

In the High Court of Judicature at Madras

Dated : 10.12.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.668 of 2019

M/s.Indian Institute of Engineering
Technology, Chennai-24.

...Appellant

Vs

The Deputy Commissioner of
Income Tax (Exemptions)-III,
Chennai-34

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 22.6.2018 made in ITA.No.2093/Chny/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2012-13.

For Appellant: Mr.R.Vijayaraghavan for
M/s.Subbaraya Aiyer Padmanabhan
For Respondent: Mr.J.Narayanasamy, SSC

Judgment was delivered by T.S.Sivagnanam,J

We have elaborately heard Mr.R.Vijayaraghavan, learned counsel appearing on behalf of the appellant – assessee and Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the respondent – Revenue.

2. This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 22.6.2018 made in ITA.No.2093/Chny/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) for the assessment year 2012-13.

3. The appeal is admitted on the following substantial questions of law :

"1. Whether the order of the Tribunal is perverse in not following the judgment relied on by the appellant in the case of Queens Educational Trust Vs. CIT - 372 ITR 699-SC and CBDT circular F.No.194/16-17II(A1) wherein it was held that where all the objects of these trusts are educational and the surplus, if any, from running the educational institution is used for educational purposes only, it can be held that the institution is existing for educational purposes and not for purposes of profit ?

2. Whether the Tribunal erred in not adjudicating the grounds of appeal No.3 pertaining to disallowance of depreciation ?

3. Whether the Tribunal was right in law in holding that the appellant is not entitled to deduction under Section 11 of the Act since the amount given to another charitable trust to construct building violates the provisions of Sections 13(1)(c) and 13(1)(d) read with Section 11(5)? and

4. Whether the Tribunal erred in law in not appreciating that the amount given by the appellant trust to another charitable trust with similar objects for carrying out the object of the other trust cannot be considered as investment or parking of funds of the trust, which violated the provisions of Sections 13(1)(c) and 13(1)(d) read with Section 11(5)?”

4. The assessee is a society registered under the provisions of the Societies Registration Act. It established and is administering two educational institutions, one of which is affiliated to Anna University and the other is affiliated to University of Madras.

5. For the previous year relevant to the assessment year 2012-13, the assessee filed their return of income admitting NIL income after claiming exemption under Section 10(23C)(vi) of the Act and alternatively under Section 11 of the Act. This claim was based on an application filed in Form 56D on 03.11.2015. Though the assessee made submissions before the Authority concerned on several dates, since nothing transpired out of such proceedings, the assessee placed reliance on the deeming provision under the 9th Proviso to Section 10(23C) of the Act. Subsequently, the assessee's case was selected for scrutiny and a notice under Section 143(2) of the Act and thereafter another notice under Section 142(1) read with Section 129 of the Act were issued. The assessment was completed under Section 143(3) of the Act by denying exemption under Sections 10(23C)(vi), 11 and 12 of the

Act determining the total income of Rs.6,45,49,660/-.

6. The issue before us is with regard to certain advances received from another charitable trust during the financial year 2003-04. The amount was repaid to the other trust and in the course of repayment, the assessee paid excessively a sum of Rs.70,25,780/-, which was recoverable from the other institution/trust.

7. The assessee contended that the amount had been given to another charitable institution for educational purposes to enable them to construct a building as part of their college and that the same could not be considered as investment and hence, the provisions of Sections 11, 12 and 13 had not been violated. The assessee further contended that the money was refunded by way of direct payment to the contractor, who constructed the building for the institution and that the institution could not be considered as a related person for the purpose of Sections 13(1)(c) and 13(1)(2) of the Act. The assessee also contended that the loan given to another charitable trust with similar objects for carrying out the object of other trust could not be considered as investment or parking of funds of the trust, but, in fact, should be considered as an application for carrying out the objects of the assessee trust. These contentions were not accepted by the Assessing Officer, who completed the assessment by order dated 20.3.2015.

8. Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-17, Chennai-34 [for short, the CIT(A)], who, by order dated 30.3.2016, dismissed the appeal on the ground that the differential excess amount of Rs.70,25,780/- was loaned to the sister trust without adequate interest or without adequate security or both and therefore, it had clearly violated the provisions of Section 13(1)(c) read with Sections 11(5) and 13(2)(a) of the Act. There are other issues pertaining to depreciation, which was also disallowed.

