

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

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

T.C.A.Nos.268 and 269 of 2016
and C.M.P.No.5840 of 2016

M/s.CNN Educational Trust
2/47, Dr.Basuvaiah Nagar
Adasholai, Ooty, The Nilgiris-643 001.
PAN : AAATC8167G ... Appellant in both TCAs

-Vs-

The Income Tax Officer
Ward I(1), Ooty. ... Respondent in both TCAs

For Appellant : Mr.S.Sridhar
For Respondent : Mr.J.Narayanasamy,
Senior Standing Counsel

Prayer : Appeals under Section 260A of the Income Tax Act, 1961 against the order dated 23.09.2015 in I.T.A.Nos.2683 & 2684/Mds/2014 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai respectively against the Commissioner of Income Tax (Appeals) - I, Coimbatore and made in P.A. No.AAATC8167G Assessment year 2008-09 and 2009-10, dated 12.08.2014 against office of the Income Tax Officer (Ward (I), Ooty and made in PAN NO.AAAT8167G Assessment year 2008-09 and 2009-10 and 25.03.2013.

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 Assessee, C.N.N.Educational Trust has filed these appeals under Section 260A of the Income Tax Act, 1961 aggrieved by the order passed by the learned Income Tax Appellate Tribunal 'A' Bench, Chennai on 23.09.2015, raising the purported questions of law arising from the said order. The appeals were admitted by the Coordinate Bench of this Court on 13.04.2016 on the following substantial questions of law.

"(1) Whether the Appellate Tribunal is correct in law in their action to reject and to sustain the denial of the tax exemption claimed in terms of Section 11 of the Act consequent to the non acceptance of the plea for accumulation of income as per Section 11(2) of the Act read with Form No.10 on presumption of wrong facts establishing perversity in such findings recorded in relation thereto?

(2) Whether the Appellate Tribunal is correct in not considering the power vested with the First Appellate Authority for entertaining the plea for accumulation of income as per Section 11(2) of the Act read with Form No.10 even after noticing the compliance of defects pointed out in making the said plea in statutorily prescribed Form No.10 filed before the Original Authority? And

(3) Whether the Appellate Tribunal was correct in law in rejecting the plea for accumulation of income, which resulted in denial of tax exemption under Section 11 of the Act even though the purpose of accumulation was clearly communicated to the Original Authority proving the violation of the principles of legitimate expectation at every stage of the proceedings?"

2.The relevant findings of the learned Tribunal denying the exemption to the Assessee under Section 11 of the Income Tax Act, 1961, are quoted below for ready reference.

" 6. We have heard both the parties and perused the material on record. As seen from the above, it is necessary that the AO must have the information under Form-10 at the time of completion of the assessment and in its absence, it is not possible for the assessing authority to give benefit of such exclusion. We are completely in agreement with the above judgment. But in the present case, though the assessee filed Form-10, it should be considered rectified in view of resolution passed. The resolution passed does not show the name of the assessee as well as the period. Thus, the resolution is also defective and it is not having all the information required. Further, it did not comply with the requirements of Sec.11(2) of the Act, which reads as follows:

"11(2) [Where [eighty five] per cent of the income referred to in clause (a) of sub-section(1) read with the Explanation

to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year, but is accumulated or set apart either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:--]

(a) such person specifies, by notice in writing given to the [Assessing] Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5)]"

7. There is no dispute that it is mandate of Sec.11 of the Act to specify the purpose and period for which accumulation is sought for. The above position was upheld by the Jurisdictional High Court in the case of CIT Vs. MCT Muthiah Chettiar Family Trust (245 ITR 400), wherein it was held as under:

"The trust is allowed to accumulate its income for a maximum period of ten years. The condition is that the trust should specify in the prescribed form the purpose for which the income is accumulated or set apart. It is not enough for the trustees to repeat the objects of the trust, but they must specify a particular purpose for which the income is being accumulated."

7.1. Similar view was also expressed by the High Court of Calcutta in the case of DIT(E) Vs. Singhanian Charitable Trust (199 ITR 189) (Cal), wherein it was held as under:

"Doubtless, it is not necessary that the assessee has to mention only one specific object. There can be setting apart and accumulation of income for more objects than one but whatever objects or purposes might be, assessee must specify in notice concrete nature of purposes, for which accumulation is being made. Plurality of the purposes for accumulation may not be precluded but it must depend on the exact and precise purposes for which the accumulation is intended for the statutory period of ten years. The generating of the objects of the trust cannot take the place of specificity of the need for accumulation."

8. Further, it is pertinent to note that the assessee has not complied with the provisions of Sec.11(5) of the Act. Considering the totality of facts and circumstances of the case, in our opinion, the orders of the lower authorities are justified in dismissing the appeal of the assessee. Accordingly, we are inclined to dismiss the appeals for the assessment years 2008-09 and 2009-10."

3. Learned counsel for the Assessee Mr.S.Sridhar however submitted that except for these two assessment years in question i.e., A.Y.2008-09 and 2009-10, the Assessee Trust has been assessed by the Department as 'Charitable Trust' under Section 11 of the Income Tax Act. He submitted that the accumulation of surplus funds of Rs.59,13,658/- was resolved to be spent for the purpose of construction of building and purchase of assets for the usage of the Trust and corrected Form No.10 dated 01.09.2008, along with the said Resolution was furnished before the learned Tribunal, but the learned Tribunal has failed to appreciate the same in correct perspective.

4. Per contra, Mr.J.Narayanasamy, learned Senior Standing Counsel for the Revenue has submitted before us that, the said Resolution does not specify any details about the alleged future use of the said accumulated surplus funds and the said Resolution has been considered by the learned Tribunal in Para 6 of the learned Tribunal's order quoted above. He therefore submitted that those findings of the learned Tribunal do not require any interference by this Court.

5. Having heard the learned counsel for the parties, we are of the opinion that, the matter would deserve a remand to the learned Income Tax Appellate Tribunal. As a matter of fact, the Assessee could have approached the learned Tribunal by way of a Miscellaneous Application if a document like Form No.10 along with the Resolution filed before the learned Tribunal contained all the details and evidence of such accumulation set apart by the Assessee Trust for the purpose of construction of building etc., in terms of the provisions of Section 11 permitted by law. We find from paragraph 6 of the learned Tribunal's order that, though the learned Tribunal has referred to the said Resolution dated 01.09.2008 passed by the Assessee Trust, without finding it to be defective, they have not given any benefit of the same to the Assessee Trust. Whether the said surplus fund has been really spent by the Assessee Trust for such construction or not for charitable purposes of the Trust contained in its Trust Deed or not might be a subsequent fact, which may be relevant for the Tribunal to consider, coupled with the fact that the Assessee Trust has been assessed as such in 'Exempted Category' for the subsequent Assessment Years as stated by the learned counsel for the Assessee.

6. Therefore, in the light of these facts, the learned Tribunal should re-examine the Form No.10 furnished by the Assessee along with the Resolution and additional evidence, which may be produced by the Assessee Trust before the learned Tribunal. Therefore, we dispose of the present appeals without answering the questions of law as such and request the learned Tribunal to reconsider the said Form No.10 dated 01.09.2008 and the Resolution along with the evidence of the surplus amount having been spent by the Assessee Trust for the purposes of the Trust. With the above observations, the appeals are disposed of. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (MD)

//True Copy//

Sub Assistant Registrar

KST

To

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

2. The Income Tax Officer,
Ward I (1), Ooty.
3. The Commissioner of Income Tax,
Appeals - I, Coimbatore.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.22301.

T.C.A.Nos.268 & 269 of 2016

JP (CO)
VSI-2 (29.05.2020)



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