

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

T.C.A.No.55 of 2018
and
C.M.P.No.474 of 2018

Krupa Trading Co.,
New No.9, Old No.6,
Dhanamal Street,
Chetpet,
Chennai 600031.

... Appellant/Respondent

Vs

The Income Tax Officer,
Non Corporate Ward - 3 (4),
Chennai - 34.

...Respondent/Appellant

PRAYER: Tax Case Appeal filed under Section 260A of Income Tax Act, 1961 against the order dated 26.04.2017 in I.T.A.No.3219/Mds/2016 on the file of the Income Tax Appellate Tribunal Chennai 'A' Bench for the assessment year 2012-13, against the order dated 12/09/2016 in ITA.NO.84/2015-16 on the file of the Commissioner of Income Tax(Appeals)-4, and against the order dated 30/03/2015 in AAIFK5044J/HCW 3(4)/2014-15 on the file of the Income Tax Officer Non-Corporate Ward 3(4).

For Appellant : Mrs.T.C.A.Sangeetha
For Respondent : Mr.T.Ravikumar, Senior Counsel.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

This tax case appeal has been filed against the order of the Income Tax Appellate Tribunal 26.04.2017 in I.T.A.No.3219/Mds/2016 in partly allowing the appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals) by which the appeal filed by the assessee was partly allowed.

2.The facts of the case are as follows:

The appellant is a partnership firm and is engaged in the business of trading in shares. The appellant filed its return of income for the assessment year 2012-13 on 29.09.2012 admitting a total income of Rs.3,83,360/-. The case was selected for scrutiny and assessment was completed under Section 143(3) of the Income Tax Act, 1961. The appellant made a contribution of Rs.1,00,000/- during the year, to M/s.Herbicare Healthcare Bio-herbal Research Foundation, Calcutta. The institution was approved to get the contributions under Section 35(1)(ii) of the Income Tax Act by CBDT Notification No.35/2008 dated 14.03.2008. The appellant had claimed the weighted deduction of 175% of contribution paid M/s.Herbicare Healthcare Bio-herbal Research Foundation in the Return of Income.

3.The donation was made only through A/c payee cheque. M/s.Herbicare also confirmed the donation received by the respondent vide letter dated 26.12.2014. A copy of the Trust's Corporation Bank Statement in which the donation was received, was also sent to the respondent by the organization.

4.However, the Assessing Officer disallowed the claim of Rs.1,75,000/- on the ground that the Founder Director of the organization Mr.Swapan Ranjan Das Gupta had recorded a sworn statement during a survey under Section 133A of the Income Tax Act, 1961 that donation made to the Organization was returned after deducting 5% commission. The Assessing Officer treated the donation as a bogus donation despite the appellant clarifying that the donation is genuine and made directly to the organization. The Assessing officer disallowed the donation by treating it as an accommodation entry despite the facts being otherwise.

5.The appellant had shown an amount of Rs.1,78,833 as dividend received from shares and Mutual funds and claimed exemption under Section 10(38) of the Income Tax Act, 1961. The Assessing officer also disallowed an amount of Rs.2,89,666/- under Section 14A of the Income Tax Act, 1961 treating it as expenses incurred towards earning the exempt income. However, the Hon'ble Commissioner of Income Tax restricted the amount of disallowance to Rs.1,78,833/- the amount equal to the exempt income, thereby taxing the entire exempt income.

6.Aggrieved by the order of the Assessing Officer, the appellant preferred an appeal to the Hon'ble Commissioner of Income Tax. The Hon'ble Commissioner summarily dismissed the appeal of the appellant without going into the merits of the matter.

7. On further appeal, the Income Tax Appellate Tribunal found that the appellant donated the amount and the donee confirmed the receipt. The Tribunal further observed that the respondent had not made any effort to get any valid evidence that the donation was given back to the appellant after reducing a commission of 5%. Despite this finding the Tribunal chose to remit the matter back to the file of the Assessing Officer. The Tribunal also remitted the issue of disallowance under Section 14 A of the Income Tax Act, 1961. Aggrieved by the order of the Tribunal, the present appeal has been filed.

