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T.C.A.Nos.168 and 169 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.Nos.168 and 169 of 2020

and

C.M.P.Nos.5380 and 5387 of 2022

Sree Venkateswara Educational Trust,
655/20 & 600, Jagilkathirampatti Village
and Post,
Pochampalli Taluk,
Krishnagiri District – 635 206.
(PAN: AAIT25220J)

... Appellant in both T.C.As

Vs.

The Income Tax Officer,
Exemptions Ward, Salem.

... Respondent in both T.C.As

Prayer in T.C.A.No.168 of 2020: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, “C” Bench, Chennai dated 30th December 2019 in **ITA.No.1338/Chny/2019**.

Prayer in T.C.A.No.169 of 2020: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, “C” Bench, Chennai dated 30th December 2019 in **ITA.No.1339/Chny/2019**.



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For Appellant : Mr.G.Baskar
(In both T.C.As)

For Respondent : Mrs.V.Pushpa
(In both T.C.As) Senior Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

These appeals are directed against the Impugned Common Order dated 30.12.2019 passed by the Income Tax Appellate Tribunal (ITAT), “C” Bench, Chennai in I.T.A.Nos.1338 & 1339/Chny/2019.

2. By the Impugned Common Order, the appeals filed by the appellant/assessee have been dismissed.

3. Operative portion of the Impugned Common Order dated 30.12.2019 in I.T.A.Nos.1338 & 1339/Chny/2019 reads as under:-

“5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. Admittedly, the assessee has filed its return of income on 18.01.2014 as a Trust. However, the assessee has no registration under Section 12AA of the Act in the assessment year under consideration or not even applied for registration under the Act since the assessee has application for registration in Form 10A only on 31.12.2015, which is in the financial year 2015-2016 and relevant to the assessment year 2016-2017. Just because the assessee is a trust, in the absence of registration under Section 12AA of the Act, the assessee cannot file its return of income as



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a Trust. If at all the assessee has filed a revised return other than assessee-trust and not considered by the Department, the Tribunal can direct the authorities below to allow deduction. Moreover, the assessee has not placed any material as to whether any scrutiny on the assessee's activities/operations, genuineness of its claim, etc., was ever made by the Revenue and its claim was found to be in order but for registration under Section 12AA of the Act nor it placed any material to suggest that any proceeding was pending before the appellate authority on such claim etc. The assessee has not placed any material to suggest that when granting the registration of the Trust under Section 12AA of the Act dated 02.03.2016 with effect from 01.04.2015 the ld. CIT(E) examined its activities/operations, genuineness of its claim etc., for the earlier years or atleast for the impugned assessment year and found its exemption claim is otherwise in order. Therefore, the assessee's claim that for the assessment year 2013-2014, it should be deemed to be an assessment proceedings pending before the Assessing Officer cannot be accepted. Based on the identical facts, similar finding was given by the Coordinate Bench of the Tribunal in the case of Soundaram Chokkanathan Educational and Charitable Trust Vs. ITO in I.T.A.No.1844/Chny/2017 dated 30.08.2019. Respectfully following the above decision, the appeal filed under Section 154 of the Act stands dismissed.

6. So far as the claim of deduction of expenditure is concerned, the assessee has not at all filed revised return. In this circumstances, neither the Assessing Officer nor the appellate authority have any power to admit the claim of the assessee as per the ratio laid down in the case of Goetze India Ltd., Vs. CIT (supra), wherein, the Hon'ble Supreme Court makes it clear that the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the power of the Appellate Tribunal under Section 254 of the Act. Therefore, the case law relied on by the ld. Counsel for the assessee in the case of Srinivasa Educational Trust Vs. ITO in I.T.A.Nos.1327 & 1328/Chny/2019 dated 05.09.2019 has no application. In the present case, no doubt, the appellate authority has power to entertain any new claim if the assessee has filed revised return



within the time prescribed under the Act and if the Assessing Officer has not considered the revised return, then the Tribunal can direct the Assessing Officer to consider the same. However, in the present case, admittedly, the assessee has not filed any revised return towards admitting the claim of deduction. Thus, in view of the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd., Vs. CIT (supra), the appeal filed against the order under Section 143(1) of the Act stands dismissed.

