

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 31618 of 2016  
and

W.M.P. No. 27444 of 2016

M/s. Vasavi Vidhya Trust,  
Represented by its Secretary  
Mr. J. Rajendra Prasad,  
Vysya College Buildings,  
Masinaickanpatty,  
Ramakrishnapuram, Salem - 630 103. .... Petitioner

Vs

1. Income Tax Officer,  
Exemptions Ward No.3,  
Gandhi Road, Salem - 636 007.
2. Commissioner of Income Tax (Exemptions)  
121, Mahatma Gandhi Road,  
Chennai - 600 034. .... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the records on the file of the First Respondent and quash the impugned proceedings in F.No. 74/AAATV1257G/ITO (E)/SLM/2016-2017 dated 17.08.2016 along with notice issued by the First Respondent under Section 148 of the Act dated 23.03.2016.

For Petitioner : Mr. N.V. Balaji

For Respondents : Ms. Hema Muralikrishnan  
Senior Standing Counsel

ORDER

The Petitioner has filed this writ petition, seeking for issuance of a Writ of Certiorari, to call for the records on the file of the First Respondent and quash the impugned proceedings in F.No. 74/AAATV1257G/ITO (E)/SLM/2016-2017 dated

17.08.2016 along with notice issued by the First Respondent under Section 148 of the Act dated 23.03.2016.

2. The learned counsel for the Petitioner states that the issue is covered by the decision of the Hon'ble Supreme Court rendered in "Commissioner of Income Tax-III, Pune Vs Rajasthan, Gujarathi Charitable Foundation", (2018) 89 taxmann.com 127 (SC)/(2018) 300 CTR 1 (SC). The learned Hon'ble Supreme Court considered the identical issue as in this writ petition.

3. The order of the Hon'ble Supreme Court is extracted below:

"1. ....From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'Commissioner of Income Tax v. Institute of Banking Personnel Selection (IBPS)' [(2003) 131 Taxman 386 (Bombay)]. In the said judgment, the contention of the Department predicated on double benefit was turned down in the following manner:

3. As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property. During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @2½% and they also claimed depreciation on furniture @ 5%. The question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income Tax Act makes provision in respect of C.A. No. 7186/ 2014 etc. computation of

income of the Trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, section 28 of the Income Tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 34. In that matter also, a similar argument, as in the present case, was advanced on behalf of the revenue, namely, that depreciation can be allowed as deduction only under section 32 of the Income Tax Act and not under general principles. The Court rejected this argument. It was held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income Tax Act. The Court rejected the argument on behalf of the revenue that section 32 of the Income Tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income Tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. In view of the aforesaid judgment of the Bombay High Court, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department.

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR 463. In that case, the facts were as follows: The assessee was the 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 ITO held that depreciation could not be taken into account because, full capital expenditure had C.A. No. 7186/ 2014 etc. 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 Tribunal, however, took the view that when the ITO 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 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. Commissioner of Income Tax'.

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 Act No. 2/2014 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.

(Emphasis added)

4. The learned counsel for the Respondents fairly concedes that the issue is now squarely covered by the above decision of the Hon'ble Supreme Court. In view of the same, this Writ Petition stands allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Income Tax Officer,  
Exemptions Ward No.3,  
Gandhi Road, Salem - 636 007.
2. Commissioner of Income Tax (Exemptions)  
121, Mahatma Gandhi Road,  
Chennai - 600 034.

+lcc to Mr.N.V.Balaji, Advocate sr.1840  
+lcc to Ms. Hema Muralikrishnan, Advocate sr.1664

W.P. No. 31618 of 2016  
and

W.M.P. No. 27444 of 2016

ev(co)  
nr 14/02/2020