07.2010. Therefore, we see no reason to interfere with the order of the remand passed by the learned Single Judge. At the same time, we make it clear that it will be open to the 1st appellant, viz. the Chief Commissioner of Income Tax to decide the issue afresh without being influenced by any of the observations made by the learned Single Judge in the order dated 06.11.2014 or the observations made in the order impugned in the Writ Petition dated 05.08.2010.

10. For the foregoing reasons, the Writ Appeal fails and the same is dismissed, subject to the observations made supra. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jv

To

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+1cc to Mr.S.Sridhar, Advocate Sr.No.41311
+1cc to Mr.Hemamuralikrishnan, Advocate Sr.No.41661

VBA(CO)
sm:17.7.2018

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