7. In the result, both the appeals filed by the assessee are dismissed.”

4. At the time of admission of these appeals, this Court had framed the following questions of law as substantial questions of law:

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1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the case of the appellant would not fall within the 1 st proviso to Section 12A(2) of the Act?	1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the case of the appellant would not fall within the 1 st proviso to Section 12A(2) of the Act?
2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the appeal pending before the Commissioner cannot be deemed to be an assessment proceeding pending before the Assessing Officer for the purposes of applying 1 st Proviso to Section 12(A)(2) of the Act?	2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the appeal pending before the Commissioner cannot be deemed to be an assessment proceeding pending before the Assessing Officer for the purposes of applying 1 st Proviso to Section 12(A)(2) of the Act?
3. Whether on the facts and in the circumstances of the case the	3. Whether on the facts and in the



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Tribunal was right in confirming the levy of tax on gross income of the Trust, when the exemption claimed u/s 11 was denied for want of registration u/s 12AA? 4. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the proceedings under Section 154 should not be taken as assessment proceedings pending before the assessing officer? 5. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that in the absence of filing a revised return, the assessee cannot make a fresh claim relying upon the judgment of the Hon'ble Supreme Court in Goetze (India)?	circumstances of the case the Tribunal was right in law in holding that the proceedings under Section 154 should not be taken as assessment proceedings pending before the assessing officer? 4. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that in the absence of filing a revised return, the assessee cannot make a fresh claim relying upon the judgment of the Hon'ble Supreme Court in Goetze (India)?

5. The brief facts of the case are that the appellant/assessee had filed Return of Income on 18.01.2014 under Section 139(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the Assessment Year 2013-2014. While filing the return, the appellant/assessee had claimed exemption from payment of tax as a Trust under Section 11 of the Act by filing the return in consonance with Section 10 of the Act.



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6. At that point of time, the appellant/assessee was not holding certificate of recognising it as a Trust under Section 12AA of the Act. An application under Section 12A(a) of the Act for recognizing the appellant/assessee as a Trust eligible for exemption was made before the Commissioner of Income Tax (Exemptions), Chennai only on 16.12.2015. A certificate recognizing the appellant/assessee as a eligible Trust for exemption was subsequently granted on 02.03.2016 by the Commissioner of Income Tax (Exemptions), Chennai.

7. By this time, the Return of Income of the appellant/assessee dated 18.01.2014 filed for the Assessment Year 2013-2014 was processed under Section 143(1) of the Act and thus assessment was completed by the Assessing Officer vide Assessment Order dated 12.03.2015.

8. The appellant/assessee filed an application dated 28.03.2015 under Section 154 of the Act, to rectify the alleged mistake in the aforesaid Assessment Order dated 12.03.2015 passed under Section 143(1) of the Act.

9. The Application dated 28.03.2015 filed by the appellant/assessee under Section 154 of the Act was however rejected by the Assessing Officer vide order dated 29.10.2015. The said order dated 29.10.2015 reads as under:-



“Order under Section 154 of the Income Tax Act, 1961

The assessee has filed its return of Income for the Assessment Year 2013-2014 on 18-01-2014 admitting NIL income. The return was processed by Centralized Processing Center, Bangalore determining Rs.99,51,157/- as the liability towards tax & interest and an intimation under Section 143(1) of the I.T.Act, 1961 dated 12-03-2015 was sent to the assessee.

2. The assessee, aggrieved by the above intimation under Section 143(1) of the Income Tax Act, filed the rectification petition under Section 154 of the Income Tax Act as referred above. Vide the above petition under Section 154, the assessee has submitted that the demand of Rs.99,51,157/- has cropped up due to non consideration of assessee's claim for exemption under Section 11 of the I.T.Act and also because of non consideration of expenditure of earlier years brought forward.