9. As against the order passed by the CIT(A), the assessee filed an appeal before the Tribunal, which dismissed the same and in doing so, the Tribunal held that the assessee is carrying on the activities of profitable venture and is not undertaking any charitable activity within the scope of Section 2(15) of the Act. Aggrieved by the impugned order passed by the Tribunal, the assessee is before us by way of this appeal.

10. So far as the second substantial question of law framed is concerned with regard to disallowance of depreciation, it is not disputed by the learned Senior Standing Counsel for the Revenue that the issue is clearly covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of **CIT Vs. Rajasthan and Guajrati Charitable Foundation [reported in (2018) 402 ITR 441]** wherein it was held that normal depreciation could 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 Act. **Thus, applying the said decision, substantial question of law No.2 is answered in favour of the assessee.**

11. With regard to substantial question of law Nos.1, 3 and 4, all relate to the same fact situation namely the amount, which was given to another trust, was stated to be for the purpose of putting up the construction.

12. Before us, the assessee has placed for our consideration the order passed by the Chief Commissioner of Income Tax-3, Chennai under Section 10(23C)(vi) of the Act wherein it has been stated that after carefully considering the report of the Commissioner of Income Tax (Exemptions) and the submissions made by the assessee and having been satisfied that the institution existed solely for education purpose, approval was accorded for exemption under Section 10(23C)(vi) of the Act for the assessment year 2014-15.

13. We are conscious of the fact that the assessment year under consideration is 2012-13. Nevertheless, in the first paragraph of the order of the Chief Commissioner of Income Tax-3, Chennai dated 30.9.2015, there is a reference to the fact that several documents placed by the assessee were taken note of including the audited statement of accounts and reports for the years ending 31.3.2012, 31.3.2013 and 31.3.2014. In fact, the Assessing Officer was never called upon to decide or test the activities of the trust and as to whether they being charitable or not.

14. Admittedly, the registration granted under Section 12AA of the Act

continued to remain valid. Therefore, in our considered view, the Assessing Officer treaded into the territory, which was not required to be done. Partly, the assessee also should be blamed for not placing sufficient material before the Assessing Officer to substantiate its claim, which is now raised before us as well as before the CIT(A) that the amounts were directly paid to the contractor, who constructed the building for the college. Another argument, which was placed, was that even assuming that it has to be treated as a loan, the amount given by the assessee to the other trust with similar objects for carrying out the object of other trust could not be considered as investment or parking of funds of the trust, but, in fact, should be considered as an application for carrying out the objects of the assessee trust. This argument was not considered.

15. In fact, the assessee would place reliance on the decision of the Delhi High Court in the case of **Director of Income Tax (Exemptions) Vs. ACME Educational Society [reported in (2010) 326 ITR 0146]** wherein it had been held that advancing of interest free temporary loan by the assessee society to another society having similar objects was not an investment or a deposit and that therefore, there was no violation of the provisions of Section 13(1)(d) read with Section 11(5) of the Act to render withdrawal of exemption under Section 11 of the Act.

16. The learned Senior Standing Counsel appearing for the Revenue has sought to sustain the impugned order by contending that the core issue was

as to whether Section 13(1)(c) read with Section 13(3)(e) would stand attracted.

17. However, there are several factual aspects, which have been missed out by the Assessing Officer to be taken into consideration and we cannot be called upon to take a decision in the abstract without examining the foundation facts for their correctness. Considering all the aspects, we deem it appropriate that the matter should be remanded to the Assessing Officer for a fresh consideration.

18. For all the above reasons, the tax case appeal filed by the assessee is allowed, the impugned order passed by the Tribunal and the orders passed by both the Assessing Officer and the CIT(A) are set aside so far as substantial questions of law 1, 3 and 4 are concerned and the matter is remanded to the Assessing Officer for a fresh consideration after affording an opportunity to the assessee. Substantial question of law No.2 is answered in favour of the assessee. No costs.

To

- 1.The Income Tax Appellate Tribunal, Chennai 'B' Bench.
- 2.The Deputy Commissioner of Income Tax (Exemptions)-III, Chennai-34.

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