

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos. 2187 & 2188 of 2008
and M.P.No.1 of 2008

Commissioner of Income Tax,
Chennai.

.. Appellant

Vs.

M/s. Kshetropasana
Gokuldharm, Maduvankarai,
Sriperumbudur – 602 105.

.. Respondent

Common Prayer : Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai, dated 19.05.2008 in I.T.A.Nos. 1757 & 1758/Mds/2007 for the assessment year 2000-01 and 2001-02 respectively.

For Appellant : Mr. J.Narayanaswamy
Senior Standing Counsel

For Respondent : No appearance

* * *

COMMON JUDGMENT

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

These appeals by the revenue filed under Section 260-A of the 'Income Tax Act, 1961' (hereinafter referred to as 'the Act') are directed against the order dated 19.05.2008 passed by the Income Tax Appellate Tribunal Madras 'C' Bench in ITA.Nos.1757/Mds/2007 & 1758/Mds/2007 for the assessment years 2000-01 and 2001-02 respectively.

2. These appeal were admitted on 23.12.2008 on the following substantial question of law:

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that when the shares were donated to the Trust with a condition that it should be retained for at least 5 years, holding of such shares in contravention of Section 13(1) (d) would not result in denial of exemption under Section 11 ?"

3. We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel for the Revenue. Though the respondent has been

served none appears for the respondent.

4. On a careful perusal of the entire material papers and reading of the order passed by the Tribunal, we find that the entire matter is wholly factual. The Assessing Officer vide an order dated 21.12.2006 by referring to Section 11(5) of the Act held that the assessee trust was required to dispose or convert the assets not conforming to the requirement of Section 11(5) of the Act into permissible investment within one year from the end of the financial year in which such bonus shares or other assets are received or 31.03.1992 whichever is later and also held that the income over expenditure derived by the assessee during the previous year relevant to the assessment year 2001-02 is assessable at the maximum marginal rate. The assessee filed an appeal before the Tribunal, this issue arose not only for the assessment year under consideration (2001-02), but also for the assessment year 2002-03.

5. In the assessee's own case, the Tribunal in ITA.No.39/2005-06 for the assessment year 2002-03 held in favour of the assessee. The CIT(A) for the assessment year under consideration followed the said decision and allowed the assessee's appeal. The

revenue preferred an appeal before the Tribunal.

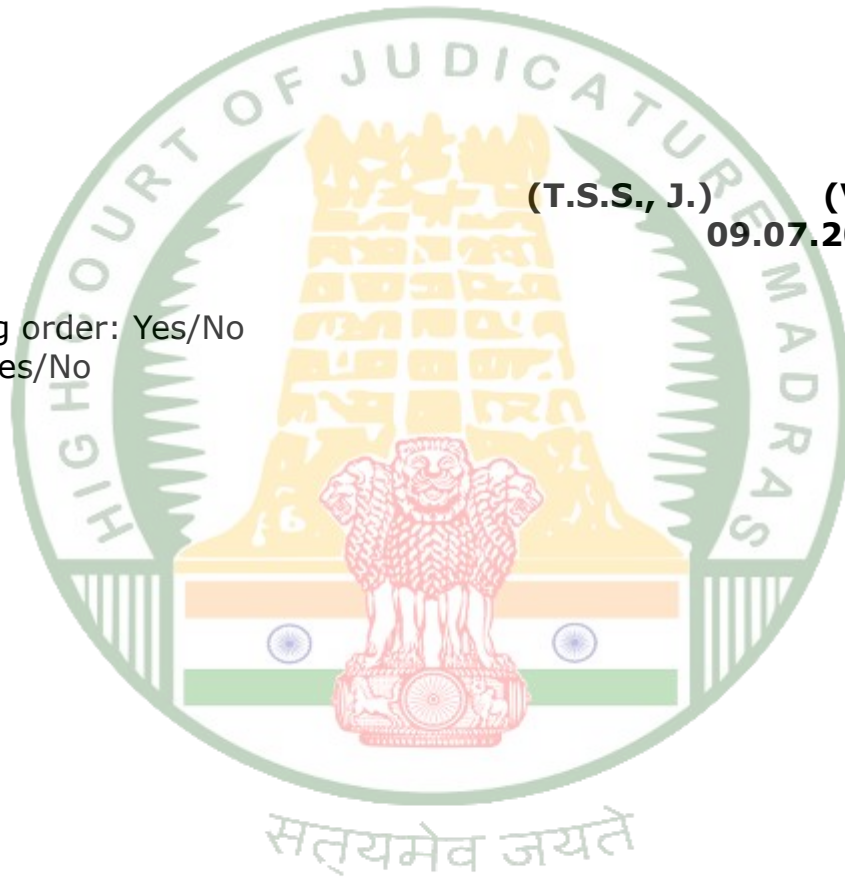
6. So far as the order passed by the Tribunal for the assessment year 2002-03, admittedly, the revenue did not prefer any appeal. The learned Senior Standing Counsel for the appellant/revenue, on instructions, submitted that appeal was not preferred on account of low tax effect. It is not known as to how the appeal could not have been filed for two reasons namely the issue is a recurring issue, apart from that the Tribunal followed the decision in the case of **CIT Vs. Nagi Reddy Charities** reported in **241 ITR 431**, which according to the revenue was distinguishable. In any event, the order passed in the assessee's own case which was affirmed by the Tribunal has become final.

7. So far as, present appeal is concerned, the Tribunal took note of the factual position and held that it is not for the assessee to sell the shares and law cannot compel one to do the impossible.

8. We are of the considered view that decision arrived at by the Tribunal is upon appreciation of the factual position and we find

that there is no substantial question of law arising for consideration in this appeal. Accordingly, these appeals are dismissed on the ground that no substantial question of law arises for consideration. No costs. Consequently, connected miscellaneous petition is closed.

Speaking order: Yes/No
Index: Yes/No
mp



(T.S.S., J.) (V.B.S., J.)
09.07.2019

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T.S.SIVAGNANAM, J.
and
V.BHAVANI SUBBAROYAN, J.

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