IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2020

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THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.11367 to 11375 of 2014

W.P.No.11367 of 2014 to W.P 11375 of 2014

M/s.Tamil Nadu Urban Development Fund
Rep. by the Chairperson & Managing Director
Tamil Nadu Urban Infrastructure Financial Services Ltd
as Fund Manager of
Tamil Nadu Urban Development Fund
Vairam Complex, First Floor
112, Thiyagarya Road, T.Nagar, Chennai-600 017
... Petitioner in all WP's

Vs.

1.The Income Tax Officer
Business Ward II (4)
Chennai 600 034

2.State of Tamil Nadu
Rep. by the Secretary to Government
Municipal Administration &
Water Supply Department
Secretariat, Chennai 600 009

3.M/s.ICICI Bank Ltd.
"Landmark", Race Course Circle
Vadodara-390 007

4.M/s.IL & FS Financial Services Ltd.
The IL & FS Financial Centre
3rd Floor, Plot C-22, G-Block
Bandra Kurla Complex, Bandra East
Mumbai 400 051

5.M/s.Housing Development Finance Corporation Ltd.
Ramon House, H.T.Parekh Marg
169, Backbay Reclamation, Churchgate
Mumbai 400 020 ... Respondents in all WP's

Petition filed under Article 226 of The Constitution of

India praying to issue a writ of Certiorarified Mandamus, to call for the records of the 1st respondent in AAATT0859N/2011-12 and quash the order dated 22.12.2011 passed therein on the petitioner herein and further direct the 1st respondent to refund the amount of tax and interest collected from the petitioner along with statutory interest thereon u/s.244A of the Income Tax Act, 1961 for the assessment year 1997-98,1998-99,1999-2000,2000-2001,2001-2002,2002-2003,2003-2004,2004-2005,2005-2006 respectively to the petitioner herein.

For Petitioner	:	Mr.Pushya Sitaraman, Sr.C for Ms.J.Sree Vidya
For Respondents	:	Mrs.Hema Muralikrishnan for R1 Mr.J.Ramesh, AGP for R2 Mr.T.Srinivasa Raghavan for R3 Mr.Srinath Sridevan for R4 R5-served-No Appearance

COMMON ORDER

The brief facts of the case are that the petitioner - assessee was the trust created by the State Government for the development of the infrastructure within the State. The contributions to the said trust were made by the three financial institutions viz., ICICI, IL&FS and HDFC, respondents 3 to 5 herein. In respect of the assessment years from 1997-98 to 2005-06, the petitioner filed its returns declaring 'nil' taxable income, as the income of the trust arising to the funds received from the beneficiaries is chargeable to tax in the hands of the beneficiaries and not in the hands of the petitioner under Section 61 of the Act. On scrutiny of the same, the first respondent passed the assessment orders, treating the petitioner as Association of Persons (AoP) and rejecting the claim of the petitioner for exemption under Section 61 of the Act. Challenging the same, the petitioner preferred appeals before the Commissioner of Income Tax (Appeals) VI, who dismissed the appeals by confirming the orders of the first respondent. Aggrieved over the same, the petitioner filed further appeals before the Tribunal, raising an additional ground that the petitioner being engaged in the activities of providing services of public utility, would be eligible for exemption under Section 11 of the Act. The Tribunal by order dated 21.09.2007 set aside the orders of the Appellate Authority and remand the matter to the Assessing Officer. Challenging the same, the petitioner filed TC(A)Nos.85 to 93 of 2008, which were dismissed by this Court vide order dated 17.03.2008. Pursuant to the same, the first respondent/ Assessing Officer passed the re-assessment orders on 22.12.2011, holding that the claim of the petitioner seeking exemption of income is not in order and hence, the total income already determined requires no interference. Feeling aggrieved, the petitioner has preferred these writ petitions to quash the re-assessment orders passed by the first respondent and consequently, direct the first respondent to refund the tax and interest collected from the petitioner along with statutory interest thereon u/s.244A of the Income Tax Act, 1961.

