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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.07.2021

CORAM:

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

T.C.A.No.423 of 2014

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

Vs

M/s.Coimbatore Welfare Association,
Shri Nehru Vidyalaya Campus,
Bhagwan Mahaveer Building,
Robertson Road,
Coimbatore – 641 002. ... 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 20.11.2013 in I.T.A.No.1756/Mds/2013 for the Assessment Year 2010-11.

As against the order dated:28/06/2013 by the office of the Commissioner of Income Tax (Appeals)-I, Coimbatore in P.A.No./G.I.R.No.:AAATC1760F Assessment year 2010-11 and as against the order dated:31/01/2013 by the office of the Additional Commissioner of Income Tax – Range-I, Coimbatore in PAN No.:AAATC1760F Assessment year 2010-11.

For Appellant : Mr.J.Narayanasamy,
Senior Standing Counsel

For Respondent : Mr.M.Kaushik
for Mr.S.Sridhar

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

Challenging the order passed in I.TA.No1756/Mds/2013 in respect of the Assessment Year 2010-11 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench, the Revenue has filed the above appeal.

2.The assessee is a Public Charitable Trust, registered

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under Section 12A of the Income Tax Act. The assessee filed its return of income for the Assessment Year 2010-11 on 18.01.2011, claiming Rs.2,10,46,625/- as depreciation on assets. The Assessing Officer disallowed the claim of depreciation on the ground that the entire cost of assets has already been claimed as application of income towards objects of the Trust and the claim of the depreciation on the cost of the very same asset will result in double deduction. The Assessing Officer relying on the decision of the Apex Court in the case of Commissioner of Income Tax Vs. Lissie Medical Institutions (348 ITR 344), disallowed the claim of depreciation made by the assessee, amounting to Rs.2,10,46,625/-. 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, directing the Assessing Officer to allow the claim of depreciation. The Commissioner of Income Tax (Appeals) also observed that it is not only the accounting principle, but even the statute and judicial interpretation of the provisions provided that in arriving at the amount of income available for application under Section 11, depreciation should be deducted. Aggrieved by the order of the Commissioner of Income Tax (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 question of law:

> "1)Whether in law and in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that depreciation is allowable as application of income on charitable objects?
>
> 2)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 cost of purchase of asset was treated as application of income under Section 11?
>
> 3)Whether in law and in the facts and 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 cost of the depreciable assets have already been allowed as application of income towards objects of the Trust?"

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4.When the appeal is taken up for hearing, Mr.J.Narayanasamy, learned senior standing counsel appearing for the appellant-Revenue fairly submitted 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 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] 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 and T.C.A.Nos.680 & 681 of 2011, the questions of law are answered against the revenue and the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

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

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

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

+1cc to M/s.S.Sridhar, Advocate, S.R.No.31291

T.C.A.No.423 of 2014

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