IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.08.2022

CORAM

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

Tax Case Appeal Nos.225, 228 and 229 of 2022

Principal Commissioner of Income Tax
(Exemptions),
Chennai Circle,
Chennai - 34. .. Appellant in all T.C.A.s

Vs.

M/s. International Institute of
Bio-Technology & Toxicology,
No.12, Harley's Road, Kilpauk,
Chennai - 10.
(PAN:AAATF0061E) .. Respondent in all T.C.A.s

Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961 against the order dated 26.04.2018 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai in I.T.A.No.2897/Chny/2017, I.T.A.No.2896/Chny/2017 and I.T.A.No.2898/Chny/2017.

For Appellant in all TCAs' : Mr.J.Narayanaswamy
Standing Counsel

For Respondent in all TCAs' : Mr.G.Baskar

COMMON JUDGMENT

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

These tax case appeals are filed by the appellant/Revenue, questioning the validity of the common order dated 26.04.2018 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai in I.T.A.Nos.2897/Chny/2017, 2896/Chny/2017 and 2898/Chny/2017, relating to the respective assessment years 2013-14, 2012-13 and 2014-15, by raising the following substantial question of law :

> *"Whether the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for Exemption under Section 10 (21) of the Income Tax Act, 1961, which is applicable only to an Association and not to an Institution when the instant assessee is categorized as an Institution and not as an Association which is a pre-requisite for claiming exemption under Section 10(21) of the Income Tax Act, 1961?"*

2.The necessary facts leading to the filing of these appeals are as follows:

The assessee is a society registered under section 12AA of the Income Tax Act, 1961 and it engaged in scientific research activities. For the assessment years in question, they filed its return of income, which were selected for scrutiny and completed under section 143(3) of the Act. While so, the assessing officer disallowed the exemption claimed by the assessee under Section 10(21) of the Act on the ground that the benefit of section 10(21) is available only to an institution notified as an "Association" and not to an "Institution". Besides this, the claim of depreciation was also disallowed by the Assessing Officer. Aggrieved by such orders of assessment, the assessee preferred appeals before the Commissioner of Income Tax (Appeals)-17, Chennai. By a common order dated 11.09.2017, the appellate authority allowed those appeals, the relevant passage of which is usefully extracted below:

> *"4. Decision: Ground No.1 is general in nature and calls for no adjudication. Ground No.2 is with regard to rejection of claim under section 10(21) of the appellant by the Assessing Officer. The Assessing Officer observes that the benefit of section 10(21) is available only to an institution notified as an "Association" and not to an "Institution". Whereas, relying on the decisions of the Hon'ble ITAT in its own case for earlier assessment years, the appellant contends that they are eligible for the exemption under section 10(21).*
>
> *The relevant part of section 10(21) reads as follows:*
>
> *10(21) any income of a research association for the time being approved for the purpose of clause (ii) or clause (iii) of sub-section (1) of section 35:*
>
> *And the relevant part of section 35(1) is as follows:*
>
> *35. (1) In respect of expenditure on scientific research, the following deductions shall be allowed-*
>
> *(i) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.*
>
> *(ii) an amount equal to one and three-fourth times of any sum paid to a research, association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research.*
>
> *(iii) an amount equal to one and one -fourth times of any sum paid to a company to be used by it for scientific research.*
>
> *Thus, irrespective of the nomenclature any research association approved under section 35(1) is eligible for the exemption under section 10(21). In fact, the Finance Act, 2010, expanded the*

scope of exemption by substituting the word "scientific research association" with "research association".

