

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/35/2021

PRINCIPAL COMMISSIONER OF INCOME TAX - 4, KOLKATA
VS.

M/S. MACO CORPORATION INDIA PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : AUGUST 12, 2022.

Appearance :
Ms. Smita Das De, Adv. ...for appellant.

Mr. J. P. Khaitan, Sr. Adv.,
Mr. Anil Kumar Dugar, Adv.
Mr. R. Chatterjee, Adv.
Mr. Subash Agarwal, Adv.
.....for respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 13.4.2018 passed by the learned Income Tax Appellate Tribunal, "B" Bench, Kolkata [Tribunal] in I.T.A. No. 378/Kol/2017 for the assessment year 2014-2015. The appeal was admitted on 1.12.2021 to decide the following question of law:

- a) Whether on the facts and the circumstances of the case the Learned Income Tax Appellate Tribunal, "B" Bench, Kolkata erred in law by deleting the disallowance of deduction under section 35(1) (ii) of the Income Tax Act, 1961 of Rs.4,37,50,000/-?
- b) Whether the Learned Income Tax Appellate Tribunal, "B" Bench, Kolkata failed to appreciate the fact that the assessee company had debited Rs.2,50,00,000/- on account of Scientific Research

Organization donation made to the concern Organization i.e. Herbicare Healthcare Bio – Herbal Research Foundation and claimed deduction u/s 35 (1) (ii) of Rs.4,37,50,000/- i.e. 175% of Rs.2,50,00,000/- which is not sustainable in the eye of law ?

- c) Whether the Learned Income Tax Appellate Tribunal, “B” Bench, Kolkata failed to apply its judicious consideration by completely ignoring the facts that donation was made to a bogus Organisation not entitled to receive any donation for the purpose of being eligible for the eligible donations made by the assessee u/s 35 (i) (ii) of the Act.
- d) Whether the Learned Income Tax Appellate Tribunal, “B” Bench, Kolkata failed to appreciate that the assessee had received divided income and income distribution from Trust of Rs.36,00,000/- and Rs.44,67,229/- respectively for the Financial Year 2013 – 2014 and claimed the same as an exempt income when the assessee had neither allocated any expenses u/s 14A of the Act nor bifurcated the investment between taxable income yielding investment and exempt income yielding investment.
- e) Whether the conclusion arrived by the Learned Income Tax Appellate Tribunal, “B” Bench, Kolkata in granting relief to the Assessee is perverse and totally bad in law.

We have heard Ms. Smita. Das De, learned standing Counsel for the appellant and Mr. J. P. Khaitan, learned senior counsel for the respondent.

The learned tribunal while dismissing the revenue’s appeal in the impugned order had followed its earlier decision in the assessee’s own case in

ITA/16/2017 dated 14.3.2018 the previous appeal against this order. Against the said order, the revenue preferred appeal in ITA/42/2020 which was dismissed by judgment dated 12.8.2022. The operative portion of the judgment reads as follows :-

“In our considered view, we need not travel this far to decide the substantial question of law in the case on hand as we are considering the case falling under Section 35 of the Act. In terms of Explanation to Section 35(1)(iii) of the Act, deductions to which the assessee is entitled to in respect of any sum paid to a research organisation, university etc. shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to the research organisation or university etc. has been withdrawn. This issue was considered by the Hon’ble Supreme Court in the case of *Commissioner of Income Tax vs. Chotatingrai Tea & Ors.* reported in (2002) 258 ITR 529 (SC). The operative portion of the said decision is as follows:

“It is not in dispute that the assessees had made donations to the Society for Integral Development, Calcutta, which had as its object the undertaking to carry out approved programmes of rural development. The society had granted a certificate to the assessee which had also been approved by the prescribed authority.

According to the Revenue authorities the assessees were not entitled to deduction as claimed despite the aforesaid because subsequently the approval granted by the prescribed authority was withdrawn with retrospective effect. It was also alleged that the assessees had received back the donation which had been made by them to the society. When the matter came up

before the Tribunal at the instance of the assessee, the Tribunal found, as a matter of fact that the assessee had fulfilled all the conditions under section 35CCA of the Act for grant of deduction thereunder. The Tribunal also found that the assessee's position could not be affected by any subsequent withdrawal of the certificate granted by the prescribed authority under section 35CCA but found that there was no evidence in support of the Revenue's case that the assessee had received back the amount donated by them to the society. However, the matter was remanded back to the Assessing Officer for fresh disposal for the purpose of determining whether the money had in fact been utilised for an approved programme. Pursuant to the directions of the High Court the following questions were referred under section 256(2) of the Act (page 645) :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal having held that the assessee have fulfilled all the conditions laid down in section 35CCA of the Income-tax Act, 1961, read with rule 6AAA of the Income-tax Rules for deduction of the amount donated to the approved society, which had not come back to the assessee soon after or later on in some form or the other, that the Tribunal was justified in law in restoring the matter to the Assessing Officer on the reasons and grounds given in the order passed on appeal?

(2) Whether, on the facts and in the circumstances of the case, and in view of the findings of facts recorded by the Tribunal on questions of facts arising for decision, the Tribunal was justified in law in holding that the entitlement of the assessee for claiming deduction of the amount donated to the approved society would depend upon the utilisation of such fund by the approved society in the approved programme before the

date specified in the section and on this basis only restoring the matter to the Assessing Officer?"

The High Court followed the reasoning of the Calcutta High Court in *CIT v. Bhartia Culter Hammer Co.* [1998] 232 ITR 785, and came to the conclusion that once it was found that the assessee had fulfilled all the conditions which had been laid down under section 35CCA of the Act for claiming deduction of the amount donated by it, there was no obligation on the part of the assessee to see that the amount was utilised for the purpose for which it was donated. Furthermore, the deduction was allowed on the certificate furnished and it was not for the assessee to show whether the institution to which the money had been donated was carrying on the rural development work, as envisaged under section 35CCA of the Act.

In our view, the reasoning of the High Court while answering the question referred to it in favour of the assessee is sound and calls for no interference.

In the light of the above decision, we find the reasoning given by the tribunal to be just and proper and cannot be held to be perverse. In the result, the appeal filed by the revenue (ITA/42/2020) is dismissed and the substantial question of law is answered against the revenue."

Thus, following the above decision substantial questions of law nos. 1, 2 and 3 are answered against the revenue.

So far as question of law no.4 is concerned, we find from the order of the learned tribunal that the issue was remanded back to the assessing officer. Thus, we find there is no substantial question of law on the said issue. Accordingly, the appeal filed by the revenue is dismissed and the substantial question of law nos.

1 to 3 are answered against the revenue. The fourth substantial question of law framed for consideration cannot be construed as a substantial question of law as the matter has been remanded by the tribunal to the assessing officer for fresh decision.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)