IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

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

Tax Case Appeal Nos.343 to 345 & 347 of 2014

Commissioner of Income Tax,
Trichy. ... Appellant in all 4 TCAs

Vs.

M/s.National College Council,
Teppakulam,
Tiruchirapalli – 620 002. ... Respondent in all 4 TCAs

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "B" Bench, dated 06.08.2013, passed in I.T.A.Nos.1157 to 1159 & 1161/Mds/2013 for the assessment year 2003-04, 2004-05, 2007-08 and 2009-10 preferred against the common order passed by the Commissioner of Income Tax (Appeals), Tiruchirapalli-1 dated 22.02.2013 made in ITA No.344/10-11, 201/11-12, 413/11-12 & 202/11-12 preferred against the order passed by the Deputy Commissioner of Income Tax, Company Circle-II, Tiruchirapalli dated 30.12.2010 Deputy Commissioner of Income Tax, Circle-I(2), Tiruchirapalli dated 29.12.2011 and Assistant Commissioner of Income Tax, Company Circle-II, Tiruchirapalli dated 29.12.2009 respectively for the Assessment Year 2003-04, 2004-05, 2007-2008, 2009-2010.

For Appellant (in all 4 TCAs) : Mr.J.Narayanasamy, Senior Standing Counsel

For Respondent (in all 4 TCAs) : Mr.V.S.Jayakumar

COMMON JUDGMENT
(Delivered by M. DURAISWAMY, J.)

Aggrieved by the orders passed by the Income Tax Appellate

Tribunal in I.T.A.Nos.1157 to 1159 & 1161/Mds/2013, the Revenue has filed the above appeals.

2.The Assessing Officer disallowed the depreciation on the capital assets claimed by the assessee on the ground that the entire cost of the asset has been considered as application of income in the year of purchase of asset and the assessee is not engaged in any business and Section 32 is not applicable to the entities claiming exemption under Section 10 & 11 of the Act. The Assessing Officer, relying on the decision of the Hon'be Supreme Court in the case of Escorts Limited reported in 199 ITR 43 (SC), held that allowing depreciation on the same asset will not amount to doubt deduction. Aggrieved by the assessment order, the assessee filed appeals before the CIT (Appeals), who allowed the appeals in favour of the assessee holding that the assessee is entitled for depreciation claim on the assets. Aggrieved by the order of CIT (Appeals), the Revenue filed appeals before the Income Tax Appellate Tribunal and the Tribunal, by following the assessee's own case for the earlier year in I.T.A.Nos.402 & 403/Mds/2010, allowed the appeals holding that the assessee can claim depreciation. Aggrieved over the orders passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeals.

3.The above appeals were admitted on the following substantial question of law :

> "Whether on 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 the cost of purchase of asset was treated as application of income under Section 11?”

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.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

va

To

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

2. The Commissioner of Income Tax,
   Trichy.

3. The Assistant Commissioner of Income Tax,
   Circle I(2), Tiruchirapalli.

4. The Deputy Commissioner of Income Tax,
   Company Circle – II, Trichy.

5. The Commissioner of Income Tax (Appeals),
   Tiruchirapalli.

6. The Deputy Commissioner of Income Tax,
   Circle – I (2), Trichy.

+1cc to M/s.V.S.Jayakumar, Advocate S.R.No.12022

+1cc to M/s.J.Narayanasamy, Advocate S.R.No.12670

Tax Case Appeal Nos.343 to 345 & 347 of 2014

BP(CO)
SU(16/09/2021)