IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM :

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

Tax Case Nos.286, 287 & 288 of 2018
and CMP.Nos.5464 & 5465 of 2018

M/s PKD Trust,
PKD Matriculation School,
Coimbatore Road, Pollachi-642 001.
...Appellant in all Appeals

-vs-

The Income Tax Officer,
Ward I(2)/Ward 1(1),
Pollachi. ...Respondent in all Appeals

Tax Case Appeals under Section 260-A of the Income Tax Act, 1961, are directed against the common order passed by the Income Tax Appellate Tribunal, Chennai “A” Bench, Chennai in I.T.A Nos.2053/Mds/2014, 1819/Mds/2016 & 1820/Mds/2016 dated 10.02.2017 for the assessment years 2010-11 & 2012-13.

against the Commissioner of Income Tax Appeals - II, Coimbatore dated 29/05/2014 made in ITA.No.101/12-13 for the assessment Year 2010-2011 and order dated 30.03.2016 made in ITA.NO. 345/2014-15 and the order of Chief Commissioner of Income Tax, Coimbatore dated 06/05/2016 made in PAN.No.AAAA1297K for the assessment Year 2012-13 against the assessment order of Income Tax Officer,Ward 1 (2), Pollachi dated 23/01/2013 made in PAN No.AAAAP1297K for the Assessment Year 2010-11 and 2012-13.

For appellant : Mr.A.S.Sriraman
(in all the appeals)
For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel
(in all the appeals)

JUDGEMENT

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

These Tax Case Appeals by the assessee filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) are directed against the common order passed by the Income Tax Appellate Tribunal “A” Bench, Chennai in I.T.A Nos1819/Mds/2016

& 1820/Mds/2016 against the order rejecting the claim for exemption under Section 10(23C)(vi) of the Act, for the assessment years 2012-13 and I.T.A.No.2053/Mds/2014 for the assessment year 2010-11 respectively.

2. T.C.A.No.286 of 2018 has been filed raising the following substantial questions of law:

"(i) Whether the Appellate Tribunal is correct in law in rejecting the petition for review/rectification within the scope of section 10 (23C)(vi) read with section 154 of the Act despite the mistake of law pointed out based on the decision of the Apex Court in the case of CIT Vs Society for the Promotion of Education, Adventure Sport & Conservation of Environment dated 16/02/2016, granting legal recognition for deemed registration under the Act which had cascading impact on the assessment?

(ii) Whether the Appellate Tribunal is correct in law in rejecting the petition for review/rectification for grant of recognition u/s 10 (23C)(vi) of the Act retrospectively from the Assessment Year 2004-05 while wrongly imposing the condition for incorporating 'no profit clause' in the documents creating the appellant trust for the eligibility to get tax exemption which profit motive should be tested only in the assessment proceedings parallely and subsequently taken up by the Jurisdictiional Assessing officer not at the state of the incorporation?

(iii) Whether the Appellate Tribunal is correct in law in not interpreting the scope of the power of review harmoniously which power according to the appellant was in-built in section 10(23C)(vi) of the Act with a view to change the decision consequent to the mistakes of law committed in the original order passed by the CCIT?"

3. T.C.A.Nos.287 & 288 of 2018 have been filed raising the following substantial question of law;

"(i) Whether the Appellate Tribunal is correct in law in rejecting the petition for review/rectification within the scope of section 10 (23C)(vi) read with section 154 of the Act despite the mistake of law pointed out based on the decision of the Apex Court in the case of CIT Vs Society for the Promotion of Education, Adventure Sport & Conservation of Environment dated 16/02/2016, granting legal recognition for deemed registration under the Act which had cascading impact on the assessment?

(ii) Whether the Appellate Tribunal is correct in law in rejecting the petition for review/rectification for grant of recognition u/s 10 (23C)(vi) of the Act retrospectively from the Assessment Year 2004-05 while wrongly imposing the condition for incorporating 'no profit clause' in the documents creating the appellant trust for the eligibility to get tax exemption which profit motive should be tested only in the assessment proceedings parallely and subsequently taken up by the Jurisdictiional Assessing officer not at the state of the incorporation?

(iii) Whether the Appellate Tribunal is correct in law in not interpreting the scope of the power of review harmoniously which power according to the appellant was in-built in section 10(23C)(vi) of the Act with a view to change the decision consequent to the mistakes of law committed in the original order passed by the CCIT?

