IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (A) Nos.192, 193, 194, 195 and 196 of 2013

Commissioner of Income Tax
Madurai. ... Appellant in all appeals

Vs.

Tuticorin Port Trust
Harbour Estate, Tuticorin. ... Respondent in all appeals

Tax Cases filed under Section 260A of the Income Tax Act against the common order dated 22.08.2012 passed in ITA Nos.1055, 1056, 1057, 1058 and 1059/Mds/2012 by the Income Tax Appellate Tribunal 'C' Bench, Chennai,

against the order passed by the Commissioner of Income Tax (Appeals)-I, Madurai made in ITA Nos.1048 to 1053/10-11 dated 29/02/2012,

against the Order passed by the Deputy Commissioner of Income Tax, Circle I, Tuticorin made in PAN AAALT0206D/2003-04, 2004-05,2005-06, 2006-07, 2007-08 dated 31/03/2010.

For Appellant : Mr.J.Narayaswamy,
Senior Standing Counsel

For Respondent : Mr.M.Devanathan

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J)

The Revenue has filed these appeals under Section 260A of the Income Tax Act, raising the following substantial question of law.

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that if the Assessee treats expenditure on acquisition of assets as application of income for charitable purpose under Section 11(1)(a) then the Assessee can claim depreciation on value of such assets?”

2. The appeal was admitted by the Coordinate Bench of this Court on 26.04.2013. The learned Tribunal allowed the benefit of depreciation to the respondent Assessee, a Charitable Trust on the assets acquired out of its funds which were treated as application of income in terms of 11(1)(a) of the Act and the learned Tribunal, following some judgments of High Court, held that the Assessee was not entitled to depreciation on such assets acquired by the respondent Assessee Trust and it did not amount to deductible deduction in the hands of the Assessee as was sought to be canvassed by the Revenue. The relevant portion of the order of the learned Tribunal is quoted below for ready reference.

> “7. The only contention of the DR before us is that the appeals before the Commissioner of Income Tax (Appeals) were in relation to an order passed under Section 154 of the Act and therefore in such a proceeding, the issue of deductibility of depreciation in case of charitable institution could not have been decided as the issue is debatable. To show that the issue was debatable, she placed reliance on the decision of the Hon'ble Kerala High Court in the case of Lissie Medical Institutions, Kochi Vs.CIT [2012-TIOL-303-HC-Kerala-IT], wherein it was held that when capital expenditure is allowed as deduction then depreciation on the same capital expenditure cannot be again allowed.”
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> 8. On the other hand, the AR of the assessee supported the order of the Commissioner of Income Tax (Appeals) and submitted that the decision of Mangal Society (2010) 328 ITR 421 (P&H) relied upon by the Commissioner of Income Tax (Appeals) has been confirmed by the Hon'ble Supreme Court inasmuch as the SLP against the said decision was dismissed by the Hon'ble Supreme Court by passing a speaking order, which is reported at 328 ITR (St) 9.
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> 9. We do not find any force in the appeals of the Revenue. The contention of the Revenue that the proceedings in the instant case are arising out of an order passed under Section 154 of the Act and allowability of depreciation being a debtable issue, the Commissioner of Income Tax (Appeals) was not justified in deciding the same on merits then on the very same anology it has to be held that the Assessing Officer was not justified in disallowing the depreciation in such a proceedings. Be that as it may.

We find that the issue of allowability of depreciation in the case of charitable institution is covered by the decision of the Hon'ble Madras High Court in the case of CIT Vs. Rao Bahadur Calavala Cunnan Chetty Charities (1982) 135 ITR 485 in favour of the assessee. Therefore, it cannot be held that the issue was still debatable after the decision of the Hon'ble Jurisdictional High Court. We therefore do not find any error in the order of the Commissioner of Income Tax (Appeals) and therefore all the appeals of the Revenue are dismissed."

3. Learned counsel at Bar on both sides submit fairly that the issue has now been put to rest and is no longer res integra in view of the recent decision of the Supreme Court of "Commissioner of Income Tax -Vs- Rajasthan and Gujarati Charitable Foundation" decided on 13.12.2017 reported in [2018] 402 ITR 441 (SC) where the Honourable Supreme Court has noticed that various High Courts has decided the said controversy in favour of the Assessee and only the Kerala High Court had taken a contrary view in the case of "Lissie Medical Institutions -Vs- C.I.T. [2012-TIOL-303-HC-Kerala-IT]," whereas the Bombay High Court has taken a view in favour of the Assessee in case of "DIT (Exemption) -Vs- Framjee Cawasjee Institute [1993] 109 CTR (Bom) 463. The relevant portion of the judgment of the Honourable Supreme Court affirming the view taken by the Bombay High Court is quoted below for ready reference.

""Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of DIT (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR (Bom) 463 . In that case, the facts were as follows : The assessee was a trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the trust. The Income-tax Officer held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The appeal was rejected. The Tri bunal, however, took the view that when the Income-tax Officer stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, question No. 2 is covered by the decision of the Bombay High Court in the above judgment. Consequently, question No. 2 is answered in the affirmative i.e., in favour of the assessee and against the Department."

2. After hearing the learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.

3. It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in Lissie Medical Institutions v. CIT*.

4. It may also be mentioned at this stage that the Legislature, realising that there was no specific provision in this behalf in the Income-tax Act, has made amendment in section 11(6) of the Act vide Finance (No. 2) Act of 2014 which became effective from the assessment year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.

5. It also follows that once the assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

6. For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters."

4. In view of the aforesaid settled legal position, the question of law raised in these appeals deserves to be answered in favour of the Assessee and against the Revenue. We hereby do so. The appeals are disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax,
Madurai.

3.The Commissioner of Income Tax (Appeals)-I,
Madurai.

4.The Deputy Commissioner of Income Tax,
Circle-I, Tuticorin.

5.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Narayanasamy, Advocate Sr.13221

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srg 09/07/2020