2.Today, when the writ petitions were taken up for consideration, the learned Senior counsel for the petitioner as well as the learned Senior Standing Counsel appearing for the first respondent jointly submitted that the issue involved herein is covered by the decision rendered by the Division Bench of this Court in the Commissioner of Income Tax, Chennai v. Tamilnadu Urban Development Fund [(2019) 104 taxmann.com 361 (Madras) : (2019) 263 Taxman 318 (Madras)], wherein, it was held as follows:

> "9. In view of the clear Scheme of the Act and the provisions quoted above, we find little force in the submission made by the learned counsel for the Revenue. Section 62(2) clearly stands attracted to the present case. The funds and transferred by the beneficiaries viz., the 3 Companies to the Trust created by the Settlor viz., State of Tamil Nadu were revocable after the specified period of three years. But, besides being Settlor, also a contributor of funds to the Trust in question, since the Units were revocable after a period of 3 years, at any point of time, irrespective of the fact whether they have been actually revoked or not or contributions have been actually recalled or not, Section 62(2) stands attracted and the said provisions clearly provide that the income in question would be taxed in the hands of the transferors which has, in fact, been taxed so far and that fact has not been disputed by the learned counsel appearing for the Revenue at all.
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> "10. The contention raised by the learned counsel appearing for the Revenue on the anvil of Section 164 of the Act falls to the ground on the bare reading of the Section itself which provides that Section 164 will be applicable only if the share of the beneficiaries is unknown or indeterminate. The facts are otherwise. Not only the 3 companies in question viz., HDFC, ICICI and IL&FS but the Government of Tamil Nadu itself contributed the funds from time to time in the said Trust Fund created in the Trust Deed. Both of them were entitled to revoke the same after a

period of 3 years. The number of shares, their extent of benefits and their identity have not been found in dispute. Therefore, the question of applying Section 164 of the Act to the facts of the present case does not simply arise.

11. Therefore, we are satisfied that the Tribunal was perfectly justified in invoking Section 62(2) of the Act read with Section 61(1) of the Act which would apply only to the Revocable Transfer of the funds made for a period which is not specified and these above circumstances, it would be taxable in the hands of the Transferor/beneficiaries and not in the hands of the Trust. As a matter of fact, the findings rendered by the Tribunal are mere findings of facts and on application of relevant provisions of the Act which, in the facts of the case, does not give rise to a substantial question of law requiring our consideration under section 260A of the Act. The appeals are, thus, found devoid of merits and the same are liable to be dismissed. Accordingly, they are dismissed. No order as to costs. The connected miscellaneous petition is closed."

The learned Senior Counsel further submitted that challenging the said order passed by the Division Bench of this Court, the Revenue went on further appeal before the Supreme Court, in SLP (Civil) Diary No.35125 of 2019, which ended in dismissal vide order dated 08.11.2019 [(2020) 113 taxmann.com 73 (SC) : (2020) 269 Taxman 5 (SC)]. Hence, according to the learned Senior Counsel, these writ petitions are liable to be allowed by setting aside the orders impugned herein.

3.Following the aforesaid decision of this Court as affirmed by the Supreme Court, which is squarely applicable to the facts of the present case, these writ petitions are allowed and the reassessment orders dated 22.12.2011 passed by the first respondent relating to the years from 1997-98 to 2005-06 stand set aside. Insofar as the claim of the petitioner seeking refund is concerned, since the Act itself provides 90 days time for effecting refund, the first respondent shall pass orders with respect to refund of the tax amount and interest already paid by the petitioner, within a period of 90 days from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Officer
Business Ward II (4)
Chennai 600 034

2.The Secretary to Government,
Municipal Administration &
Water Supply Department
Secretariat, Chennai 600 009

+1cc to Mrs.J.Sreevidya, Advocate, Sr.No.18601
+1cc to Mrs.Hema MuraliKrishnan, Advocate, Sr.No.18201
+1cc to Government Pleader, Sr.No.19257
+1cc to Mr.Srinath Sridevan, Advocate, Sr.No.18831

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PM(CO)
GS(13/07/2020)