4.1 The Chennai "A" Bench of the ITAT in the appellant's own case for the assessment year 1997-98 in ITA No.2309/Mds/2005 observed as follows:

The ld.Counsel for the Assessee has drawn our attention and submitted that in sec.35(1)(ii) of the Act, the wordings ' Association, Institution and University have been used interchangeably and the Assessee has also referred to definition of these terms in dictionaries. Further, she submitted as under:

> *"The above would indicate that the terms "Association" and Institution" in themselves have been used in a wider sense and interchangeably. While the benefit of Section 10(21) is available to an "Association" as set out in sub-clause (ii) of section 35(1), the applicant as per the definition of an "Association". Its bye-laws and the ratio of the decisions cited clearly qualifies to be an "Association" as it was designated in the first notification issued".*

It is seen from the Certificate of Registration of Societies that except the change in the name, there is no change in the objectives of the Assessee-society since its inception and this change was effected by the Registrar of Societies on 24th May, 2002 wherein it is certified that the Society "Fredrick Institute of Plant Protection And Toxicology (FIPPAT) changed its name as International Institute of Bio Technology And Toxicology (IIBAT)". It is a fact that the Assessee-society is a registered society engaged in scientific research activities and ever since its inception it is engaged with the objectives of the research in plan protection, toxicology and related areas which take out from the object of the Society reads as under:

> *1. To conduct studies on plant protection, dissipation/environmental fate and characterize chemistry of plant protection substances covering biological, microbial, botanical and synthetic pesticides.*
>
> *2. To elucidate possible toxicological consquences due in the use of agrochemicals such as pesticides and Drugs/Pharmaceuticals includes Natural/Ayurvedic Drugs.*
>
> *3. To analyze and evaluate bio safety of transgenic crops/food.*

4. To compute risk assessment, based upon bio safety investigations, of transgenic crops, recombinant DNA and other biotech based products.

5. To identify and search for natural/biological agents which can alleviate the possible toxicological manifestations caused by chemical pesticides.

6. To conduct basis research studies to develop, characterize and test in vitro cell line models to assess toxicity of environmental agents

7. To establish and conduct non-clinical safety assessment of environmental agents under the principles of Good Laboratory Practices (GLP)"

The denial of exemption by the Assessing officer is based on the fact that the Assessee is classified as an Institution. It is the case of the Department that the Assessee-society is classified as an Institution and not as an Association and as per the provisions of section 10 (21) of the Act, exemption is available only to an Association. But once the fact that the Assessee-society is engaged in research work regarding agriculture related activities and it is recognized as a leading National Body in the filed of Research in Bio-Technology and Toxicology. Further, the Central Board of Direct Taxes has classified the Assessee-society as an Association in the year 1997, after due verification of its object as well as its activities and there is no change in the objectives of the assessee-society from its inception till date. In view of these facts and circumstances of the case and respectfully following the Tribunal's decision cited supra, we hold that the Assessee is entitled to exemption under Section 10(21) of the Act as the Assessee-society is engaged in research work in agriculture related activities.

Respectfully following the decision of the Hon'ble ITAT in the appellant's own case for the assessment year 1997-98 in ITA No.2309/Mds/2005 I hold that the appellant is entitled to exemption under section 10(21) of the Act as the appellant-society is engaged in research work related to agriculture. The appellant succeeds on this ground."

Being dissatisfied with the order of the appellate authority, the Revenue preferred appeals before the Income Tax Appellate Tribunal. By order dated

26.04.2018, the Tribunal dismissed the appeals filed by the Revenue, with the following observations:

> "3.*We heard Shri Prabhu Mukunth Arun Kumar, the learned Standing counsel for the Revenue and Shri G.Baskar, the learned counsel for the assessee. During the course of hearing, it was brought to the notice of the Bench that the CIT (Appeals) has followed the order of this Tribunal in the assessee's own case for the assessment year 1997-98 in which this Tribunal found that the assessee is eligible for exemption under section 10(21) of the Act. This order of the Tribunal for the assessment year 1997-98 was subsequently followed by this Tribunal in the assessee's own case for assessment years 1998-99 and 2000-01. Even though an appeal was said to be filed before the High Court, the learned counsel submitted that the appeal was not numbered till date by the High Court and it was returned for rectification of certain errors. By producing a copy of the assessment order for the assessment year 2015-16, the learned counsel for the assessee submitted that the Assessing Officer at para 4.8 of his order for the assessment year 2015-16 has extracted a letter said to be written by the Sr. Standing Counsel for the Revenue saying that these appeals were represented before the High Court. Be that as it may, this Tribunal is of the considered opinion that when the co-ordinate Bench of this Tribunal for assessment years 1997-98, 1998-99 and 2000-01 found that the assessee is eligible for exemption under Section 10(21) of the Act, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the order of the CIT (Appeals) is confirmed."*

