In the High Court of Judicature at Madras

Dated : 02.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.7 of 2016

The Commissioner of Income
Tax, Chennai ...Appellant

Vs

M/s.Guru Nanak Educational Society,
Chennai-28. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.5.2015 in ITA No.2990/Mds/2014 on the file of the Income Tax Appellate Tribunal Madras 'C' Bench for the assessment year 2009-10, as against the order of the Commissioner of Income Tax(Appeals)VII, 121, Mahatma Gandhi Road, Chennai-600 034 in ITA.NO.488/11-12 dated 16/09/2014 against the assessment order of the Deputy Director of Income-Tax(Exemptions) I, Chennai-34 dated 30/12/2011 in PAN/GIR/NO-AAATG0187E/1616-G for the Assessment year 2009-10.

For Appellant : Mr.J.Narayanasamy, SSC
For Respondent : M/s.Iyer and Thomas for Mr.Karthik Seshadri

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Standing Counsel for the appellant.

2. This appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee. The appeal was admitted on 19.1.2016 on the following substantial questions of law :

(2)

"i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to claim depreciation on the assets even though the cost of purchase of asset was already treated as application of income under Section 11? and

ii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing the Assessing Officer to consider the revised form-10 for enhancement of accumulation of income after condoning the delay in filing even though form-10 was not filed within the due date?”

3. The Revenue seeks to withdraw this appeal on account of low tax effect in terms of Circular No.3 of 2018 dated 11.7.2018 issued by the Central Board of Direct Taxes.

4. In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Madras 'C' Bench.

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

3.The Deputy of Income-Tax (Exemption) I,
Income Tax Department,
Chennai-34.

+1cc to Mr.H.Karthik Seshadri, Advocate sr.no.403

TCA.No.7 of 2016

spd(co)
nr 04/03/2019