

आयकर अपील आधिकरण, मद्रास आयपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL BENCH, CHENNAI
श्री धुवुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I T.A. No. 2196/Mds/2017

निर्धारण वर्ष/**Assessment Year:2009-10**

The Deputy Commissioner of
Income Tax, Central Circle 1(1),
Chennai 600 034.

M/s. Vellore Institute of Technology,
Vs. 54, Thennamaram Street,
Vellore 632 014.

[PAN:AAATN0569M]

(अपीलाथ /Appellant)

(प्रत्यथ /Respondent)

अपीलाथ क ओर से / Appellant by : Shri AR.V. Sreenivasan, JCIT

प्रत्यथ क ओर से/Respondent by : Shri A. Mahesh, C.A.

सुनवाई क तारख / Date of hearing : 25.01.2018

घोषणा क तारख /Date of Pronouncement : 31.01.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 18, Chennai dated 28.06.2017 relevant to the assessment year 2009-10. The only effective ground raised by the Revenue is that the Id. CIT(A) has erred in holding the assessment order passed by the Assessing Officer giving effect to order under section 263 of the Income Tax Act, 1961 [Act+in short] as infructuous.

2. Brief facts of the case are that the assessee is a registered public charitable trust assessed to income tax from assessment year 1985-86 onwards. The assessee was granted registration under section 12A of the Act. Although the trust was registered under section 12A of the Act, it was claiming and has been allowed exemption under section 10(22) of the Act as an educational institution existing solely for educational purposes and not for purposes of profit+ upto assessment year 1988-89 until the omission of section 10(22) of the Act. Thereafter the trust had been claiming and been allowed exemption under section 11 of the Act. Although in the return filed, the trust had claimed that the income will also be exempt under section 10(23C)(vi) of the Act, it was ascertained that the trust had not even made an application for notification before the prescribed authority and has therefore, not been notified, as such, for any year. A search and seizure operation was carried out at the premises of the trust and at the residences of its founder and managing trustee on 06.06.2007. Assessment under section 143(3) r.w.s. 153A of the Act was made for the relevant assessment years.

2.1 Originally, the assessment under section 143(3) of the Act was made accepting the returned income on 14.12.2011. The above order of assessment was found to be erroneous and prejudicial to the interest of Revenue and therefore, subjected to revision under section 263 of the Act by

the Id. CIT. After considering various submissions as well as verification of records, by quashing the assessment passed under section 143(3) of the Act, the Id. CIT directed the Assessing Officer to re-examine and redo the assessment. Consequent to the order under section 263 of the Act, the Assessing Officer issued notice under section 142(1) of the Act calling for 12 details for the assessment year 2009-10. However, the assessee has requested the Assessing Officer to wait till the appeal of the assessee filed against order under section 263 of the Act is disposed off by the ITAT. Thus, with the available details, the assessment by giving effect to order under section 263 of the Act was completed.

2.2 Against the order under section 263 of the Act passed by the Id. CIT, the assessee preferred further appeal before the Tribunal. Vide order dated 17.04.2015 in I.T.A. No. 1441/Mds/2015, the Tribunal quashed the order passed by the Id. CIT under section 263 of the Act.

3. Against the assessment order giving effect to order under section 263 of the Act dated 30.03.2015, the assessee preferred further appeal before the Id. CIT(A). After considering the submissions of the assessee as well as facts of the case, the Id. CIT(A) allowed the appeal filed by the assessee.

4. Aggrieved, the Revenue is in appeal before the Tribunal and the Id. DR has contended that against the order of the Tribunal quashing the order

passed under section 263 of the Act, the Revenue preferred further appeal before the Hon'ble Madras High Court and the matter has not attained finality and pleaded that the order of the Id. CIT(A) should be reversed.

5. On the other hand, the Id. Counsel for the assessee strongly supported the order passed by the Id. CIT(A).

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessment order passed under section 143(3) of the Act was quashed by passing order under section 263 of the Act holding that the assessment is erroneous and prejudicial to the interest of Revenue. Based on the directions of the Id. CIT vide his order under section 263 of the Act, the Assessing Officer passed assessment giving effect to order under section 263 of the Act. On appeal, the Id. CIT(A) has observed as under:

“4. I have gone through the giving effect to order, the grounds raised by the appellant and the order of the ITAT cited supra. After going through the same, in as much as the order passed by the CIT u/s. 263 itself had been quashed, the order giving effect to passed by the AO have no legs to stand. Hence, the instant order, passed by the AO is hereby becomes infructuous. This ground of appeal is therefore allowed.”

We find that the above findings of the Id. CIT(A) is duly fortified by the order of the Mumbai Benches of the Tribunal in the case of ACIT v. Sweet Industries Ltd. in I.T.A. No. 776/Mum/2010 dated 22.10.2010 for the assessment year 2004-05. Further, the Id. DR could not furnish any order of

higher forum having reversed the order passed by the Tribunal in quashing the order passed by the Id. CIT under section 263 of the Act. Under the above facts and circumstances, we find no infirmity in the order passed by the Id. CIT(A) and thus, the ground raised by the Revenue stands dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 31st January, 2018 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 31.01.2018

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रतिलिपि/DR & 6. गाडाफाईल/GF.