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

ITAT/276/2017
IA NO. GA/2/2017 (Old No:GA/2531/2017
COMMISSIONER OF INCOME TAX (EXEMPTION), KOLKATA
Versus
INTEGRATED EDUCATION AND RESEARCH CENTRE FOR ENGINEERING AND MANAGEMENT

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 28th July, 2022

*Appearance* :
*Mr. Soumen Bhattacharjee, Adv.*
*….for Appellant*

*Mr. Dwip Raj Basu, Adv.*
*…for Respondent*

The Court :- This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 1st June, 2016, passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITA No. 620/Kol/2016 for the assessment year 2012-13.

The revenue has raised the following substantial questions of law for consideration.

i) Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in not considering that allowing depreciation in respect of a depreciable asset for which the assessee

has already claimed deduction under section 35(2)(iv) of the Income Tax Act being acquired for charitable purpose is permissible under section 32 of the Act and whether the same would amount to double deduction ?

ii) Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in not considering the decision of Escorts Limited & Anr. Versus Union of India, reported in 199 ITR 43(SC) which squarely applies in the facts and circumstances of the instant case ?

iii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was right in holding that exercise of jurisdiction under Section 263 of the Act by the Commissioner of Income Tax (Exemption) was proper and in accordance with law ?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant/revenue and Mr. Dwip Raj Basu, learned Counsel appearing for the respondent/assessee.

We take it for consideration the substantial question of law no.3 and if the said question is answered against the revenue, the necessity to answer the question of law nos.1 and 2 may not arise. In the event we have to hold that substantial question of law no.3 is to be answered in favour of the revenue, then the need will arise to decide question nos.1 and 2.

The assessee is a charitable trust, filed its return of income for the assessment year under consideration 2012-13 declaring the total income as nil. The Income Tax Officer (Exemption) – 1, Kolkata, who was the assessing

officer, completed the assessment under Section 143(3) determining the total income of the assessee at Rs.41,615/-. In the return of income the assessee claimed depreciation of Rs.68,43,455/- is allowable expenditure against receipts of the assessee during the previous year. The assessing officer has allowed the claim made by the assessee while completing the assessment by order dated 30th June, 2014. The Commissioner of Income Tax (Exemption) [CIT(E)] exercised his power under Section 263 of the Act and issued show cause notice dated 28th October 2015 on the ground that when deduction under Section 35(2)(iv) is allowed in respect of capital expenditure on assets used for scientific research, no depreciation is allowable under Section 32 on the same assets. The assessee submitted the reply to the show cause notice by placing reliance on several decisions of various High Courts and in particular, the decision in the case of *CIT Vs. SOCIETY OF SISTERS OF ANNE.*; 146 ITR 28 (Kar.); *CIT Vs. TINY TOTS EDUCATION SOCIETY,* (2011) 330 ITR 21 (P&H), which followed the decision in *CIT Vs. MARKET COMMITTEE, PIPLI (2011)* 330 ITR 16 (P&H), as also the decision of this Court in *JYOTIRMAI CLUB,* ITA No. 647 of 2004 dated 10th November, 2014. Reliance was also placed on the decision in the case of *CIT Vs. RCAO BAHADUR CALAVALA CUNNAN CHETTY CHARITIES,* (1982) ITR 485 (Mad.)

The CIT did not agree with the stand taken by the assessee, primary on the ground that intention of the legislature was never to give double deduction for the same outgoing and there was the amendment by insertion of Section 11(6) of the Act, which was merely clarificatory. Accordingly, the

CIT held that the assessment order allowing the claim for depreciation is erroneous in so far as it is prejudicial to the interest of the revenue.

Aggrieved by such order the assessee filed appeal before the Tribunal and relied on various decisions, some of which have been referred to above. With regard to the exercise of power by the CIT under Section 263 of the Act, the assessee contended that the CIT accepts that two views are possible in the matter and also noted that the assessee had followed the decision of this Court which is the jurisdictional High Court and, therefore, the assumption of jurisdiction under Section 263 was erroneous. This submission was considered by the Tribunal, referred to the decision in *Malabar Industrial Company*, 243 ITR 83 and pointed out that it is clear from the order passed by the CIT that two divergent views have been expressed by the High Courts in the matter and the decision of this Court which being the jurisdictional High Court was noted by the assessing officer and relief was granted to the assessee and, therefore, it cannot be held to be a case where the assessment order was erroneous in so far as it is prejudicial to the interest of revenue.

In our considered view, the order passed by the Tribunal rightly reflects the legal position and when two views are possible and the assessing officer had accepted the assessee's claim for depreciation by placing reliance on the decision of this Court, the order cannot be reversed by the CIT branding the same as being erroneous in so far as it is prejudicial to the interest of revenue. Therefore, we find that there is no error committed by the Tribunal in holding that the exercise of jurisdiction under Section 263 was not proper and justified.

In the light of the above substantial question of law No. 3 is answered against the revenue.

In the light of our conclusion, that substantial question of law No. 3 is to be answered against the revenue and in favour of the assessee, there would not be any necessity to answer substantial questions of law Nos. 1 and 2.

For the above reasons the appeal stands dismissed.

With the dismissal of the appeal, the stay application also stands dismissed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

SN/GH