IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.03.2021
CORAM
THE HON'BLE MR. JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Tax Case Appeal Nos.518, 519, 524 & 525 of 2017

M/s. Karpagam Charity Trust
SF No.559, Pollachi Main Road,
Eachanari Post,
Coimbatore - 641 021 ... Appellant in TCA No.518/2017

M/s. Karpagam Academy of Higher Education,
SF No.559, Pollachi Main Road,
Eachanari Post,
Coimbatore - 641 021 ... Appellant in TCA No.519/2017

M/s. Karpagam Academy of Higher Education,
SF No.559, Pollachi Main Road,
Eachanari Post,
Coimbatore - 641 021 ... Appellant in TCA No.524/2017

M/s. Karpagam Charity Trust
SF No.559, Pollachi Main Road,
Eachanari Post,
Coimbatore - 641 021 ... Appellant in TCA No.525/2017

Vs.

Commissioner of Income Tax (Exemptions),
Chennai. ... Respondent in all 4 TCAs

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 05.12.2016, 05.12.2016, 15.03.2017 and 15.03.2017 respectively passed in I.T.A.Nos.2363/Mds/2016 for the assessment year 2012-13, I.T.A.Nos.2364/Mds/2016 for the assessment year 2012-13, I.T.A.Nos.2738/Mds/2016 for the assessment year 2013-14, and I.T.A.Nos.2739/Mds/2016 for the assessment year 2013-14 respectively preferred against the order of the commissioner of Income Tax(Appeals)-2, coimbatore dated 27.05.2016, 27.05.2016,30.06.2016 and 27.06.2016, made in ITA Nos.28/15-16,26/15-16,245/15-16 and 240/15-16 respectively against the order of the Assistant commissioner of Income Tax(Exemptions)), coimbatore, dated 19.03.2015, 17.03.2015, 29.01.2016 and 30.12.2015 made in PAN. Nos. AAATK3484C, AABTK3932G, AABTK3932G and AATK3484C respectively for the assessment years 12-13,12-13,13-14 and 13-14.

For Appellant : Mr.N.V.Balaji,
(in all 4 TCAs)

For Respondent : Mr.J.Narayanasamy,
(in all 4 TCAs) Senior Standing Counsel

COMMON JUDGMENT

(Delivered by M. DURAISWAMY, J.)

Challenging the orders passed by the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.No.2363/Mds/2016 dated 05.12.2016 in respect of assessment year 2012-13; I.T.A.No.2364/Mds/2016 dated 05.12.2016 in respect of the assessment year 2012-13; I.T.A.No.2738/Mds/2016 dated 15.03.2017 in respect of the assessment year 2013-14 and I.T.A.No.2739/Mds/2016 dated 15.03.2017 in respect of the assessment year 2013-14, the assessee has filed the above appeals.

2. (i) T.C.A.Nos.518, 519 & 524 of 2017 were admitted on 20.09.2017 with the following substantial question of law:

> "Whether depreciation is not allowable if the cost of asset has been allowed as deduction towards application of income?"

(ii) T.C.A.No.525 of 2017 was admitted on 28.11.2017 with the following substantial question of law:

> "Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the depreciation is not allowable as a deduction in computing the income of the appellant trust for the assessment year 2012-2013?"

3. Mr.N.V.Balaji, learned counsel for the appellants submitted that the questions of law that arise for consideration in the above appeals were already decided in favour of the assessee and against the Revenue in Tax Case Appeal Nos.343 to 345 and 347 of 2014 by judgment dated 26.02.2021. It would be appropriate to extract the relevant portion of the order which reads as follows:

> 2.The Assessing Officer disallowed the depreciation on the capital assets claimed by the assessee on the ground that the entire cost of the asset has been considered as application of income in the year of purchase of asset and the assessee is not engaged in any business and Section 32 is not applicable to the entities claiming exemption under Section 10 & 11 of the Act. The Assessing Officer, relying on the decision of the Hon'be Supreme Court in the case of Escorts Limited reported in 199 ITR 43 (SC), held that allowing depreciation on the same asset will not amount to doubt deduction.

Aggrieved by the assessment order, the assessee filed appeals before the CIT (Appeals), who allowed the appeals in favour of the assessee holding that the assessee is entitled for depreciation claim on the assets. Aggrieved by the order of CIT (Appeals), the Revenue filed appeals before the Income Tax Appellate Tribunal and the Tribunal, by following the assessee's own case for the earlier year in I.T.A.Nos.402 & 403/Mds/2010, allowed the appeals holding that the assessee can claim depreciation. Aggrieved over the orders passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeals.

3.The above appeals were admitted on the following substantial question of law :

"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 the cost of purchase of asset was treated as application of income under Section 11?"

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.

4. Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the respondent fairly submitted that the questions of law that arise for consideration in the present appeals are covered by the decision of the Division Bench of this Court dated 26.02.2021 made in Tax Case Appeal Nos.343 to 345 and 347 of 2014 and that the questions of law were decided in favour of the appellant and against the Revenue.

5. In view of the submissions made by the learned counsel on either side, following the judgment dated 26.02.2021 made in T.C.A.Nos.343 to 345 and 347 of 2014, the questions of law are decided

in favour of the assessee and against the Revenue. Accordingly, the orders passed by the Commissioner of Income Tax(Appeals) and the Income Tax Appellate Tribunal are set aside and the Tax Case Appeals are allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

/TRUE COPY/

Sub-Assistant Registrar

vsi
To
1)The Income Tax Appellate Tribunal,
Madras "A" Bench

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

3)The Assistant Commissioner of Income Tax(Exemptions)
Coimbatore

+4cc to Mr.N.V.BALAJI, ADVOCATE, SR.NO.20356, 20357,20358,20359

Tax Case Appeal Nos.518, 519,
524 & 525 of 2017

CP(CO)
KKN 23.04.2021