IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.09.2019

The Hon'ble Mr.Justice DR.VINEET KOTHARI
and
The Hon'ble Mr.Justice C.SARAVANAN

T.C.A.Nos.442 and 443 of 2010

The Commissioner of Income-tax,
Tamil Nadu-VIII, Madras. ... Appellant in both appeals

vs.

United India Insurance Company
Employees Pension Fund
No.2A Whites Road, Royapettah,
Chennai-14 .. Respondent in both appeals
(PAN. AAATU0145Q)

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal 'C' Bench, Chennai, dated 28.08.2009, in I.T.A.No.768/Mds/2009 and I.T.A.No.769/Mds/2009, respectively against the order dated 19.02.2009 and made in I.T.A.No.167 & 168/2008-2009 on the file of the Commissioner of Income Tax (Appeals)IX, Chennai and against the order dated 30.12.2008 and made in PAN. No. AATU0145Q respectively on the file of Income Tax Officer, Ward IX(2) Chennai 6.

For Appellant : M/s.S.Premalatha for
Standing counsel
Mr.G.M.Swaminathan
in both appeals

For Respondent: M/s.Pushya Sitaraman,Sr.Counsel
for Ms.J.Sreevidhya in both appeals

COMMON JUDGMENT
(Judgement of the Court was made by DR.VINEET KOTHARI,J.)

The Revenue has filed these appeals under Section 260-A of the Income Tax Act, 1961, aggrieved by the order dated 28.08.2009, dismissing the Revenue's appeals against the assessee M/s.United India Insurance Company Employees Pension Fund, Chennai. The relevant portion of the order of the learned Tribunal is quoted below for ready reference:

"5. Now the Revenue has disputed this finding of the ld.CIT(A). The main crux of the arguments as advanced by the ld.CIT(DR) is that the assessee has not claimed exemption of its entire income from tax under any specific section of the Act. The other argument of the Department is that the assessee trust has sought registration under Section 12A despite having obtained approval of the required authority under Part-B of Schedule IV of the Act, which was obtained way back in the year 1996. The objection of the ld.CIT(DR) is that u/s.10(23AAA) renewal of approval once in three years is required to be obtained, which has not been done, hence no exemption is eligible to the assessee-trust.

6.After hearing the rival versions, it was found for a fact that the assessee has already obtained approval u/s 10(23AAA) as back as in 1996. the assessee was also registered u/s 12A of the Act, subsequently. Now the moot question arises for our adjudication is if the assessee is registered u/s 10(23AAA) as well as under Section 12A of the Act, but its entire income is not taxable u/s 10(25)(iii), according to which entire income received by the trustee on behalf of an approved Superannuation Fund is exempt, would the factum of such registration throw the assessee-trust out of the legislative benefit. According to us, it is not correct proposition and construction of law. If an assessee is eligible for any specific exemption, even if it has not mentioned any specific Section or has mentioned a wrong section, it would not debar it from the benefit of a specific exemption. Rather, it is the duty of the Assessing Officer to apply correct provisions of the law. It is found that in so far as the facts of the case are concerned, there is no dispute at all. In our opinion also, the assessee is entitled to the exemption u/s 10 (25)(iii) of the Act. Hence, we confirm the impugned finding of the ld.CIT(A) and cannot allow these appeals of the Revenue.

7.In the result, both the appeals of the Revenue are dismissed.

8.The order pronounced in the open Court on 28.08.09."

2. The learned counsel for the Revenue urged before us that since no specific provision, under which the approval was obtained in respect of the respondent assessee Trust fund, was mentioned at the time of filing of the return and the approval granted under Part-B of Schedule-IV of the Act requires renewal after three years and since the said approval was not renewed, the assessee was not entitled to the exemption.

3. The learned for the assessee, however, submitted that Rule 2 of part-B of Schedule IV of the Act does not require any such renewal every three years and since the said Trust Fund of the respondent assessee was duly approved under Part-B Schedule-IV of the Act, the exemption claimed by the assessee under Section 10(25)(iii) of the Act could not have been denied by the respondent Revenue authorities.

