IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

TCA.No.326 of 2013

Commissioner of Income Tax
Madurai. ... Appellant

Vs

Tuticorin Port Trust
Harbour Estate,
Tuticorin 628 004,
PAN: AAALT0206D ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai, dated 08.01.2013 in I.TA.No.1060/Mds/2012, as against the order dated 29/02/2012 of the Commissioner of Income Tax, Madurai, in ITA No.0148 to 0153/10-11 as against the order dated 28/12/2010 of the Deputy Commissioner of Income Tax in PAN No.AAAL70206D for the Assessment Year 2008-2009.

For Appellant : Mr.J.Narayanaswamy
Senior Standing Counsel

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 08.01.2013 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.TA.No.1060/Mds/2012, relating to the assessment year 2008-2009.

2. By order dated 13.08.2013, this court admitted the aforesaid tax case appeal on the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in allowing the depreciation on the fixed assets when the entire capital expenditure incurred by the assessee had already been considered as application of income for charitable purpose under Section 11(1)(a)?"

3.When the matter was taken up for consideration, the learned counsel for the appellant / Revenue fairly submitted that a Co-ordinate Bench of this court by judgment dated 13.02.2020 in T.C.A.Nos. 192 to 196 of 2013 in respect of the assessee's own case, decided the identical question of law against the Revenue. The relevant passage of the said judgment can profitably be extracted below:

> "3. Learned counsel at Bar on both sides submit fairly that the issue has now been put to rest and is no longer res integra in view of the recent decision of the Supreme Court of "Commissioner of Income Tax -Vs- Rajasthan and Gujarati Charitable Foundation" decided on 13.12.2017 reported in [2018] 402 ITR 441 (SC) where the Honourable Supreme Court has noticed that various High Courts has decided the said controversy in favour of the Assessee and only the Kerala High Court had taken a contrary view in the case of "Lissie Medical Institutions -Vs- C.I.T. [2012-TIOL-303-HC-Kerala-IT]," whereas the Bombay High Court has taken a view in favour of the Assessee in case of "DIT (Exemption) -Vs- Framjee Cawasjee Institute [1993] 109 CTR (Bom) 463. The relevant portion of the judgment of the Honourable Supreme Court affirming the view taken by the Bombay High Court is quoted below for ready reference.
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> > "Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of DIT (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR (Bom) 463 . In that case, the facts were as follows : The assessee was a 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 Income-tax Officer 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 Income-tax Officer 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 the 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. CIT*.

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 (No. 2) Act of 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 the assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.
6. For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters."

4. In view of the aforesaid settled legal position, the question of law raised in these appeals deserves to be answered in favour of the Assessee and against the Revenue. We hereby do so. The appeals are disposed of accordingly. No costs."

4.Following the aforesaid decision, the substantial question of law raised in this appeal is answered in favour of the assessee and against the Revenue. Accordingly, the present tax case appeal is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1. The Income Tax Appellate Tribunal,
"C" Bench, Chennai,

2. The Commissioner of Income Tax
Madurai.

3. The Assistant Commissioner of Income Tax,
Circle I, Tuticorin.

4. The Commissioner of Income Tax (Appeals) I,
Madurai.

TCA.No.326 of 2013

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