IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:13.07.2021

CORAM:

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

T.C.A.Nos.1 and 2 of 2017

M/s. Mazdoor Welfare Trust,
9, Murugan Illam, 3rd Main Road,
Mugappaire West Garden,
Chennai - 600 037
[PAN : AAATM0632Q] .. Appellant in both TCAs

v.

The Deputy Commissioner of Income Tax [Exemptions],
67, Race Course,
Coimbatore - 631 018. ...Respondent in both TCAs

T.C.A. No.1 /2017 : Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 17.02.2016 in ITA.No.1653/Mds/2015 for the Assessment Year 2009-2010. Against the order of the Commissioner of Income Tax (Appeals)-2, Chennai in ITA Nos.245/2011-12 dated 05.02.2015 for the Assessment year 2009-2010 against the order of the Assistant Commissioner of Income Tax, Circle-I (I/C) Thanjavur, dated.22.12.2011 (in TCA 1/2017).

T.C.A. No.2 /2017 : Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 17.02.2016 in ITA.No.1652/Mds/2015 for the Assessment Year 2008-2009. Against the order of the Commissioner of Income Tax (A)-2, Chennai in ITA Nos.244/2011-12 dated.05.02.2015 for the Assessment year 2008-2009 against the order of the Assistant Commissioner of Income Tax, Circle-I (I/C), Thanjavur, dated.27.12.2010 (in TCA 2/2017).

For Appellant (in both TCAs) : Ms. Sriniranjani for Mr.G.Baskar

For Respondents (in both TCAs) : Mr. J. Narayanasamy, Senior Standing Counsel

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

Challenging the common order passed in ITA.No.1652/Mds/2015 in respect of the Assessment Year 2008-2009 and ITA.No.1653/ Mds/2015 in respect of the Assessment Year 2009-2010 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench (for brevity, the Tribunal), the assessee has filed the above appeals.

2.1 The appellant-Trust has been registered under section 12A of the Income Tax Act, 1961 vide order dated 29.07.1988 for running an Engineering College in the name of Anjalaiammal Mahalingam Engineering College at Koilvenni, Tiruvarur District.

2.2 The appellant filed its return of income on 30.10.2008 for the assessment year 2008-2009 declaring Nil income after claiming exemption under section 11 of the Act. Thereafter scrutiny assessment under section143(3) read with section 147 of the Act was completed by the Assessing Officer on 27.12.2010 rejecting the claim of depreciation of Rs.1,47,97,912/- for the assessment year 2008-09 as the depreciation is not an allowable deduction since the capital expenditure incurred for acquiring the asset was already allowed as application of fund for the purpose of section 11 of the Act and therefore, further allowance of depreciation on the same would amount to double deduction.

2.3 The appellant filed its return of income on 29.09.2009 for the assessment year 2009-2010 declaring Nil income after claiming exemption under section 11 of the Act. Thereafter scrutiny assessment under section143(3) read with section 147 of the Act was completed by the Assessing Officer on 22.12.2012 rejecting the claim of depreciation of Rs.42,64,830/- for the assessment year 2009-10 as the depreciation is not an allowable deduction since the capital expenditure incurred for acquiring the asset was already allowed as application of fund for the purpose of section 11 of the Act and therefore, further allowance of depreciation on the same would amount to double deduction.

2.4 Challenging the orders passed by the Assessing Officer, the assessee filed appeals before the Commissioner of Income Tax (Appeals) and the appellate authority allowed the appeals. Challenging the common order passed by the CIT (Appeals), the Revenue preferred appeals before the Income Tax Appellate Tribunal and the Tribunal by its common order allowed the appeals and set aside the common order of the CIT (Appeals). Challenging the common order passed by the Income Tax Appellate Tribunal, the assessee has filed the above appeals.

3. In the above appeals, the assessee has raised the following Substantial Questions of Law for consideration:

" (i) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the Appellant-Trust will not be entitled to claim depreciation while computing the income of the appellant u/s. 11 of the Income Tax Act, 1961?

(ii) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that treating a capital expenditure as application and allowing depreciation amounts to double deduction?

