HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1386 OF 2013

Commissioner of Income Tax – II, Thane ... Appellant
Vs
The Mumbai Metropolitan Regional Iron
& Steel Market Committee ... Respondent

WITH
INCOME TAX APPEAL NO. 1385 OF 2013

Commissioner of Income Tax – II, Thane ... Appellant
Vs

The Mumbai Metropolitan Regional Iron
& Steel Market Committee ... Respondent

Mr. Suresh Kumar for the Appellants.

Ms. Aarti Sathe with Mr. Kalpesh Turalkar for the Respondents.

CORAM : S.C. DHARMADHIKARI &
A.K. MENON, JJ.

WEDNESDAY, 1ST APRIL, 2015

P.C. :

1. These two appeals of the Revenue arise out of a common order of the Tribunal delivered in Income Tax Appeal Nos.931 of 2012 and 1569 of 2012. These appeals were dealt with by the Pune Bench of

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the Tribunal. The assessments years are 2004-05 and 2005-06.

2. Mr. Suresh Kumar submits that the appeals raise substantial questions of law. They are formulated at page 7 of the paper-book. According to Mr. Suresh Kumar, the Tribunal failed to appreciate that the assessee before us was a local authority entitled to exemption under section 10(20) of the Income Tax Act, 1961 (for short "IT Act"), upto assessment year 2002-03. Thereafter, it decided to take the benefit of change in law and applied for grant of registration under section 12A of the IT Act, before the competent authority. That would enable it to claim exemption under section 11 of the IT Act. Though the application was filed on 26th March, 2007, the registration was claimed with effect from 1st April, 2003. That application was allowed by the Commissioner of Income Tax but the registration was granted prospectively, namely, from 1st April, 2006. The assessee was not satisfied with this partial relief and approached the Tribunal. The Tribunal directed the Commissioner of Income Tax to condone the delay in filing the application and consider grant of registration with effect from 1st April, 2003. In compliance with this order, the

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registration was granted by the Commissioner of Income Tax with effect from 1st April, 2003, by his order dated 23rd April, 2008. In the meanwhile, the assessment for the years 2005-06 was completed by the Assessing Officer without allowing any exemption under section 11. The assessee, after receipt of registration under section 12AA obtained an audit report as is required under section 12A(1)(b) for the purpose and the same was filed along with Form No.10 before the Commissioner of Income Tax (Appeals) and claim for exemption under section 11 was made for the first time before the Commissioner of Income Tax (Appeals) in respect of assessment year 2005-06. The Commissioner rejected this claim for exemption under section 11 mainly for the reason that this claim was not made in the original return and that Form 10 and audit report in support of this claim are not filed before the Assessing Officer. The assessee carried the matter to the Tribunal. The Tribunal, by its order dated 15th April, 2009, held that the appellate proceedings before the Commissioner of Income Tax are a continuation of the assessment and, therefore, late filing of these documents would not disable the assessee from benefits of section 11. The assessment order was set aside by the Income Tax Appellate

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Tribunal and the Assessing Officer was directed to make a *de novo* assessment. While doing so, the Assessing Officer was directed by Income Tax Appellate Tribunal to take into account the registration granted under section 12AA of the IT Act with effect from 1st April, 2003, and the audit reports as well as the other documents filed in support thereof.

3. Mr. Suresh Kumar submits that this view of the Tribunal is not in consonance with the law laid down by the Hon'ble Supreme Court in the case of *Commissioner of Income Tax vs. Nagpur Hotel Owners Association, 247 ITR 201*. Further, there is no compliance made with the Revenue circular as well. Mr. Suresh Kumar read out that portion of the Tribunal's order and the circular to submit that this appeal be admitted as it raises substantial questions of law which are common for both assessment years.

4. We are unable to agree with Mr. Suresh Kumar. The Tribunal has found that in the light of these admitted facts, there is substance in the assessee's arguments. The Tribunal perused its own order for the

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assessment year 2005-06 restoring the matter to file of the Assessing Officer and to make a *de novo* assessment. It held that at that time the Form 10, audit reports and documents were already on record of the Assessing Officer. If the assessee was required to file Form 10 and other documents before the completion of the assessment and in this case there is only a technical plea raised by the Revenue, then, that should not take away a benefit accruing to the assessee in law. The Tribunal has neither disregarded the judgment of the Hon'ble Supreme Court nor has misapplied it. It found that the case of the assessee is peculiar. It was not the assessee's fault inasmuch as it got into a legal tangle. Upto assessment year 2002-03, it was enjoying a benefit under section 10(20) of the IT Act by a local authority. Later on it decided to avail of the benefit of section 11 and applied for registration. The chequered history of the case pertaining to registration has been noted by us. It is that which enabled the Tribunal to conclude that the rigors of the section have been somewhat diluted by the Revenue's understanding and the issuance of a circular. Thus, the circular contemplates condonation of delay in filing the above documents and which would enable the assessee to avail of the benefit. Filing of

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Form No.10 is not dispensed with. The Commissioner is only vested with powers to accept it after the specified period. This circular No.273 dated 3rd June, 1980 which has been relied upon to hold that the assessee's claim for benefit of exemption under section 11 of the Act deserved acceptance. It is in these circumstances and when the objects of the trust were found to be genuine that the Assessing Officer was directed to carry out a *de novo* assessment in terms of the Tribunal's observations. We do not find such conclusion to be perverse or vitiated by any error of law apparent on the face of the record. No larger question or wider controversy needs to be decided.

5. The appeals are, therefore, devoid of merit. They are, accordingly, dismissed. There shall be no order as to costs.

A.K. MENON, J. ***S.C. DHARMADHIKARI , J.***

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