3. The petition filed by the assessee is carefully considered and order under Section 154 is passed as under:

3.1 The claim of the assessee for exemption under Section 11 of the Income Tax Act was not considered by the Centralized Processing Center, Bangalore during the processing of the return of income under Section 143(1) of the Income Tax Act, for the Assessment Year 2013-2014. The primary criteria for exemption under Section 11 and 2 of the Income Tax Act that the assessee trust should be registered under Section 12A(a) of the Income Tax Act. In the instant case, even during the proceedings under Section 154 of the Income Tax Act, the assessee has not filed any evidence for its registration under Section 12A(a) of the Income Tax Act.

4. In view of the above discussion, the petition filed by the assessee is rejected.”

10. Aggrieved by the Assessment Order 12.03.2015 passed by the Assessing Officer under Section 143(1) of the Act and order dated 29.10.2015 passed by the respondent under Section 154 of the Act, the appellant/assessee



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preferred appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) however rejected the respective appeal in I.T.A.Nos.138 & 136/2016-2017 vide Orders dated 25.03.2019.

11. A further appeal of the appellant/assessee was also rejected by the Income Tax Appellate Tribunal (ITAT) vide Impugned Common Order dated 30.12.2019 in I.T.A.Nos.1338 & 1339/Chny/2019 and thus, the present appeals have been filed by the appellant/assessee.

12. As far as the issue as to whether subsequent grant of recognition/registration under Section 12 of the Act is concerned, the issue now stands covered against the appellant/assessee in terms of the decision of the Division Bench of this Court in **M/s.Soundaram Chokkanathan Educational and Charitable Trust Vs. The Income Tax Officer, Salem** in T.C.A.No.1015 of 2019 dated 09.12.2020.

13. The surviving issue that arises for consideration in these appeals is whether the appellant/assessee ought to have filed a revised return to claim deductions as a “Regular Assessee” or as an “Association of Person”. It is the contention of the Department, the appellant/assessee ought to have filed a



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revised return to claim deductions either as a “Regular Assessee” or as an “Association of Person”.

14. In support of his contention, the learned counsel for the appellant has relied on the following decisions of the Tribunal:-

- i. **Kingston Educational Trust, Thiruvannamalai Vs. The Deputy Commissioner of Income, CPC, Bengaluru** in I.T.A.No.567/Chny/2019 dated 21.11.2019.
- ii. **M/s.Srinivasa Educational Trust Vs. The Income Tax Officer, Exemptions Ward, Salem** in I.T.A.Nos.1327 & 1328/Chny/2019.

15. In these cases, under a somewhat similar circumstance, the case has been remitted back to the Assessing Officer to redo the assessment by recomputing the taxable income.

16. Learned Senior Standing Counsel for the respondent Revenue on the other hand would submit that the order of the Appellate Tribunal does not call for any interference.



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17. Learned Senior Standing Counsel for the respondent Revenue has relied on the decision of the Hon'ble Supreme Court in **Goetze (India) Ltd., Vs. Commissioner of Income tax, (2006) 284 ITR 323/2006 SCC Online SC 1446**, wherein the Hon'ble Supreme Court held as under:-

“1. Leave granted.

2. The question raised in this appeal relates to whether the appellant assessee could make a claim for deduction other than by filing a revised return. The assessment year in question was 1995-96. The return was filed on 30.11.1995, by the appellant for the assessment year in question. On 12.01.1998, the appellant sought to claim a deduction by way of a letter before the assessing officer. The deduction was disallowed by the assessing officer on the ground that there was no provision under the Income Tax Act to make amendment in the return of income by modifying an application at the assessment stage without revising the return.

3. This appellant's appeal before the Commissioner (Appeals) was allowed. However, the order of the further appeal of the department before the Income Tax Appellate Tribunal was allowed. The appellant has approached this court and has submitted that the Tribunal was wrong in upholding the assessing officer's order. He has relied upon the decision of this court in National Thermal Power Company Ltd. Vs. CIT MANU/SC/1287/1997 : [1998] 229 ITR 383 (SC), to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal.

