IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.205 of 2016
and
C.M.P.No.3573 of 2016

M/s.Indian Officers Association,
No.69, Thiru-vi-ka High Road,
Royapettah, Chennai - 600 014.
PAN: AAATT7858F ...Appellant/Respondent

Vs

The Deputy Commissioner of Income Tax
(Exemptions)-1,
Nungambakkam, Chennai - 600 034.
...Respondent/ Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 06.11.2015 made in ITA.No.108/Mds/2015 on the file of the Income Tax Appellate Tribunal, 'C' Bench, Chennai for the assessment year 2011-2012

Against the order of The Commissioner of Income Tax Appeals VII, Chennai -34. dated 14/10/2014 in ITA-174/14-15 against the order of The Deputy Director of Income Tax (Exemptions)-1, Chennai in PAN/GIR.No.AAATT7858F dated 31/03/2014 assessment year 2011-2012.

For Appellant : M/s.Pushya Sitaraman
Senior Counsel
for M/s.Sree Vidya

For Respondent : Mr.J.Narayansasamy
Senior Standing Counsel

JUDGMENT

(Delivered by T.S.Sivagnanam,J)

This tax case appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ['the Act' for brevity] is directed against the order dated 06.11.2015 passed by the Income Tax Appellate Tribunal [hereinafter referred to as "the Tribunal"], 'C' Bench in I.T.A.No.108/Mds/2015 for the assessment year 2011-12.

2.This appeal was admitted on 08.03.2016 on the following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the appellant society is not entitled to exemption under Section 11 in the light of the amendment made to Section 2(15) with effect from 01.04.2009?
>
> (ii) Whether on the facts and circumstances of the case, the Tribunal was right in denying the exemption under Section 11, when the Revenue had opted to withdraw the appeal filed by them for the earlier year (AY 2010-11) on the same set of facts? And
>
> (iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding denial of exemption on the ground that conducting lectures, workshops, seminars and earning rental income from multi-storeyed building and running of hostel are commercial in nature contrary to the decision of the Supreme Court in the case of ACIT vs. Thanthi Trust [247 ITR 785]?"

3.We have heard M/s.Pushya Sitaraman, learned senior counsel for M/s.J.Sree Vidya, learned counsel for the appellant/assessee and Mr. J.Narayanasamy, learned senior standing counsel appearing for the respondent/revenue.

4.The assessee is an association which is in existence for more than 100 years established by the Gazetted Officers of State and Central Governments and Judges of High Court and District Courts. The object of starting the association was to render social service and it was a non-profit organization and was registered as Public Charitable Trust under Section 12AA of the Act by order dated 29.08.2001 with retrospective effect. For the assessment year under consideration, the assessee filed return of income dated 30.09.2011 declaring Nil income claiming exemption under Section 11 of the Act. The Assessing Officer took up the case for scrutiny and called upon the assessee to explain the activities of the Trust pertaining to letting out of commercial property and rental income received from tenants and as to how they can be termed as Charitable activities eligible for claim ;of exemption and as to how it is not hit by the amended proviso to Section 2(15) of the Act. The assessee furnished all the details with regard to the charitable activities conducted by them, various medical camps, free legal aid camps, etc. and sought to explain that they are eligible for exemption under Section 11 of the Act as their activities fall under the limb of medical relief and they are not hit by the amended proviso to Section 2(15) of the Act.

5.The Assessing Officer did not agree with the assessee and while completing the assessment under Section 143(3) of the Act, by order dated 31.03.2014 held that the activities of the assessee are not charitable in nature and its objects fall under the category of 'advancement of object of general public utility' and they are not eligible for exemption under Section 11 of the Act. Further, the Assessing Officer held that the receipts of the assessee by way of rental income from students, tenants are in the nature of trade, commerce and business and thus are commercial receipts in nature and are not eligible for the benefit of exemption under Section 11 and treated the assessee as an Association of Persons [AoP] and brought the receipts to tax. Certain other issues were also such as the claim of the benefit of principle of mutuality was also decided against the assessee. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-VII, Chennai [hereinafter referred to as CIT(A)]. The said appeal was allowed by order dated 14.10.2014. Aggrieved by the same, the revenue preferred appeal before the Tribunal which has been allowed by the impugned order. Challenging the correctness of the same, the assessee is before us by way of this appeal raising the above referred substantial questions of law.

6.Though elaborate submissions have been made by the learned senior counsel appearing on behalf of the appellant/assessee and the learned senior standing counsel appearing for the respondent/revenue, we are of the view that on account of the fact that the assessee had succeeded before the Commissioner of Income Tax (Appeals) in I.T.A.No.286/13-14 for assessment year 2010-11 and the said order having become final, applying the Rule of Consistency the revenue cannot take a different stand for the assessment year under consideration, AY 2011-12. Further, we note that the returns filed by the assessee claiming exemption under Section11 of the Act was accepted by the revenue for the assessment years 2012-13, 2013-14, 2014-15 and only for the assessment year 2016-17, the issue was once again waked up and the matter is now pending before the

Commissioner of Income Tax (Appeals).

7.It is the submission of the learned senior standing counsel appearing for the respondent/revenue that each assessment year is a distinct unit and the Assessing Officer is entitled to consider the return of income filed for the concerned year independently and take a decision in the matter.

8.There can be no quarrel to the legal proposition as pointed out by the learned senior standing counsel for the respondent. Nevertheless there are decisions wherein it has been held that though the cardinal principle is that each assessment year is a distinct and separate unit, nevertheless if the facts and the nature of activities done by the assessee and the nature of claim made by the assessee are identical for the earlier assessment years. Unless there are strong and compelling reasons to take a different view, the revenue should be bound by the decisions in the earlier as well as the subsequent assessment years so far as the said assessee is concerned. This in other words terms as the Rule of Consistency.

