IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.04.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.NO.407 OF 2014

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

v.

M/s.Kovai Medical Centre and Educational Trust,
KMCH Campus, Avinashi Road,
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, "C" Bench, dated 07.10.2013 in I.T.A.No.1772/Mds/2012 for the Assessment Year 2009-2010.

Confirming the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore in Appeal No.151/11-12 dated 09.07.2012 preferred against the Assessment order of the Income Tax officer, Company Ward-I, Coimbatore dated 13.12.2011 in PAN.No.AAATK2825P for the Assessment Year 2009-10.

For Appellant : Mr.J. Narayanaswamy
Senior Standing Counsel

For Respondent : No Appearance

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

Challenging the order passed in I.T.A.No.1772/Mds/2012 in respect of the Assessment Year 2009-2010 on the file of the Income Tax Appellate Tribunal, Chennai,"C" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The respondent-assessee is a Charitable Trust registered under section 12A of the Income Tax Act, 1961. The assessee filed its return of income for the Assessment Year 2009-2010 on

28.08.2009. The Assessing Officer issued a notice under section 143(2) of the Act on 13.12.2011. While concluding the assessment, the Assessing Officer inter alia held that the depreciation claimed by the assessee would not be allowable as a deduction in the computation of the funds available for application by the assessee on the premise that the entire cost of the assets were allowed as an application of the funds in the year when the same were purchased. The Assessing Officer also held that the provisions of section 11 is distinct from that of section 14 and that the deductions and allowances that are provided in Chapter V cannot be applied in determining the income for the purpose of section 11 of the Act. 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 in favour of the assessee and held that the depreciation is to be deducted in arriving at the total income of the assessee. 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 questions of law:

> " (i) Whether in law and in the facts and circumstances of the case, the Tribunal is 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 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?
>
> (iii) Whether in law and in the facts and in the circumstances of the case, the Tribunal is 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 taken up for hearing, Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the appellant-revenue fairly submitted that the substantial questions 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(CS IV)

//True Copy//

Sub Assistant Registrar

Rj

To

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

2. The Commissioner of Income Tax,
Coimbatore.

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

4. The Income Tax Officer,
Company Ward-I, Coimbatore.

GMI(CO)
CS/11/05/2021