IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

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

T.C.A. No. 760 of 2016

M/s. Toiling Masses Welfare Trust
No.27, Vaidya Raman Street
T.Nagar, Chennai – 600 017
Represented by its Trustee
Mr.G.Ramakrishnan ...Appellant/Respondent

Vs.

Deputy Commissioner of Income Tax
(Exemptions) IV
No112, Uttamar Gandhi Salai
Chennai – 600 034. ... Respondent/Appellant

Appeal filed under Section 260-A of the Income Tax Act, 1961, praying to allow the above Writ Appeal by setting aside the order dated 06.11.2015 passed in I.T.A. No. 1597/Mds/2014 of the Income Tax Appellate Tribunal Chennai 'A' Bench for the assessment year 2010-11, against the order passed by the Commissioner of Income Tax(Appeals)-VII, Chennai-34, made in ITA.No.263/12-13, dated 28/02/2014 and against the order passed by the Assistant Director of Income Tax(Exemption)IV, Chennai, made in PA/GIR.No.AAATT6230F dated 19.02.2013.

For Appellant : Mr. J.Balachander
assisted by Ms. S.Indumathi

For Respondent : Mr. J.Narayanaswamy
Senior Standing Counsel

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J U D G M E N T
(Delivered by T.S.Sivagnanam, J.)

This appeal filed by the assessee under Section 260-A of the Income Tax Act, 1961('the Act' for short) is directed against the order dated 06.11.2015 in I.T.A. No. 1597/Mds/2014 on the file of the Income Tax Appellate Tribunal ('ITAT' for short), Chennai for the assessment year 2010-11.

2. The assessee has raised the following questions of law for consideration:-

> "1. Whether on the facts and circumstances of the case the Hon'ble Income Tax Appellate Tribunal was right in law in denying the exemption under section 11 to 13 of the Act by placing a very narrow interpretation to the term charitable activity with respect to amount applied towards the objectives of the Trust.
>
> 2. Whether on the facts and circumstances of the case the Hon'ble Income Tax Appellate Tribunal was right in law in concluding that the printing of News papers to educate the Toiling Masses being its objects is not a Charitable activity in nature.
>
> 3. Whether on the facts and circumstances of the case the Hon'ble Income Tax Appellate Tribunal was right in law in omitting to allow Depreciation on fixed assets as per the Judgments of the Punjab and Harayana High Court in the case of CIT Vs. Market Committee pipli reported in (330) ITR 16 (P&H) and CIT Vs. Tiny Tots Education Society reported in (330) ITR 21 (P&H)."

3. We have heard Mr. J.Balachander, Learned counsel for the appellant-assessee and Mr. J.Narayanaswamy, Learned Senior Standing Counsel appearing for the respondent-Revenue.

4. The assessee is a charitable trust constituted by a deed of declaration of trust dated 28.02.1986 and registered under Section 12-A of the Act by order dated 05.06.1986. The appellant-assessee filed its return of income for the assessment year under consideration 2010-11 for the total income of nil and claiming the exemption under Sections 11 to 13 of the Act. The assessment was completed under Section 143(3) of the Act and an order to the said effect was passed on 19.02.2013. The Assessing Officer, while assessing the total income, disallowed the sum claimed by the assessee for publication of the newspaper 'Theekkathir' on the ground that it is not for charitable purpose and also observed that disallowed the claim of depreciation on the assets of the assessee stating that it is not eligible for deduction. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) VII, Chennai ('CIT(A)'). The appeals were allowed by order dated 28.02.2014. The Department being aggrieved by such order preferred an appeal before the Income Tax Appellate Tribunal, "A" Bench ('the Tribunal') and the Tribunal has allowed the department's appeal and the assessee being aggrieved by such order is before us by way of this appeal by raising the above mentioned substantial questions of law.

5. From the order passed by the Commissioner of Income Tax (Appeals)-VII, Chennai, we find that the authority had examined the nature and purpose for which the Trust was created and the publication of the newspaper was to educate the toiling masses and having arrived at such a factual conclusion held the denial of exemption under section 11 of the Act was not correct. The CIT(A) has also noted as to how the substantial number of people in the country lives in rural areas and about 40% of the population is below the poverty line and the appellant-trust is to educate those daily wage earners in urban areas and industrial workers about the various aspects, which they are bound to know and held that the activity of publishing the newspaper can be covered under ''advancement of any other object of general public utility''. While testing the correctness of the order passed by the CIT(A), the Tribunal had relied upon the decision of the Cochin Bench of this Tribunal in Al-Madeena Charitable Trust -vs- ACIT reported in (76) ITD 214 and came to the conclusion that the assessee had not carrying on any charitable activity and therefore, exemption cannot be granted under section 11 of the Act.

6. We find that the Tribunal has not rendered any finding on the correctness of the decision of the CIT(A), which examined the factual aspects as to purpose behind which the newspaper was printed and published. Therefore, merely by applying the decision in Al-Madeena Charitable Trust(cited supra), the order passed by the CITA could not have been reversed.

7. That apart, we also find that no detailed factual examination was required to have been done, with regard to the depreciation on the assets, which was considered by the CIT(A) and certain reasons have been referred to by the CIT(A) to grant relief to the assessee. In fact, the CIT(A) had referred to three decisions and observed that since there are conflicting decisions of the various High Courts, one which is favourable to the assesee should be given effect to and allowed the claim for deduction.

8. However, the Tribunal has reversed the finding of the CIT(A) that the claim of depreciation cannot be a double deduction over and above the full value of the assets and with that observation, the Revenue's appeal was allowed. There is no finding rendered by the Tribunal as regards the views expressed by the CIT(A). Before us the assessee would contend that in terms of the decision of the Hon'ble Supreme Court in CIT Vs. Vegetable Products Ltd. reported in 88 ITR 192 (SC) that the view expressed by the High Court in favour of the assessee should be preferred to the views expressed as against the assessee and this aspect has not been considered by the

Tribunal.

9. Further, Learned Counsel for the assessee placed reliance on the decision of the Punjab & Haryana High Court in CIT -vs- Market Committee Pipli reported in 330 ITR 16 (P&H) and CIT -vs- Tiny Tots Education Society reported in 330 ITR 21 (P&H), wherein, it has been held that depreciation allowance on fixed assets of charitable trusts are not double deduction as claimed by the department.

10. Thus, in the light of what we have observed above, we are of the view that the Tribunal should reconsider the case of the appellant-assessee by taking note of all the facts and legal position that may be placed before the Tribunal by and on behalf of the assessee.

11. The Learned Counsel for the appellant submitted that in sofar as the third substantial question of law is concerned, the decisions of this Court in Director of Income Tax (Exemptions) -vs- Medical Trust of the Seventh Day Adventists is fully in favour of the appellant-assessee and the question has been answered in favour of the appellant-assessee. This issue also can be raised before the Tribunal.

For the above reasons, the Tax Case Appeal is allowed and the order passed by the Tribunal was set aside and the matter is remanded before the Tribunal for fresh consideration on all issues, after hearing the appellant-assessee. Consequently, the substantial questions of law are left open. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Maya/Sp

To

1.Deputy Commissioner of Income Tax
(Exemptions) IV
No112, Uttamar Gandhi Salai
Chennai – 600 034.

2.The Commissioner,
Income Tax Appellate Tribunal,
Chennai A Bench.

3.The Commissioner of Income Tax(Appeals)VII
Chennai-34.

4.The Assistant Director of Income Tax(Exemption)IV,
Chennai.

+1cc to Mr.J.Balachandar, Advocate, S.R.No.48676

T.C.A. No. 760 of 2016

BS(CO)
CB(22/10/2021)