(iv) Whether the Appellate Tribunal is correct in law in rejecting the claim for tax exemption u/s 10(23C)(vi) of the Act in the computation of taxable total income rejecting the plea of deemed recognition based on the non-disposal of the two applications filed in overlooking the statutory time limit for disposal of such applications as well as the perpetuity in the nature of grant of such recognition after 01.12.2006?

(v) Whether the Appellate Tribunal is correct in law in interpreting narrowly the provisions of section 12A(2) of the Act so as to deny the benefit of tax exemption u/s 11 of the Act in view of the grant of registration u/s 12AA of the Act in recokning the appellant as Public Charitable Trust which defeated the harmonious as well as purposive interpretation of the said provisions in the Act?

(vi) Whether the Appellate Tribunal is correct in law in interpreting the applicability of the registration granted u/s 12AA of the Act for pending assessment proceedings before the Assessing Officer and not to the proceedings pending in appeal despite the settled position in law of such appellate proceedings as extended assessment proceedings?

(vii) Whether the Appellate Tribunal is correct in law in not considering the nature of the amendment brought-in in the form of provisos below section 12A(2) of the Act by the Finance (No.2) Act, 2014 as retrospective applicability or prospective applications?

3. We have heard Mr.A.S.Sriraman, learned counsel for the appellant/assessee trust in all the cases and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the the respondent/Revenue.

4. The order impugned before us is a common order. T.C.A.No.286 of 2018 is taken as the lead case because this appeal challenges the order passed by the Tribunal confirming the order passed by the Chief Commissioner of Income Tax dated 06.05.2016 in and by which, application made by the assessee/trust for review of the rejection order passed by the Chief Commissioner of Income Tax, Coimbatore under Section 10 (23C)(vi) dated 24.06.2013 was rejected. The Tribunal did not accepted the contention of the assessee that, the application filed by the appellant/trust dated 28.04.2014, should be treated as an application under Section 154 of the Act. The decision in T.C.A.No.286 of 2018 will have a direct bearing on the result of the other two appeals namely T.C.A.No.287 and 288 of 2018, which are against the substantive assessments for the assessment year 2012-13 and 2010-11 respectively. We first take up T.C.A.No.286 of 2018 for consideration.

5. The assessee/trust filed an application in Form 56(D) on 28.09.2012, seeking approval under Section 10(23C)(vi) of the Act as its annual receipts exceeded Rs.1 Crore. A report was called for by the Chief Commissioner from the Assessing Officer of the appellant/ assessee and the assessee was given an opportunity to explain his case with regard to the report submitted by the Assessing Officer. The Chief Commissioner by order dated 24.06.2013 rejected the application on the ground that the assessee is running an educational institution and it does not appear to be running for no profit, as in the trust deed there was no specific mention of the fact that the education institution is not running for the purpose of any profit. The assessee/ trust filed a petition to review the said order vide a petition dated 28.04.2014. In the said petition apart from stating about the founder of the trust, who was an eminent medical practitioner in the area and that the school was started in the year 1992 and it has got around 2,000 students on its rolls, various activities of the trust were mentioned in the petition for review.

6. It was pointed out that the definition of charitable purpose, as defined in Section 2(15) of the Act, contemplates pursuing as well as providing education and per se it should be reckoned as charitable activity within the ambit of the said definition. Further it was pointed out that the activities of the assessee/trust were not tested independently, so as to consider their request for approval under Section 10(23C)(vi) of

the Act and in not doing so, it has gone against the well established principle that 'substance over form' is required to be considered while passing the order. The assessee/trust enclosed the cash flow statement for the period commencing 01.04.1992 till 31.03.2013, to establish their stand that education activity is pursued as a charitable activity. Further they stated that the surplus generated was incidental to the activity of pursuing education and in any event, such surplus was ploughed back/utilized for achieving the objects of the trust.

7. The review petition was rejected by the Chief Commissioner of Income Tax, Coimbatore, vide order dated 06.05.2016 solely on the ground that there is no specific mention in the Trust Deed of the fact that educational institution is not running for the purpose of any profit. The assessee filed an appeal before the Tribunal and by then orders passed by the Chief Commissioner rejecting the application under Section 10(23C)(vi) became appealable order.