4. The appeals were admitted on the following Substantial Questions of Law by the coordinate Bench of this Court, on 14.06.2010, and the said questions are quoted below:

T.C.A.No.442 of 2010:

"(i)Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the assessee is entitled to exemption under Section 10(25(iii)) of the Income Tax Act 1961 to the tune of Rs.29,73,80,620/- is valid?

(ii)Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the assessee is entitled to exemption under Section 10(25)(iii) of the Income Tax Act, 1961, even though the assessee claim for exemption under Section 10 (23AAB) of the Act cannot be acceded because the provision came into effect from 01.04.1997 only and whereas the assessee was granted original approval by the Commissioner of Income-Tax in 1996 itself?

(iii)Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in granting exemption under Section 10(25(iii)) of the Income-tax Act, 1961, even though the assessee should have followed the procedure laid down in Section 10(23AAA) of the Income-tax Act, 1961 to get exemption?"

T.C.A.No.443 of 2010:

"(i)Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the assessee is entitled to exemption under Section 10(25(iii)) of the Income Tax Act 1961 to the tune of Rs.34,61,51,010/- is valid?

(ii)Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the assessee is entitled to exemption under Section 10(25)(iii) of the Income Tax Act, 1961, even though the assessee claim for exemption under Section 10(23AAB) of the Act cannot be acceded because the provision came into effect from 01.04.1997 only and whereas the assessee was granted original approval by the Commissioner of Income-Tax in 1996 itself?

(iii)Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in granting exemption under Section 10(25(iii)) of the Income-tax Act, 1961, even though the assessee should have followed the procedure laid down in Section 10(23AAA) of the Income-tax Act, 1961 to get exemption?"

5.We have heard the learned counsel for the parties.

6.The said Ruling 2 of Part-B of Schedule IV of the Act is quoted below for ready reference:

"Approval and withdrawal of approval

2(1) The Principal Chief Commissioner or Chief Commissioner or superannuation fund or any part of a superannuation fund which, in his opinion, complies with the requirements of rule 33, and may at any time withdraw such approval, if, in his opinion, the circumstances of the fund or part cease to warrant the continuance of the approval.

(2)The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

7. We do not find any such requirement of renewal of such approval granted by the concerned authority to the said Trust Fund, which is entitled to exemption under Section 10(25) (iii) of the Act. Therefore, this contention of the learned counsel for the Revenue is absolutely misplaced. There is no dispute that the assessee held this approval for the assessment period in question, viz., assessment years 2001-02 and 2003-04. The Tribunal has found that the assessee had already obtained approval under Section 10 (23AAA) of the year 1996 and registration under Section 12(A) of the Act subsequently and therefore the entire income would be exempted under Section 10 (25)(iii) of the Act. The learned Tribunal, in our opinion, was justified in upholding the exemption in favour of the assessee irrespective of the fact that the provision of the law, under which exemption was quoted, was not correctly mentioned by the assessee.

8. We do not find any justification for referring to the provisions under Section 10(23AAA) of the Act in this case. The provisions of Section 10(25)(iii) of the Act, under which the assessee claimed exemption in question, is clearly applicable to the approved superannuation fund and the assessee's Trust fund was duly approved by the competent authority in the present case. Therefore, we do not find any error in the order passed by the learned Tribunal or any Substantial Question of Law to be arising in the present appeals filed by the Revenue.

9. In view of the aforesaid discussion, we answer the Substantial Questions of Law in favour of the assessee and as against the Revenue. Accordingly, the appeals are liable to be dismissed and the same are dismissed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Income-Tax Appellate Tribunal 'C' Bench,
Chennai.

2.The Commissioner of Income Tax
Tamil Nadu VIII, Chennai

3.The Commissioner of Income Tax (Appeals)IX
Chennai

4.The Income Tax Officer Ward IX(2), Chennai

+1 CC to M/s.J. Sreevidya, Advocate sr 87410.
+1 CC to M/s. S.Premalatha, Advocate sr 81315.

VD(CO)
SP(06/11/2019)