IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

TAX CASE APPEAL NOS.399 & 400 OF 2020
AND
CMP.NOS.12297, 12298 & 12299 OF 2020

M/s.Jaya Educational Trust,
Rep.By its Chairman A.Kanagaraj,
No.8, II Mani Raod, Krishnapuram,
CTH Road, Thiruninravur,
Chennai-24.

(Cause title accepted vide order of Court dated 15.10.2020 made in CMP.No.11448 of 2020 in TCA.SR.No.37129 of 2020)

... Appellant

Vs

The Deputy Commissioner of
Income Tax, Central Circle 1(2),
Income Tax Office, Nungambakkam,
Chennai-34. ... Respondent

Prayer:-

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 13.3.2020 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai made respectively in S.P.Nos.105 and 104/Chny/2020 in I.T.A.Nos.3115 and 3114/ Chny/2019 for the assessment years 2013-14 and 2012-13.

Preferred against the order passed by the Commissioner of Income Tax (Appeals)-18, Chennai-34, dated 19.08.2019 made in ITA.No.359/18-19 and ITA.No.109/17-18 respectively against the order passed by the Assistant Commissioner of Income Tax, Central Circle – 1(2), Chennai dated 06.12.2018 and 29.08.2017 respectively for the Assessment year 2013-14 and 2012-13.

For Appellant : Mr.M.Velmurugan

For Respondent: Mr.T.R.Senthilkumar, SSC assisted by Ms.K.G.Usha Rani, JSC

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals have been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the common order dated 13.3.2020 passed respectively in S.P.Nos.105 and 104/Chny/2020 and in I.T.A.Nos.3115 and 3114/Chny/2019 on the file of the Income Tax Appellate Tribunal, Chennai, 'D' Bench ('the Tribunal' for brevity) respectively for the assessment years 2013-14 and 2012-13.

2. The assessee filed the above appeals by raising the following substantial questions of law:

> "i. Whether the Tribunal is correct in not allowing the stay of demand application when there is unsettled question of law in merits, on which, the entire tax demand of Rs.9,78,28,810/- and Rs.9,42,57,813/- created in favour of the trust by the Hon'ble High Court of Karnataka in the case of Fr.Muller? and
>
> ii. Whether, on the facts and circumstances of the case, the Tribunal is correct in law in not applying the decision of the Hon'ble Supreme Court in the case of Fr.Muller on the SLP filed by the Department ?"

3. We have heard Mr.M.Velmurugan, learned counsel appearing for the appellant - assessee and Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usha Rani, learned Junior Standing Counsel accepting notice for the respondent - Revenue.

4. Challenging the orders dated 19.8.2019 passed by the Commissioner of Income Tax (Appeals)-18, Chennai-34 [for short, the CIT(A)], in and by which, the appeals filed by the assessee were partly allowed and the demands, which were raised by the Assessing Officer on the assessee, were confirmed to the extent indicated, the assessee filed appeals before the Tribunal. The assessee also moved the Principal Commissioner of Income Tax,

Central I, Chennai (PCIT) praying for stay of the demands. In the stay petitions, a conditional order was passed by two separate orders dated 13.2.2020.

5. The assessee preferred appeals before the Tribunal as against the substantive orders passed by the CIT(A) along with petitions on 09.3.2020 praying for stay of the demands. By the common impugned order, the Tribunal rejected the stay petitions.

6. It is not in dispute that as against the demand of Rs.9,42,00,000/- for the assessment year 2012-13, the assessee paid a sum of Rs.3,65,51,310/- and the balance payable is Rs.5,76,48,690/- and as against the demand of Rs.9,78,28,810/- for the assessment year 2013-14, the assessee paid a sum of Rs.2,02,00,000/- and the balance payable is Rs.7,76,28,810/-.

7. The assessee was in the same position in respect of the assessment year 2016-17 and in the appeal, the assessee filed a stay petition before the Tribunal. However, the stay petition came to be dismissed by order dated 31.10.2019. Challenging the same, the assessee preferred an appeal before the Hon'ble Division Bench of this Court by filing TCA.No.902 of 2019. The Hon'ble Division Bench of this Court, after hearing the learned counsel for the assessee and the learned Senior Standing Counsel appearing for the Revenue, disposed of the said appeal by judgment dated 14.11.2019 by imposing a further condition on the assessee. The operative portion of the said judgment dated 14.11.2019 reads as follows :

> "8. After hearing the parties, this Court finds that no question of law is required to be framed in this case. However, taking note of the fact that the appellant has already said to have paid a sum of Rs.2,80,28,000/-, in the interest of justice, this Court directs the appellant to pay a sum of Rs.2,20,00,000/- within a period of one week from the date of receipt of the copy of this order as a condition to stay the proceedings."

8. The learned Senior Standing Counsel appearing for the Revenue would point out that the assessee has not pleaded any financial constraint either before the PCIT or before the Tribunal and therefore, the Tribunal was well justified in rejecting the stay petitions.

9. Per contra, the learned counsel appearing for the appellant - assessee submits that the Central Board of Direct Taxes issued instructions No.1914 dated 02.2.1993, which was

subsequently amended by the Official Memorandum dated 29.2.2016 and further modified by the Official Memorandum dated 31.7.2017, by which, broad guidelines were laid down as to how stay petitions have to be considered and in those guidelines, it has been observed that payment of 20% of the disputed tax pending appeal would be a reasonable amount to protect the interest of the Revenue. It is further submitted that in respect of the question, which is to be decided by the Tribunal, the assessee would rely upon the decision of the High Court of Karnataka in the case of CIT Vs Fr.Muller Charitable Institution [reported in (2014) 363 ITR 230], which was decided in favour of the assessee and the special leave petition in SLP(C) No.15907 of 2014 filed before the Hon'ble Supreme Court was dismissed.

10. In any event, a larger issue is now pending before the Tribunal and we would not be justified in expressing any opinion on the same. However, taking into consideration the amounts already paid by the assessee for both the assessment years as mentioned above, we are of the considered view that a further condition is to be imposed on the assessee over and above the payments already made to meet the ends of justice.

11. Accordingly, the above tax case appeals are allowed, the common order passed by the Tribunal is set aside and there will be a stay of recovery proceedings initiated against the assessee for both the assessment years subject to the condition that the assessee shall pay a further sum of Rs.1,00,00,000/- (Rupees one crore only) for the assessment year 2012-13 and another sum of Rs.3,00,00,000/- (Rupees three crores only) for the assessment year 2013-14. The assessee shall effect payment on or before 21.12.2020. In the event the assessee fails to comply the above condition for any of the assessment years within the time stipulated, the benefit of this order will not enure to the assessee, the stay granted shall stand automatically vacated, the appeals would be dismissed and consequently, the common order passed by the Tribunal would be restored. The substantial questions of law are left open. No costs. Consequently, all connected pending CMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To
1. The Income Tax Appellate Tribunal,
'D' Bench, Chennai.

2. The Deputy Commissioner of Income Tax,
Central Circle 1(2), Nungambakkam,
Chennai-34.

3. The Commissioner of Income Tax (Appeals)-18,
Chennai-34.

4. The Assistant Commissioner of Income Tax,
Central Circle-1(2), Chennai.

+1cc to Mr.T.R.Senthilkumar, SSC , Advocate, S.R.No.35866
+2cc to Mr.M.Velmurugan, Advocate, S.R.No.38528

TCA.Nos.399 & 400 of 2020 &
CMP.Nos.12297, 12298 & 12299 of 2020

PM(CO)
CS/16/12/2020