Aggrieved over the aforesaid order of the Tribunal, the Revenue is before this court with the present tax case appeals.

3. Today, when the matters were taken up for consideration, the learned counsel appearing for both sides submitted that the substantial question of law raised herein, is covered in favour of the assessee, as per the judgment dated 15.02.2021 rendered by a Co-ordinate Bench of this Court in T.C.A.Nos.54 to

56 of 2021 in respect of the assessee's own case relating to the assessment years 2010-2011, 2011-12 & 2015-16. The relevant passage of the said judgment is extracted below for ready reference:

> *"12. Be that as it may, the Tribunal rightly took note of the objectives of the assessee and their activities, which have been carried out ever since their inception in the year 1987. They are engaged in the research work in agricultural related activities and it is recognized as a leading nationally acclaimed society engaged in the field of research in Bio-Technology and Toxicology and they undertake various aspects including research and development studies that directly impact the safety in non-clinical, health and environmental areas and the Tribunal has rightly accepted the stand taken by the assessee and consequently reversed the finding of the Assessing Officer who treated the assessee acclaimed to have been a contractor.*
>
> *13. Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the appellant would vehemently contend that the provisions of Section 10(21) of the Act is applicable only to research association and not to institutions. The Assessing Officer treated the assessee as an institution while granting approval under Section 35(1)(ii) by the competent authority as well as by the Directorate of Income Tax (Exemption) (DITE) and not as an association and therefore, the assessee cannot claim the benefit under Section 10(21) of the Act.*
>
> *14. The above submission cannot be countenanced for more than one reason. Firstly, ever since the inception of the assessee society, they have been treated as an association. It is not disputed by the Revenue that the assessee is registered under the provisions of Tamil Nadu Societies Registration Act, 1975 and it has been treated as an association/society since 1987. The change done in the interregnum was set aside by the Tribunal, which decision stands confirmed as on date, in the light of the various orders passed by the Tribunal, which we have referred above. Therefore, the contention raised by the Revenue does not merit acceptance.*
>
> *15. In our considered view, the observation made by the Assessing Officer is wholly unsustainable, going by the objectives, for which, the assessee association had been established. Thus, in the light of the above undisputed position, we find no good ground*

to interfere with the order passed by the Tribunal.

16. Accordingly, the appeals fail and they are dismissed and the substantial question of law is answered against the Revenue. No costs. Consequently, connected miscellaneous petitions are closed."

4. In the light of the aforesaid decision, which is squarely applicable to the facts of the present case, the substantial question of law raised in all these appeals is answered in favour of the assessee and against the Revenue. Accordingly, all the Tax case Appeals filed by the Revenue stand dismissed. No costs.

[R.M.D., J.] [J.S.N.P., J.]

11.08.2022

Internet : Yes
Index : Yes / No

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To

1. The Income Tax Appellate Tribunal,
 'A' Bench, Chennai.

2. The Principal Commissioner of Income Tax
 (Exemptions),
 Chennai Circle,
 Chennai - 34.

3. The Deputy Commissioner of Income Tax
 (Exemptions),
 Chennai Circle,
 Chennai - 34.

4. The Commissioner of Income Tax (Appeals) - 17,
 Chennai.

R. MAHADEVAN, J.
AND
J.SATHYA NARAYANA PRASAD, J.

av/rns

Tax Case Appeal Nos.225, 228 and 229 of 2022

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