IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.03.2021

CORAM:

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

T.C.A.No. 231 of 2014

The Commissioner of Income Tax,
Coimbatore. ... Appellant

Vs.

M/s. Little Flower Education Society,
Ramalinga Nagar,
Sai Baba Colony,
Coimbatore - 641 011. ... 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 06.11.2013 in I.T.A.No.400/Mds/2013 for the Assessment Year 2009-2010. Against the Commissioner of Income Tax (aPPealS)-I, Coimbatore dated 17/12/2012 in Appeal No.279/2011-12, PAN No.AAATL1342 E in Assessment year 2009-2010 against the Additional Commissioner of Income Tax Range-I 63,Race Course Road, Coimbatore-18, dated 23.12.2011 in PAN NO.AAATL1342 E IN Assessment year 2009-2010.

For Appellant : Mr.J. Narayanaswami
Senior Standing Counsel

For Respondent : Mr. M. Kaushik

JUDGMENT

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

Challenging the order passed in I.T.A.No.400/Mds/2013 in respect of the Assessment Year 2009-2010 on the file of the Income Tax Appellate Tribunal, Chennai,"D" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The above appeal was admitted on the following substantial questions of law:

" (i) Whether in law on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that depreciation is allowable as application of income on charitable objects?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is entitled to claim depreciation on the assets, in the form of application of income, even though cost of purchase of asset was treated as application of income under section 11 of the Income Tax Act?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that allowing the depreciation claim of the assessee would not result in double deduction, though the entire costs of the depreciable assets have already been allowed as as application of income towards objects of the trust?"

3. .When the appeal is e taken up for hearing, Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the appellant-revenue fairly submitted that the substantial questions of law raised in the above appeal are covered against the revenue by a decision of this Bench dated 17.03.2021 made in T.C.A.Nos.405 & 406 of 2011 [The Commissioner of Income Tax - 1, Coimbatore v. M/s. Coimbatore Stock Exchange Ltd., Coimbatore], which reads as follows:-

"............ 2.The above appeals were 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 law in holding that depreciation claimed by the assessee, who is claiming exemption under Section 11 of the Act is allowable on the fixed asset (the cost of the capital asset) acquired for charitable purposes as if so allowed it would amount to double deduction, which cannot be the intention of the legislature?"

3.When the appeals are taken up for hearing, Mr.J.Narayanasamy, learned senior standing counsel appearing for the appellant - Revenue fairly submitted the substantial questions 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 judgment of the Hon'ble Supreme Court, this Bench, by its judgment dated 26.02.2021 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] and the Hon'ble Division Bench in its judgment dated 26.08.2019 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.

4.Following the judgment of the Hon'ble Supreme Court reported in [2018] 402 ITR 441 (SC) and the judgments of the Division Bench of this Court made in T.C.A.Nos.343 to 345 & 347 of 2014 and 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.

4.Mr. M. Kaushik, learned counsel appearing for the respondent submitted that in view of the Judgment dated 17.03.2021 made in T.C.A.Nos.405 & 406 of 2011, the questions of law may be decided against the revenue and the appeal may be dismissed.

5. In view of the submissions made by the learned counsel on either side, following the ratio laid down in T.C.A.Nos.405 & 406 of 2011 , 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 Income Tax Appellate Tribunal,
Chennai, "D" Bench

2) The Commissioner of Income Tax(Appeals)-I,
Coimbatore.

3) The Additional Commissioner of Income Tax
Range-I, Coimbatore-18.

+1 cc to M/s.S.Sridhar,Advocate Sr No.21002

T.C.A.No. 231 of 2014
31.03.2021

VSN-II(CO)
RG.28.04.2021(4P/5C)