4. The decision in question is that the power of the Tribunal under Section 254 of the Income Tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power



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of the assessing officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income Tax Appellate Tribunal under Section 254 of the Income Tax Act, 1961. There shall be no order as to costs.”

18. A reading of the decision of the Hon'ble Supreme Court in **Goetze (India) Ltd.**, (cited supra) makes it clear that it restricts the power of the Assessing Authority and does not impinge on the power of the Income Tax Appellate Tribunal (ITAT) under Section 254 of the Act. The Hon'ble Supreme Court has clearly held that limited to the power of the Assessing Authority and does not impinge on the power of the Income Tax Appellate Tribunal under Section 254 of the Income Tax Act, 1961.

19. The facts of this case are not in dispute. The appellant/assessee had claimed exemption-cum-payment under the Act without actually filing application under Section 12A(a) of the Act as it stood then during the period in dispute.

20. The appellant/assessee obtained registration under Section 12AA of the Act only on 02.03.2016. The case pertains to the Assessment Year 2013-



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2014. Therefore, in terms of the decision of the Division Bench of this Court in

M/s.Soundaram Chokkanathan Educational and Charitable Trust case

(cited supra), the benefit of registration would not enure in favour of the appellant/assessee after registration.

21. At the same time, the appellant/assessee cannot be denied all the legitimate deductions that would have been available, if the returns were filed either as a “Regular Assessee” or as an “Association of Person”.

22. The purpose of assessment is to recover just tax and not subject an assessee to unjust tax by holding that no return was filed either as a “Regular Assessee” or as an “Association of Person” merely because revised return was not filed under Section 139(4) of the Act, within a time specified under Section 134 of the Act.

23. The last date for filing the returns under Section 139(4) of the Act would have expired on 31.03.2015 which was just few days before the return was processed on 12.03.2015 under Section 143(1) of the Act.

24. The Hon'ble Supreme Court in **Formica India Division, Bombay,**



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Burma Trading Corporation Limited Vs. Collector of Central Excise and

others, 1995 Supp (3) SCC 552/1995 (77) ELT 511, had held as under:-

“When it was found that they were liable to pay duty on the intermediary product and had not paid the same, but had paid the duty on the end product, they could not ordinarily have complied with the requirements of Rule 56A. Once the Tribunal took the view that they were liable to pay duty on the intermediary product and they would have been entitled to the benefit of the notification had they met with the requirement of Rule 56A, the proper course was to permit them to do so rather than denying to them the benefit on the technical ground that the point of time when they could have done so had elapsed and they could not be permitted to comply with Rule 56A after that stage had passed. We are, therefore, of the opinion that the appellants should be permitted to avail of the benefit of the notification by complying at this stage with Rule 56A to the satisfaction of the Department.”

25. In our view also, if assessments are to be completed, deductions and applicable exemptions that are otherwise available to an assessee ought to have been extended by the Assessing Officer to an assessee before finalizing the assessment. Since the appellant/assessee was not entitled to exemption as a Trust under Sections 11, 12 and 12A of the Act in absence of registration under the Act as it stood Section 12AA of the Act, the benefit of other deductions under the Act ought to have been given. The Assessing Officer is not expected to act mechanically to confirm the liability to fasten an unjust tax liability on an assessee.



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26. Therefore, we are inclined to set aside the Impugned Common Order dated 30.12.2019 and remit the case back to the Assessing Officer to pass a fresh order under Section 143(3) of the Act.

27. These appeals stand disposed of with the above observations. The substantial questions of law are partly answered in favour of the appellant/assessee. No costs. Connected Civil Miscellaneous Petitions are closed.

[R.S.K., J.]

[C.S.N., J.]

02.09.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

The Income Tax Officer,
Exemptions Ward, Salem.



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AND
C.SARAVANAN J.

[Order of the Court was made by
C.SARAVANAN, J.]

The above appeals are listed today 'For
Being Mentioned'.

2. In Paragraph 26 of the order, the
expression "under Section 143(3) of the Act"
be deleted.

3. Registry is directed to issue fresh
order copy to the parties.

[R.S.K., J.] [C.S.N., J.]
21.10.2024

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