IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.07.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY

AND

THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.No.722 of 2015

Commissioner of Income Tax,
Coimbatore. ...Appellant

v.

M/s. Coimbatore Masonic Charity Trust,
232, Race Course Road,
Coimbatore - 641 015. ...Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 12.12.2014 passed in I.T.A.No.2225/Mds/2014 against the order of the Commissioner of Income Tax (Appeals)-I, Chennai in ITA No.32/13-14 dated 04.06.2014 against the Assessment order of the Income Tax Officer, Company ward-I, Coimbatore for the Assessment Year 2010-2011 dated 15.03.2013.

For Appellant : Mr.J. Narayanaswamy
Senior Standing Counsel

For Respondent : Notice served - No Appearance

JUDGMENT

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

Challenging the order passed in I.T.A.No.2225/Mds/2014 in respect of the Assessment Year 2010-2011 on the file of the Income Tax Appellate Tribunal, Chennai,"A" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2.1 The respondent-assessee is a Public Charitable Trust registered under section 12A(a)of the Income Tax Act, 1961. The assessee filed its return of income for the Assessment Year 2010-2011 on 16.06.2010 admitting a gross receipts of Rs.4,31,86,105/- and declarign 'Nil' income. The case was selected for scrutiny. During the assessment proceedings under section 143(3),the Assessing Officer found that the assessee had claimed depreciation on assets contending that depreciation on fixed assets has to be considered while working out the application of income. The Assessing Officer found that the assessee during the earlier years had claimed the entire cost of the assets as application of income and hence, he was of the view that since the assets have been claimed as deducton in the earlier years as application of income, claiming of depreciation on the same would amount to double deduction. The Assessing Officer relying on the decision of the Apex Court in the case of Lissie Medical Institutions v. CIT reported in 348 ITR 344 (Ker) disallowed the claim of depreciation made by the assessee amounting to Rs.26,57,455/-.

2.2 Aggrieved over the order passed by the Assessing Officer,the assessee preferred an appeal before the Commissioner of Income Tax(Appeals), who allowed the appeal directing the Assessing Officer to allow depreciation. The CIT (A) also observed that it is not only the accounting principle but even the statue and judicial interpreation of the provisions provided that in arriving at the amount of income available for application under section 11, depreciation should be deducted. Aggrieved by the order of CIT (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal and the Tribunal, dismissed the appeal. Challenging the order passed by the Income Tax Appellate 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 Tribunal was right in holding that the assessee is entitled to claim depreciation on the assets even though the cost of purchase of asset was already treated as application of income under section 11 of the Income Tax Act?"

4. When the appeal is taken up for hearing, Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the appellant-revenue fairly submitted that the substantial question of law that are raised in the above appeal were already decided by the Division Bench of this court in the Common Judgment in T.C.A.Nos.343 to 345 & 347 of 2014 [Commissioner of Income Tax, Trichy Vs. M/s.National College Council, Teppakulam, Tiruchirapalli - 620 002] wherein the Division Bench held as follows:-

> " .... 4.When the appeals were taken up for hearing, Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the appellant - Revenue in all the appeals, fairly submitted that the

substantial question of law, which has been framed in these appeals, have been answered against the Revenue by the Hon'ble Supreme Court in CIT Vs. Rajasthan and Gujarati Charitable Foundation reported in [2018] 402 ITR 441 (SC). Further, the learned Senior Standing Counsel submitted that following the decision of the Hon'ble Supreme Court, the Hon'ble Division Bench of this Court, by judgment dated 26.08.2019, made in T.C.A.Nos.680 & 681 of 2011 [Commissioner of Income Tax - I, Tiruchirapalli Vs. M/s.National College Council, P.B.No.369, Chatram Bus Stand, Teppakulam, Tiruchirapalli - 620 002] dismissed the appeals and answered the substantial questions of law against the Revenue. The appeals in T.C.A.Nos.680 & 681 of 2011 relates to the very same assessee. Hence, following the judgment of the Hon'ble Supreme Court reported in [2018] 402 ITR 441 (SC) and the judgment of the Hon'ble Division Bench of this Court made in T.C.A.Nos.680 & 681 of 2011, the substantial question of law is answered against the Revenue and the appeals are dismissed. No costs.

5. In view of the fair submission made by the learned Senior Standing Counsel, following the Judgment dated 26.02.2021 made in T.C.A.Nos.343 to 345 & 347 of 2014 [cited supra], the questions of law are answered against the Revenue and the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To
1. The Registrar,
The Income Tax Appellate Tribunal,
Chennai, "A" Bench.

2. The Commissioner of Income Tax (A)-I,
Chennai.

3. The Income Tax Officer,
Company ward-I, Coimbatore.

PPA(CO)
RGA(20/07/2021)