

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.06.2021

CORAM:

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

T.C.A.No.97 of 2014

Commissioner of Income Tax,
Coimbatore.

... Appellant

v.

M/s. KGISL Trust,
No.365, K.g. Campus,
Thudiyalur Road,
Saravanavampatti,
Coimbatore - 641 035.

... Respondent

Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 06.06.2013 in I.T.A.No.1813/Mds/2012 for the Assessment Year 2009-2010.

For Appellant : Mr.J. Narayanaswamy
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.T.A.No.1813/Mds/2012 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 respondent-assessee is a Trust registered under section 12A of the Income Tax Act, who filed its return of income for the Assessment Year 2009-2010 on 29.09.2009 claiming depreciation on assets of Rs.8,95,08,744/- as “application of income towards charitable purpose” and claimed deduction under section 11 of the Income Tax Act. The Assessing Officer, disallowed the claim of the assessee on the ground that it amounts to giving deductions/exemptions twice.. Aggrieved by the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and

the appellate authority allowed the appeal. Challenging the order passed by the CIT (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal, which confirmed the order of the CIT (Appeals) and dismissed the appeal. Aggrieved over 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, 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 jn 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 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 has already been allowed as application of income towards object of the trust?"

4. .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. The learned Senior Standing Counsel appearing for the appellant submitted that following the Judgment dated 26.02.2021 made in ***T.C.A.Nos.343 to 345 & 347 of 2014 [cited supra]***, this Bench already decided the questions of law against the Revenue by its Judgement dated 08.04.2021 made in ***T.C.A.No.407 of 2014 [The***

Commissioner of Income Tax, Coimbatore. v. M/s. Kovai Medical Centre and Educational Trust, Coimbatore] and dismissed the appeal.

6. 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]*** and the Judgement dated 08.04.2021 made in ***T.C.A.No.407 of 2014 [cited supra]***, the questions of law are answered against the Revenue and the Tax Case Appeal is dismissed. No costs.

[M.D., J.] [R.H., J.]
14.06.2021

Index : Yes/No
Internet : Yes
Rj

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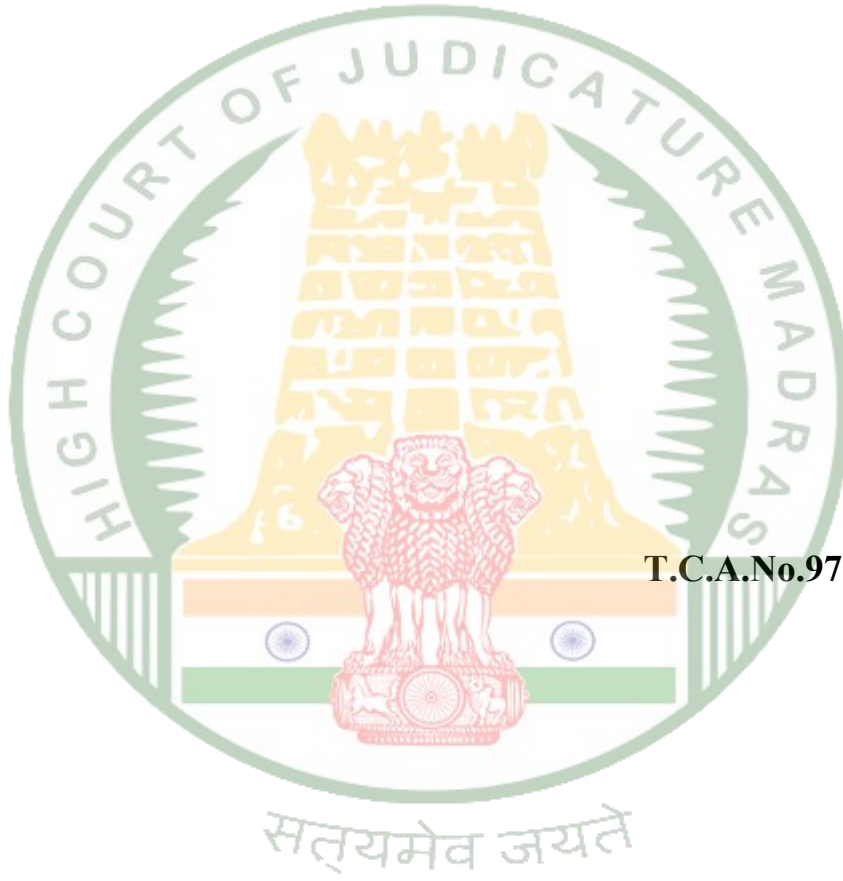
The Income Tax Appellate Tribunal,
Chennai, "D" Bench

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M. DURAISWAMY, J.
and
R.HEMALATHA, J.

Rj



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