IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

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

Tax Case Appeal Nos.680 and 681 of 2011

Commissioner of Income Tax-I,
Tiruchirapalli. .. Appellant/Respondent in both Appeals

-vs-

M/s.National College Council,
P.B.No.369, Chatram Bus Stand,
Teppakulam, Tiruchirapalli-620 002. .. Respondent/Appellant in both Appeals

Appeals under Section 260A of the Income-tax Act, 1961 against the common order dated 24.06.2011, on the file of the Income Tax Appellate Tribunal Bench 'A', Chennai in I.T.A.Nos.402 & 403/Mds/2010 for the assessment years 2005-06 and 2006-07 respectively, as agiasnt the the order of the Commissioner of Income Tax (Appeals)No.44 Willams Road, Contonment, Tiruchirapalli-620 001 made in ITA.NO.138 & 176/08-09 dated 27/01/2010 as against the order dated 18/12/2008 Depurty Commissioner of Income Tax Company Circle-II, Trichy in PAN/GIR.NO. AAATT6266H for the Assessment year 2006-07 and as against the order dated 27/12/2007 by the Assisstant Commissioner of Income Tax Company Circle-11, Tiruchirapally in Pan/Gir No.AAATT6266H for the Assessment year 2005-2006.

For Appellant : Mr.J.Narayanaswamy,
(In both Appeals) Senior Standing Counsel

For Respondent : No appearance
(In both Appeals)

******

COMMON JUDGMENT

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

These appeals filed by the appellant/Revenue under Section 260A of the Income-tax Act, 1961, are directed against the common order dated 24.06.2011, passed by the Income Tax Appellate Tribunal Bench 'A', Chennai, in I.T.A.Nos.402 & 403/Mds/2010 for the assessment years 2005-06 and 2006-07 respectively.

2.The above appeals were admitted, on 14.02.2012, on the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee could claim depreciation on its capital assets even though the expenditure on such capital assets itself was allowed as a deduction being an application and that such allowance would not amount to double deduction?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee would be entitled to claim depreciation even though the assessee has not used the assets in any business carried on by it, which is a pre-requisite for allowance of depreciation under Section 32?"

3.Heard Mr.J.Narayanaswamy, learned Senior Standing Counsel for the appellant/Revenue.

4.The learned Senior Standing Counsel appearing for the Revenue fairly submits that the substantial questions of law, which have been framed in these appeals, have been answered against the Revenue by the Hon'ble Supreme Court in CIT vs. Rajasthan and Gujarati Charitable Foundation reported in [2018] 402 ITR 441 (SC).

5.Following the same, these appeals stand dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

(abr)

To

1.The Assistant Commissioner of Income Tax,
Company Circle-II, Trichy.

2.The Commissioner of Income Tax (Appeals),
No.44, Williams Road, Cantonment, Tiruchirapalli-620 001.

3.The Income Tax Appellate Tribunal Bench 'A', Chennai.

4.The Deputy Commissioner of Income Tax,
Company Circle-II, Trichy.

+1cc to Mr.J.Narayanaswamy, Advocate sr.73470

T.C.A.Nos.680 and 681 of 2011

spd(co)
nr 24/10/2019