8. This tax case appeal is admitted on the following substantial questions of law:

"(i) Whether in the facts and circumstances of the case, Income Tax Appellate Tribunal was justified in remitting the matter back to the file of the assessing officer instead of allowing the appeal, when the Tribunal has accepted the fact that the donation has been made as per Section 35(1)(ii) of the Income Tax Act, 1961?

(ii) Whether in the facts and circumstances of the case, Income Tax Appellate Tribunal was justified in remitting the matter back to the file of the assessing officer instead deciding the issue of disallowance under Section 14A of the Income Tax Act, 1961 in view of the fact that no expenditure was incurred for earning the dividend income?"

9. The only question which is focused before this Court is with regard to the remand of the matter for adjudicating is as to whether the donee sent back the donation to the donor viz., the appellant which claimed allowance under explanation to Section 35(1)(ii) of the Income Tax Act.

10. The learned Counsel for the appellant would submit that once the Tribunal found that the organization to which the donation had been made, has valid recognition or approval granted by the Central Government, the appellant is entitled to exemption. Merely, because a statement had been made by the founder director of the donee that they sent back the donation money to the donor cannot be a ground for remanding the matter to the assessment officer.

11. However, Mr. T. Ravikumar, learned Senior Counsel for the respondent would submit that it is a statement made by the

founder director of the donee that the donation received from the appellant was sent back to the donor and therefore, the Tribunal is right in remanding the matter to ascertain the means as well as the actual amount repaid by the donee to the assessee and decide the issue afresh after giving sufficient opportunities of hearing to the assessee.

12.Heard Mrs.T.C.A.Sangeetha, learned Counsel for the appellant and Mr.T.Ravikumar, learned Senior Counsel for the respondent.

13.It is stated by the appellant that the donation for a sum of Rs.1,00,000/- was made to M/s.Herbicare Healthcare Bio-herbal Research Foundation, Calcutta which is proved by the receipt given by the said organization and the same was acknowledged. When the donation was made, the approval given by the Central Government to the Kolkatta Trust is found to be valid. In this circumstances, the Tribunal found that the donation made by the appellant in favour of M/s.Herbicare Healthcare Bio-herbal Research Foundation would attract exemption under explanation to Section 35(1)(ii) of the Income Tax Act.

14.Having given a finding that the appellant is entitled to exemption, the Tribunal went further and based on sworn statement of founder director of M/s.Herbicare Healthcare Bio-herbal Research Foundation that the organization returned the donation to the assessee, thought it fit to remand the matter to ascertain the means of the assessee and the actual amount paid by the assessee and decide the issue afresh after affording sufficient opportunities to the assessee.

15.This Court does not find anything wrong with that. The approach of the Tribunal is very balanced. Initially, it found that the disallowance made by the lower authorities is unsustainable and allowance should be given, however, based on the statement made by the donee, the Tribunal rightly remanded the matter to the assessing officer.

16.The learned Counsel for the appellant and the respondent would submit that pursuant to the remand made by the Tribunal, the assessment officer had conducted enquiry and the re-assessment order was passed. Further, it is stated that the issue is covered by the Judgment of this Court in the case of "CIT Vs.Chettinad Logistics P. Ltd.," in T.C.A.No.24 of 2017 dated 13.03.2017.

17.Though it is covered by the Judgment of this Court against the assessee, it is seen that the Tribunal had only remanded the matter for re adjudication by the assessment officer after giving opportunity to the appellant. Hence, there is no infirmity in the order passed by the Tribunal. The questions of law framed are answered in favour of the respondent. Hence, the appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1.The Income Tax Officer,
Non Corporate Ward - 3 (4),
Chennai - 34.

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

3.The Commissioner of Income Tax(Appeals)-4,
Non-Corporate Ward 3(4), Chennai-34.

+lcc to Mr.T.Ravikumar, Advocate sr.103846

T.C.A.No.55 of 2018
and
C.M.P.No.474 of 2018

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