IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM

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

Tax Case Appeal No.306 of 2019

The Government Telecommunication
Employees Co-operative Society Ltd.,
New No.112, Old No.37 A,
Sembudoss Street, Chennai-600 001.
PAN : AABAT 3072B .. Appellant/Appellant

-vs-

The Income Tax Officer,
Non Corporate Ward - 12(3),
Chennai. .. Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income-tax Act, 1961 against the order dated 19.09.2018 made in I.T.A.No.2478/Chny/2017 on the file of the Income Tax Appellate Tribunal, "B" Bench, Chennai for the assessment year 2014-15 against the Order of The Commissioner of Income Tax, (Appeals-13), Chennai dated 13.07.2017 and made in ITA No.178/CIT(A)-13/2014-15 for the Assessment Year 2014-15 against the Order of the Income Tax Office, Non -Corporate Ward 12 (3), Chennai -6, dated 29.12.16 and made in AABAT 3072B for Assessment Year 2014-15.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.M.Swaminathan,
Senior Standing Counsel,
and Mrs.V.Pushpa,
Junior Standing Counsel

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the assessee filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order passed by the Income Tax Appellate

Tribunal "B" Bench, Chennai in I.T.A.No.2478/Chny/2017, dated 19.09.2018 for the assessment year 2014-15.

2.The assessee has raised the following substantial questions of law for consideration:-

> "(i) Whether the Appellate Tribunal is correct in denying the claim for deduction u/s 80P (2)(a)(i) of the Act by following their non-existent order dated 08.06.2018?
>
> (ii) Whether the provisions of Section 80P(2)(a)(i) of the Act permit the claim for deduction relatable to the interest income earned from the advances to the staff/employees as well as from the interest earned from savings bank account?
>
> (iii) Whether the reading of the bye-laws of the Appellant society as well as the provisions in MSCS Act, 2002 for interpreting section 80P(2)(a)(i) of the Act while considering the correctness of claim of deduction in the computation of taxable total income was in accordance with the well settled principles of purposive theory and harmonious interpretation in the orders under challenge?"

3.We have heard Mr.A.S.Sriraman, learned counsel appearing for the appellant/assessee; and Mr.M.Swaminathan, learned Senior Standing Counsel and Mrs.V.Pushpa, learned Junior Standing Counsel for the respondent/Revenue.

4.We need not labour much to decide the substantial questions of law, as a serious error has crept in in the impugned order presumably due to oversight. The Tribunal relied upon an order in I.T.A.No.2478/Mds/2017 for the assessment year 2014-15 and held that the appeal does not merit consideration. Unfortunately, it is the very same appeal which was to be decided by the Tribunal because, the said appeal was disposed of earlier by a single member bench vide order dated 11.01.2018. This order was set aside by the jurisdictional bench of the Tribunal by order dated 08.06.2018 by recalling the earlier order dated 11.01.2018 and accordingly, the appeal stood fixed for hearing. Unfortunately, neither the assessee's authorised representative, nor the Department's representative brought to the notice of the Tribunal that it is the very same appeal which has to be heard on merits. On the contrary, it appears that both of them had referred to the earlier order dated 11.01.2018 in the same appeal which stood recalled by order dated 08.06.2018.

5.In the light of the above, the impugned order passed by the Tribunal has to be necessarily set aside and the appeal should be remanded to the file of the Tribunal to be heard and decided afresh.

6.In the light of the above, the substantial questions of law are not required to be decided and they are left open.

7.In the result, the appeal is allowed, the impugned order passed by the Tribunal is set aside and the matter is remanded to the Tribunal to be heard and decided afresh. It is made clear that all issues are left open. No costs.

abr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Officer,
Non Corporate Ward – 12(3),
Chennai.

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

3.The Commissioner of Income Tax (Appeals)-13,
121, Mahatma Gandhi Road, Chennai-600 034.

+1cc to Mr.M.Swaminathan, Advocate, SR.No.45254
+1cc to Mr.S.Sridhar, Advocate, SR.No.45168

 T.C.A.No.306 of 2019

Kak(23/07/2019)