IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.444 of 2011

The Commissioner of Income Tax -II
Madurai. ... Appellant

Vs.

M/s.Ayira Vysya Mahasabai Matriculation
Higher Secondary School Committee,
Balasubramaniaswamy South Car Street,
Velipattinam, Ramanathapuram - 623 535 ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 23.12.2010 in I.T.A.No.304/Mds/2010 against the order of the Commissioner of Income Tax-II, Madurai dated 19.01.2010 in C.No.102/181/CIT-II/2003-04.

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

For Respondent : Mr.R.Sivaraman

JUDGMENT
(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.304/Mds/2010 on the file of the Income Tax Appellate Tribunal, Madras “D” Bench, the Revenue has filed the above appeal.

2.The assessee - Trust has filed its application for grant of renewal of exemption under Section 80G of the Income Tax Act on 21.08.2009. The registration under Section 12A(a) of the Income Tax Act has been granted to the Trust vide order dated 24.09.2004 for the assessment year 2005-06 onwards and the earlier exemption under Section 80G(5) of the Act was granted to the Trust vide order dated 26.02.2007 from 01.04.2005 to 31.03.2009. The Trust was asked to file (a) extract of charitable activities carried out by the Trust (b) expenditure on charitable activities for last three financial years 2006-07 to 2008-09 (c) details of donation received and receipts and (d) bill/vouchers for expenses. The Commissioner of Income Tax rejected the application for renewal under Section 80G(5)(vi) of the Income Tax Act and as against the said order, the assessee preferred an appeal before the Income Tax Appellate Tribunal and the Tribunal in its order held that denial of approval seems to be that the Board passed a resolution on 22.07.2006 and signed by the Secretary of the School wherein it has been stated that "Resolved that children of economically background family and sons and daughters of staff of our School shall be given concession of fees of tuition and special fees". The Tribunal further held that the above resolution is not a valid reason to refuse renewal of approval under Section 80G of the Act and directed to grant approval to the assessee - Trust and allowed the assessee's appeal. As against the order passed by the Tribunal, the Revenue has filed the above appeal.

3.The above appeal was admitted on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in directing the Commissioner of Income Tax to grant approval of Section 80G of the Income Tax Act, when the primary statutory requirement under Section 80G(5)(i) has not been complied with by the Trust?"

4.Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the appellant contended that the order passed by the Tribunal is erroneous for the reason that the Commissioner of Income Tax had taken into consideration the Resolution passed by the Trust on 22.07.2006 and ultimately, came to the conclusion that the assessee is not entitled for renewal of approval under Section 80G of the Act.

5.On a reading of the order passed by the Commissioner of Income Tax, it could be seen that the reasoning given by the Commissioner of Income Tax cannot stand for the reason that the Board Resolution passed on 22.07.2006 stating that the children of the economically backward family and sons and daughters of staff of the School shall be given concession of fees of tuition and special fees, shall not stand in the way of granting renewal of approval under Section 80G of the Act. The said Resolution cannot be put against the assessee for the grant of approval under Section 80G of the Act. We are of the considered view that the reasoning given by the Tribunal for setting aside the order passed by the Commissioner of Income Tax is just and proper. We do not find any ground much less any substantial question of law to interfere with the order passed by the Tribunal. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

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To

1.The Income Tax Appellate Tribunal, Chennai, "D" Bench

2.The Commissioner of Income Tax-II, Madurai

T.C.A.No.444 of 2011

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