IN THE HIGH COURT OF JUDICATURE AT Chennai

DATED: 18.03.2021

CORAM

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

Tax Case Appeal No.584 of 2014

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

v.

National College Council,
P.B. No.369, Chattram Bus Stand,
Trichy ... Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai, dated 09.09.2011 passed in I.T.A.No.1057/Mds/2011 for the Assessment Year 2007-08, preferred against the order of the Commissioner of Income Tax (Appeals), No.44 Williams Road, Cantonment, Tiruchirapalli-620 001, made in ITA.No.381/09-10, Dated:11-03-2011, GI.No/PA.No.AAATT6266H, year of Assessment 2007-2008 and aganist the order of the Assisstant Commissioner of Income Tax Company Circle-II, Tiruchirapalli, made in PAN/GIR No.AAATT6266H, District/Ward/Circle, Company Circle II, Tirhcy, Status, AOP (Society), Assessment year:2007-2008 and date of order 29/12/2009.

For Appellant : Mr.J.Narayanasamy
Senior Standing Counsel

For Respondent : Mr.V.S. Jayakumar

J U D G M E N T
(Judgment was Delivered by M. DURAISWAMY, J)

Challenging the order passed in I.T.A.No.1057/Mds/2011 in respect of the Assessment Year 2007-08 on the file of the Income Tax Appellate Tribunal, Chennai, 'A' Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The appellant has raised the following Substantial Question of Law for consideration:

> " Whether on the facts and the circumstances of the case, the Tribunal was right in holding that revised Form 10 for accumulation of income can be furnished in the course of assessment proceedings before the Assessing Officer and there is no bar prohibiting the appellant from modifying the figure in the application and the Assessing Officer can consider the revised Form 10 and allow the accumulation of income ?"

3. The respondent trust was registered under section 12AA vide order dated 07.01.2002 with effect from the Assessment Years 1999-2000 to 2001-2002. The assessee filed Form 10 along with the return of income seeking accumulation of income of Rs.57,09,829/-. Subsequently, the assessee filed revised Form 10 seeking accumulation of income of Rs.1,70,53,661/- for improvement of infrastructure facilities etc. The Assessing Officer did not consider the revised Form 10 as the jurisdiction vests only with the Commissioner of Income Tax and not with the Assessing Officer.

4. Aggrieved over the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) held that revised Form 10 for accumulation of income can be furnished in the course of assessment proceedings and there is no bar prohibiting the appellant from modifying the figure in the application.

5. Aggrieved over the order passed by the Commissioner of Income Tax (Appeals), the Revenue has filed an appeal before the Income Tax Appellate Tribunal and the Tribunal also confirmed the order of the Commissioner of Income Tax (Appeals) holding that revised Form 10 for accumulation of income can be furnished in the course of assessment proceedings and there is no bar prohibiting the appellant from modifying the figure in the application.

6. Aggrieved over the concurrent findings passed by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, the Revenue has filed the above appeal.

7. Mr. V.S. Jayakumar, learned counsel appearing for the respondent submitted that the Tribunal as well as the Commissioner of Income Tax (Appeals) have concurrently held

that modified Form 10 may be furnished in the course of assessment proceedings and there is no bar prohibiting the appellant from modifying the figure in the application. While arriving at the said conclusion, the Commissioner of Income Tax (Appeals) and the Tribunal followed the ratio laid down by the Punjab and Hariyana High Court in the Judgment reported in 318 ITR 96 [Commissioner of Income Tax v. Simla Chandigarh Diocese Society]. Further, in support of his contentions, the learned counsel relied upon a Judgment of the Hon'ble Supreme Court reported in (2001) 114 Taxman 255(SC) [Commissioner of income Tax v. Nagpur Hotel Owners'Association] wherein the Hon'ble Supreme Court held as follows:-

> " ...... 5. We find substantial force in this argument. Chapter III of the Act which consists of Sections 10 to 13A enumerates various types of income which do not form part of total income for the purpose of levy of tax. The relevant part of Section 11 in the said Chapter reads thus :-
>
> "11. Income from property held for charitable or religious purposes - (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income -
>
> [(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;
>
> x x x x
>
> [(2) (a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years,"
>
> 6. It is abundantly clear from the wordings of sub-section (2) of Section 11 that it is mandatory for the person claiming the benefit of Section 11 to intimate to the assessing authority the particulars required, under Rule 17 in Form No.10 of the Act. If during the assessment proceedings the Assessing Officer does not have the necessary information, question of

excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arises from Section 11 and is subjected to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time he completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, in our opinion, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules even then, in our opinion, it is reasonable to presume that the intimation required under Section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income the assessing authority cannot entertain the claim of the assessee under Section 11 of the Act, therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings. Further, any claim for giving the benefit of Section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. In our opinion, the Act does not contemplate such reopening of the assessment. In the case in hand it is evident from the records of the case the respondent did not furnish the required information till after the assessments for the relevant years were completed. In the light of the above, we are of the opinion that the stand of the Revenue that the High Court erred in answering the first question in favour of the assessee is correct, and we reverse that finding and answer the said question in the negative and against the assessee. In view of our answer to the first question, we agree with Mr. Verma that it is not necessary to answer the second question on the facts of the case.

8. On a reading of the said Judgment, it is clear that if Form 10 is filed within the stipulated time and during the course of assessment proceedings before the Assessing Officer, there is no bar prohibiting the assessee from modifying the figure in the application. Only in the case of revised Form 10 being filed after the assessment proceedings, the same cannot be accepted. The said ratio laid down by the Hon'ble Supreme Court supports the case of the assessee.

9. It is not in dispute that the assessee filed Form 10 within the stipulated time. Since the Assessing Officer disallowed the claim of application in respect of the depreciation, it filed a revised Form 10 enhancing the claim. The very intention of the assessee is to accumulate the surplus for the subsequent years. As per the ratio laid down in the Judgment reported in 318 ITR 96 [cited supra], modified Form 10 may be furnished in the course of assessment proceedings and there is no specific bar prohibiting the assessee from modifying the figure of application. The order passed by the Tribunal as well as the Commissioner of Income Tax (Appeals) are just and proper.

10. In these circumstances, we do not find any ground much less any substantial question of law to interfere with the order passed byt he Tribunal. The Tax Case Appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Income Tax Appellate Tribunal,
Chennai 'A' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)
No.44, Williams Road, Contonment,
Tiruchirapalli-620 001.

3.The Assistant Commissioner of Income Tax,
Company Circle-II,
Tiruchirapalli.

+1cc to Mr.V.S.Jayakumar, Advocate, S.R.No.17817

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GSM(CO)
CB(17/04/2021)