9.In this regard, we are guided by the decision of the High Court of Bombay in the case of Dipti Textiles Industries vs. Commissioner of Income Tax [(2010) 323 ITR 0638]. In the said case, the expenditure which was incurred by the assessee for the subsequent assessment years were similar to that of the expenditure incurred in respect of the assessment year which was under consideration and the question was whether the revenue having accepted the orders passed by the subsequent years can take a different stand for the year under consideration. The Court held that if the revenue had accepted the order of the Tribunal in the case of the assessee itself for the subsequent assessment years in the identical facts and circumstances of the case, in that event, it is not open for the revenue to take a contrary stand.

10.The Hon'ble Division Bench of this Court in Commissioner of Income Tax vs. Hitech Arai Ltd. [(2014) 368 ITR 0577 (Mad)], held that there is no justifiable reasons to differ with the finding rendered by the Tribunal, more so, taking note of the fact that the revenue had for the assessment years 1986-1987 to 1994-1995, for a period of nine years, accepted the fact that the payment made towards royalty is revenue expenditure and had not raised dispute thereon. It is further held that a sudden volte-face by the Department on the issue appears to be on account of a new interpretation by the subsequent Assessing Officer. It was held that while interpreting the very same agreement, the revenue cannot be inconsistent. Unless there is a change in law or on the basis of new and acceptable material which went unnoticed, the opinion should not differ from time to time based on the perception of individual Officers. Further, it was held that Citizens expect consistency not only in judicial orders but also in the orders passed by the quasi-judicial authorities.

11.The legal principle which can be culled out from the above decisions is that the Rule of Consistency needs to be adopted by the revenue even though each assessment year may be a distinct and a separate unit unless and until there are distinguishing features to take a different view, the revenue is bound to be consistent, more so, when they are interpreting the nature of transactions done by the assessee Trust which were identical in respect of the earlier assessment years as well as the assessment years post the assessment year under consideration. In the instant case, for the assessment year 2010-2011, the Assessing Officer took a similar view as that of the view taken by the Assessing Officer for the assessment year under consideration AY 2011-2012. Against such decision, the assessee filed appeal before the CIT(A)-VII, Chennai. The CIT (A) after elaborately considering the factual matrix allowed the appeal filed by the assessee. In the said decision, the CIT(A) has examined the very same rental receipts received by the appellant/assessee and granted relief to the appellant/assessee. Aggrieved by the same, the revenue preferred an appeal before the Tribunal in I.T.A.No.1600/Mds/2014 and the appeal was withdrawn by the revenue and accordingly, the appeal was dismissed as withdrawn by order dated 22.07.2014. It is submitted by the learned senior standing counsel for the respondent that the appeal was not pursued by the revenue on account of low tax effect. This appears to be factually incorrect as could be seen from the order passed by the Tribunal dated 22.07.2014 which reads as follows:

> "The appeal has been filed by the Revenue against the order of Commissioner of Income Tax (Appeals)-VII, Chennai dated 19.02.2014 relevant to the Assessment Year (AY) 2010-11.
>
> 2.The Revenue has filed application for withdrawal of appeal stating following reasons:
>
> "Ref:(i) Appeal filed vide F.No.DDIT(E)-1/2nd Appeal/AAATT7858F/2014-15 dated 06.06.2014 filed on 10.06.2014.
>
> In connection with above, it is hereby requested that the departmental appeal filed vide reference (1) cited above may please be withdrawn as the communication received in this office vide the judicial Memo dated 01.07.2014 intimated 'No appeal to the Appellate Tribunal is necessary against the order of the Commissioner of Income Tax (appeals)".
>
> 3.For the reasons stated in the application,

the Revenue is permitted to withdraw the appeal. The appeal of the Revenue is dismissed as withdrawn.”

12.As could be seen from the above order that the Tribunal has recorded the application filed by the revenue seeking leave to withdraw the appeal and nowhere in the said application it has been mentioned that the appeal has not been pursued on the ground of low tax effect. Rather the application states that no appeal to the Appellate Tribunal is necessary against the order of the CIT(A) dated 19.02.2014. If such was the factual position, the Assessing Officer on the date when he completed the assessment on 31.03.2014 the order passed by the CITA() in the assessee's own case for the earlier assessment year dated 19.02.2014 was available and on record. Therefore, the Assessing Officer was bound by the said order because the said order has not been reversed or modified on the date when the assessment order for the current assessment year 2011-2012 was passed i.e. on 31.03.2014. Therefore, the Assessing Officer ignored the cardinal principle of judicial discipline in not adhering to the orders passed by the Appellate Authority. Thus, for all the above reasons we find that the Tribunal ought not to have reversed the order passed by the CIT(A).

13.In the result, the tax case appeal is allowed, the order passed by the Tribunal is set aside and the order passed by the CIT(A) dated 14.10.2014 is restored. Since we have allowed the appeal by holding that the order passed by the CIT(A) dated 19.02.2014 for the assessment year 2010-2011 had attained finality and binds the Department, the substantial questions of law are left open. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cse

To

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

2. The Deputy Commissioner of Income Tax
   (Exemptions)-1,Nungambakkam,
   Chennai - 600 034.

3. The Commissioner of Income Tax
   Appeals VII,
   Chennai - 600 034.

4. The Deputy Director of Income Tax(Exemptions)-1, Chennai

+1cc to Mr.J.Narayansasamy, Advocate, S.R.No.41568
+1cc to M/s.Sree Vidya, Advocate, S.R.No.41573

TCA.No.205 of 2016

PVS(CO)
CT(21/09/2021)