8. The Tribunal opined that there is no error that needs to be rectified and nothing is glaring or apparent on the face of the order to invoke Section 154 of the Act. In the common order, the Tribunal also affirmed the assessment made by the Assessing Officer for the assessment years 2012-13 and 2010-11 respectively, primarily for the reason that the assessee did not secure exemption under Section 10(23C)(vi). We find that both in the first order of rejection dated 24.06.2013 and second order of rejection dated 06.05.2016. The only reason assigned by the Chief Commissioner of Income Tax is by stating that the trust deed does not specifically mention that the educational institution established by it, is not running for the purpose of profit.

9. In the petition for review dated 28.04.2014, the assesee/ trust had placed the cash flow statement for the period from 01.04.1992 till 31.03.2013. Therefore when the petition came up before the Chief Commissioner of Income Tax, Coimbatore for review, an attempt should have been made to examine the financials of the Trust.

10. As rightly pointed out by the assessee before the Chief Commissioner of Income Tax in the Review petition, the substance flow form is, what is important to be noted. We find that there has been no examination from that angle and the application made by the assessee has been rejected at the threshold solely going by the words mentioned in the deed of trust.

11. We may also note that the assessee had earlier filed

applications for grant of exemption under Section 10(23C)(vi) on 16.11.2005 for the assessment years 2003-04, 2004-05 & 2005-06 and another application was filed on 26.10.2006 for the assessment year 2005-06 onwards based on Circular No.7 of 2010 dated 27.10.2010. We find that those applications were neither considered nor were disposed of and were pending and the application dated 29.08.2012 was the third application.

12. Further we find that the order passed by the Chief Commissioner of Income Tax dated 06.05.2016 has been passed without affording an opportunity to the petitioner trust to explain. Though the Statute does not specifically contemplate an opportunity of personal hearing on facts, the Chief Commissioner of Income Tax could have afforded an opportunity of personal hearing especially, when the assessee has come forward with the plea that the funds are utilized for educational activities and the same is pursued as a charitable activity. Therefore, we hold that there has been violation of principles of natural justice and this is also grant one more ground to interfere with the orders passed by the Chief Commissioner of Income Tax, Coimbatore, dated 06.05.2016.

13. We find from the order impugned before us that the income and receipts of the assessee from the various institutions run by it have been noted from paragraph 13 of its order. There has been no exercise done by the Department to find out as to whether the assesee/Trust has generated a reasonable surplus to enable them to sustain the institution and in the event of them earning a higher surplus, whether they had ploughed back or utilising the same for achieving the objects of the trust. This exercise ought to have been done at the first instance or at least when the assessee had filed a review petition dated 28.04.2014.

14. Thus, for the above reasons, we are of the considered view that the matter should be remanded back to the Chief Commissioner of Income Tax with a direction to examine the entire financials of the assessee and take a decision on merits and in accordance with law.

15. In the result the TCA.No.286/19 is allowed and the order passed by the Tribunal is set aside and the substantial questions of law are answered in favour of the assessee and the matter is remanded back to the Chief Commissioner of Income Tax for a fresh decision after considering the entire financials and all other records that the assessee may place before the Chief Commissioner of Income Tax for consideration.

16. In the light of the orders passed by us in TCA No.286 of 2018, the orders passed by the Tribunal, which are impugned in TCA.No.287 and 288 of 2018 are necessarily to be set aside

because they all are based upon the based upon rejecting the prayer for exemption under Section 10(23C)(vi) of the Act. Consequently, TCA.Nos.287 and 288 of 2018 are allowed and the orders passed by the Tribunal are set aside and the substantial questions of law are left open and the matter is sent back to the Assessing Officer to await a decision of the Chief Commissioner of Income Tax as directed by us in TCA.No.286/18.

17. With the above directions, these tax case appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ska/mrm

TO

1.The Income Tax Appellate Tribunal,
Chennai - A Bench,
Chennai.

2.The Income Tax Officer,
Ward I (2)/Ward - I (1),
Pollachi.

3.The Chief Commissioner of Income Tax,
Coimbatore.

4.The Commissioner of Income Tax,
Appeals - 2, Coimbatore.

+1cc to Mr.S.Sridhar, Advocate, S.R.No. 46669
+3cc to Mr.J.Narayasamy, Advocate, S.R.No. 47726, 47725, 47724

Tax Case Nos.286, 287 & 288 of 2018
and CMP.Nos.5464 & 5465 of 2018

VBA(CO)
GN(08/08/2019)