IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal Nos.611 to 614 of 2018 and
CMP Nos.12414 to 12420 of 2018

M/s.Kalaimagal Sabha
New No.17, Old No.48,
North Usman Road,
T.Nagar, Chennai - 600 017. ...Appellant in all Appeals/Appellant

-vs-

The Income Tax Officer,
Non Corporate Ward - 1(4)
Chennai. .... Respondent in all Appeals/Respondent

Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal "C" Bench, Chennai dated 08.01.2018 in I.T.A.No.1403/Mds/2017, I.T.A.No.1997/Mds/2016, I.T.A.No.1998/Mds/ 2016 and I.T.A.No.1404/Mds/2017 for the assessment years 2012-13, 2010-11, 2011- 12 and 2013-14 respectively.

Against the order passed by the Commisioner of Income Tax (Appeals)-2 Chennai 600 034 datd 31/03/2017 made in ITA No.44 & 225/CIT(A)-2/2015-16 for the Assessment Year 2012-13 and against the order passed by the Income Tax Officer non Corporate Ward 1 (4), Chennai dated 16/3/2015 made in AAAAK1638B for the Assessment Year 2012-13 (Tax Case 611/2018)

against the order passed by the Commissioner of Income Tax (Appeals)-2 Chennai 600 034 dated 11/03/2016 made in ITA No.256/CIT(A)-2/2013-14 & 119/CIT (A)-2/2014-15, dated 11/3/2016 made in ITA No.256/CIT(A)-2/2013-2014 and 119/CIT(A)-2/2014-15 dated 11/03/2016 made in ITA No.44 & 225/CIT(A)02/2015-16 dated 31/3/2017 for the Assessment Year 2010-11 , 2011-2012, 2012-13 respectively and against the order passed by the Income Tax Officer Ward 1(4), Chennai made in AAAAK1638B dated 20/03/2013 for the Assessment Year 2010-11, AAAAK1638B dated 11/03/2014 for the Assessment Year 2011-12, AAAAK1638B dated 29/01/2016 for the Assessment Year 2013-14 respectively (TAX Case Nos.612 to 614/2018)

For Appellant : Mr.P.Rajagopal (in all Appeals)

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel
(in all Appeals)

C O M M O N   J U D G M E N T

(Judgment of the Court was delivered by T.S.SIVAGNANAM,J.)

These appeals by an organisation called Kalaimagal Sabha is directed against the common order passed by the Income Tax Appellate Tribunal, "C" Bench, Chennai, dated 08.01.2018 in I.T.A.Nos.1403/Mds/2017, 1997/Mds/2016, 1998/Mds/ 2016 and 1404/Mds/2017 for the assessment years 2012-13, 2010-11, 2011-12 and 2013-14 respectively.

2. The above appeals have been filed raising the following substantial questions of law:-

" 1.Whether on the facts and in circumstances of the case the Appellate Tribunal was legally correct in holding that the principles of mutuality cannot be made applicable to the assessee since the interest earned out of the surplus funds deposited in the bank amounts to making of profit and shall be treated as income and taxable?

2. Whether the conclusion of the Appellate Tribunal is legally correct that merely because the presence of the bank, being a third party with whom the surplus funds are deposited, the identity between the contributors and the recipients is lost?".

3. The assessee's case is that Fixed Deposits made by collecting monies by sale of properties and the interest earned from them is not to be treated as income and made taxable.

4. The Assessing Officer, Commissioner of Income Tax (Appeals) as well as the Tribunal rejected the contentions advanced by the appellant and held that once the funds of the Society are given for business purposes of a non-Member and the assessee receives any compensation either in the form of profits or in the form of interest from such non-Member, the principles

of mutuality cannot be applied to that receipt from the non-Member.

5. Under normal circumstances, we would have accepted the said finding of the Tribunal as well as the submission of Mr.T.Ravikumar, learned Senior Standing Counsel for the Revenue, as he would submit that he is supported by three decisions in this regard. However, considering the facts and circumstances of the case, we are compelled to take a different view.

6. M/s.Kalaimagal Sabha, which was registered as a Society under the provisions of the Tamil Nadu Societies Registration Act, defrauded its members numbering more than 5 1/2 lakhs. Writ petitions were filed by the members, who were defrauded by the Society in W.P.No.514 of 1999. In the said writ petition, the Court appointed Joint Receivers to take charge of the affairs of the Sabha and detailed directions were issued. Pursuant to such directions, the writ petition was heard by other learned Judges, including one of us (T.S.SIVAGNANAM,J.) wherein, the Joint Receivers had to act in accordance with the directions issued by the Court. Hence, this aspect has to be borne in mind before considering as to whether the interest income earned from the Fixed Deposits of the Bank required to be taxed. It appears that the directions issued in the writ petition from time to time were not placed before the Assessing Officer and the directions are required to be examined in depth to ascertain the manner in which the sale proceeds are kept in Fixed Deposit and the purpose for which it is done.

7. Mr.S.Navaneethakrishnan, was one of the Joint Receivers appointed by the Court. The Assessing Officer shall afford an opportunity to the Joint Receiver to make submissions. The Court hopes and trust that the Assessing Officer will devote sufficient time to examine the matter considering the critical nature of the case and bearing in mind that the order passed by the Writ Court appointing Joint Receiver was to realise the monies invested by innocent persons in the Sabha and this can be realised only by way of sale of immovable properties. Apart from that, the Joint Receiver has initiated various litigations to recover properties. Thus, a holistic view is required to be taken. However, if in the event, any application is required to be made before seeking waiver, then the Joint Receiver is at liberty to do so.

8. For the foregoing reasons, we allow the appeals and set aside the orders passed by the Tribunal, Commissioner of Income Tax (Appeals) as well as the Assessing Officer and remand the matter to the Assessing Officer to redo the assessment after

affording an effective opportunity to the Joint Receiver appointed by this Court in W.P.No.514 of 1999. The Joint Receiver is directed to file a compilation consisting of all the directions issued by the Court from time to time to enable the Assessing Officer to take a correct decision in the matter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Officer,
Non Corporate Ward - 1(4)
Chennai.

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

3.The Commissioner of Income tax (Appeals)-2,
Chennai 600 034.

+1cc to Mr.T.Ravikumar, Advocate sr.88626
+4c to Mr.P.Rajagopal, Advocate Sr.88881 to 88884

T.C.A.Nos.611 to 614 of 2018

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srg 28/01/2019