(iii) Whether amendment to section 11(6) of the Income Tax Act, 1961 is only prospective with effect from Assessment Year 2015-16 and depreciation is allowable for all the prior Assessment Years?

(iv) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law following the decision against the assessee, when divergent judicial precedents are there, without considering hte decision of Supreme Court in the case of CIT v. Vegetable Products (88 ITR 192)? "

4. When the appeals are taken up for hearing, Mr.J.Narayanasamy, learned Standing Counsel appearing for the respondent-revenue fairly submitted that the substantial questions of law that are raised in the above appeals were already decided against the Revenue and in favour of the Assessee in the Judgment dated 26.04.2021 made in T.C.A.No.46 of 2021 [The Anjuman - E - Himayat - E - Islam, Chennai v. The Assistant Director of Income Tax, Chennai.], wherein this Bench held as follows:-

" .... 5. So far as the 1st question of law is concerned, the learned counsel on either side submitted that the same was decided against the revenue and in favour of the assessee in the Judgment dated 13.12.2017 made in C.A.No.7186 of 2014 [Commissioner of Income Tax-III, Pune v. Rajasthan & Gujarati Charitable Foundation, Ponna] reported in (2018) 402 ITR 441 wherein the Hon'ble Supreme Court held as follows:-

" 1. These are the petitions and appeals filed by the Income Tax Department against the orders passed by various High Courts granting benefit of depreciation on the assets acquired by the respondents-assessees. It is a matter of record that all the assessees are charitable institutions registered under Section 12A of the Income Tax Act (hereinafter referred to as 'Act'). For this reason, in the previous year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable puruposes under Section 11(1)(a) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under Section 32 of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assessees had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the assessee. Though it appears that in most of these cases, the CIT (Appeals) had affirmed the view, but the ITAT reversed the same and the High Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department. From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'Commissioner of Income Tax v. Institute of Banking Personnel Selection (IBPS)' [(2003) 131 Taxman 386 (Bombay)]. In the said judgment, the contention of the Department predicated on double benefit was turned down in the following manner:

> "3. As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property. During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @2½% and they also claimed depreciation on furniture @ 5%. The

question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income Tax Act makes provision in respect of computation of income of the Trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, section 28 of the Income Tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business ahll be computed in accordance with section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 34. In that matter also, a similar argument, as in the present case, was advanced on behalf of the revenue, namely, that depreciation can be allowed as deduction only under section 32 of the Income Tax Act and not under general principles. The Court rejected this argument. It was held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income Tax Act The Court rejected the argument on behalf of the revenue that section 32 of the Income Tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived form building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income Tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. In view of the aforesatated judgment of the Bombay High Curt, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department.

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR 463. In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently, Question No. 2 is answered in the Affirmative i.e., in favour of the assessee and against the Department."

2. After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.

3. It may be mentioned that most of the High Courts have taken the aforesaid view with

only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions v. Commissioner of Income Tax'.

4. It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income Tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.

5. It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well. For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters.

6. Therefore, following the judgment reported in (2018) 402 ITR 441 [cited supra], the 1st question of law is decided in favour of the assessee and against the Revenue. ...."

5. Ms. Sriniranjani , learned counsel appearing for the appellant-assessee submitted that in view of the ratio laid down by the Division Bench of this Court in T.C.A.No.46 of 2021 [cited supra], the appeals are liable to be allowed.

6. Having regard to the submissions made by the learned counsel on either side, following the ratio laid down in the Judgment dated 26.04.2021 made in T.C.A.No.46 of 2021 [cited supra], the questions of law are decided in favour of the assessee and against the Revenue. Accordingly, the common order passed by the Income Tax Appellate Tribunal is set aside. The Tax Case Appeals are allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Rj

To

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

2. The Commissioner of Income Tax (A),
   Tiruchirapalli -2 (I/C)

3. The Deputy Commissioner of Income
   Tax [Exemptions],
   67, Race Course,
   Coimbatore - 631 018.

4. The Assistant Commissioner of Income Tax
   Circle -I (I/C), Thanjavur.

T.C.A.Nos.1 and 2 of 2017

PPA (CO)
CT(12.08.2021)