

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.1583/Mds/ 2016

निर्धारण वर्ष /Assessment year : 2004-2005

House of Abraham Charitable
Trust,
Kodaikanal Christian College,
Kodaikanal.

Vs. The Income Tax Officer,
Ward I(1)
Dindigul.

[PAN AAATH 6569D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. T. Vasudevan, Advocate
: Shri. Sasikumar, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 10-10-2016

घोषणा की तारीख /Date of Pronouncement

: 28-10-2016

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee deiced against an order dated 04.03.2016 of Commissioner of Income Tax (Appeals)-2, Madurai, it has altogether raised twelve grounds of which grounds one and twelve are general needing no adjudication.

2. Through its grounds 2 to 6 assessee assails the re-opening of assessment done for the impugned assessment year.

3. Facts that can be gathered from the assessment order are that assessee had filed a return for the impugned assessment year on 17.08.2007. Though it is not so stated explicitly in the assessment order, it seems the said return was processed u/s.143(1) of the Act. On 27.03.2010, the Assessing Officer issued a notice u/s.148 of the Income Tax Act 1961 (In short the Act) seeking to re-open the assessment. Assessee requested the Assessing Officer to treat the return originally filed by it as one filed in pursuance of the said notice. During the course of the re-assessment proceedings the Assessing Officer required the assessee to produce books of accounts, bills and vouchers for expenses, confirmation for loans, details of construction expenses etc. As per the Assessing Officer, assessee did not produce the books of accounts and had produced only the loan creditors confirmation, hostel maintenance details, trust account copy and self made vouchers for expenses. Further as per the Assessing Officer the trust was declined registration sought by it under Section 12AA of the Act by CIT vide his order No.C101/254/CIT-II/2008-09, dated 04.09.2009. The Id. Assessing Officer denied the exemption claimed by the assessee under section 11 and 12 of the Act and completed the re-assessment proceedings disallowing the claim of capital expenditure, charitable expenditure, building maintenance expenditure, hostel maintenance expenditure, miscellaneous

expenditure, annual day celebration expenditure, cost of library books and depreciation allowance.

4. Aggrieved assessee moved in appeal before Commissioner of Income Tax (Appeals). As per the assessee, it had produced bills for capital expenditure claimed. According to it, they were prepared to produce supporting bills & vouchers for all other expenses as well. Further according to it depreciation was allowable since the assets were used and Accounting Standards as of Institute of Chartered Accountants of India, clearly mandated charge of deprecation. Assessee also stated that it had moved in appeal against the order dated 04.09.2009 declining such registration before this Tribunal.

5. The Id. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee held as under at para 7 of his order.

i) During the course of hearing alsp the appellant was not able to produce any vouchers for the capital and revenue expenses claimed.

ii) The appellant has not obtained registration under 12AA. Therefore, the question of application of Section 11 to 13 does not arise in the appellant's case as determined by the Assessing Officer.

iii) The appellant has been treated as AOP and their activity will have to be treated as business income

iv) The corpus and donation claimed will have to be disallowed

v) The Assessing Officer has to recompute the total income without allowing for any amount spent on capital nature and allow only revenue expenditure to the extent it is proved with evidence and vouchers. Since the appellant has not produced any vouchers even during appeal the revenue expenditure disallowed in the assessment order will stand confirmed.

However, Id. Commissioner of Income Tax (Appeals) held that even without a registration under section 12AA of the Act, assessee was entitled for depreciation on assets, since assets were used and subjected to wear and tear.

6. Now before us, Id. Authorised Representative strongly assailing the reopening submitted that assessee was not provided with the reasons for re-opening. According to him, the tenor of the assessment order did show that no reasons were recorded. Assessee was granted registration by Commissioner of Income Tax pursuant to Tribunal direction on 21.02.2011. As per the Id. Authorised Representative, by virtue of second proviso to Section 12AA(2) of the Act reopening cannot be done for any assessment year preceding the year of registration, only for non-registration. Thus according to him the re-opening done for the impugned assessment year was bad. While conceding that validity of re-opening was not questioned before the lower authorities by the assessee, Id. Authorised Representative submitted that it was a pure question of law going to the root of the

jurisdiction and could be raised any point of time. As per Id. Authorised Representative this Tribunal had in assessee's own case for assessment year 2003-04 and 2006-07 remitted the issue regarding validity of reopening to the Commissioner of Income Tax (Appeals) for adjudication on similar set of facts. Reliance was also placed on a decision of Kolkata Bench of this Tribunal in the case of *Sree Sree Ramkrishna Samity vs. DCIT (2015) 64 taxmann.com 330*.

7. Per contra, Id. Departmental Representative submitted that assessee had not raised any question regarding validity of reopening before any of the lower authority. Further according to him, the proviso relied on by the Id. Authorised Representative was not applicable in assessee's case.

8. We have perused the orders and heard the rival contentions. Assessee is questioning the validity of re-opening for the impugned assessment year. First para of the assessment order is very relevant in this regard.

" The assessee trust has belatedly filed a nil return for the assessment year 2004-2005 on 17.08.2007. IN the absence of 12AA registration the trust is not entitled to enjoy the benefit u/s.11 of the I.T. Act. Accordingly depreciation claim of rs.1571797/- have to be disallowed. In view of the above, I have reason to believe that income chargeable to tax has escaped assessment. Based on that notice u/s.148 was issued on 27.03.2010. The assessee filed a reply in response to the notice and requested to treat the return already filed as in response to the notice issued u/s.148. The

case was taken up for scrutiny and the case was posted for hearing on 15.04.2010.

Assessing Officer has not clearly mentioned how the initial assessment was completed. It also indicate that reasons reopening was recorded in the assessment order for first time since the Assessing Officer has used the term "have" and not "had". Further for AY 2006-07, the Income Tax Officer (Exemptions) Madurai had clearly indicated that no reasons were recorded for that year before issuing notice u/s.147 of the Act, which is clear from para 8 of the order dated 24.08.2016 of this Tribunal in assessee's appeal for A.Y. 2003-04 and A.Y. 2006-2007 in ITA 2045 and 2046/Mds/2014, where also the reopening of assessment was assailed. Said para is reproduced hereunder:-

'8. We have heard both the parties and perused the material on record. Admittedly, these assessments were reopened u/s.147 of the Act. Recording of reasons is prime important before issuing notice u/s.148 of the Act, which was not done by the AO. The assessee filed a copy of letter dated 2.11.2015 for the AY 2006-07 issued by the ITO(Exemptions), Madurai stating that there is no reasons recorded before issuing notice u/s.148 of the Act, which reads as follows :

*"To
Senior Authorised Representative,
"A" Bench,
Income tax Appellate Tribunal,
II floor, "B" Block,
Besant Nagar,
CHENNAI – 600 090 .*

Sir,

*Sub: Assessee appeal before ITAT – in the
case of M/s. House of Abraham*

*Charitable Trust, Kodaikanal,
A.Y. 2006- 07 – submission of details – reg*

*Ref: Letter in ITAT No.2046/2014-A.Y.2006-
07 Dt. 09.09.2015*

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Please refer to the above.

It is seen from the record there is no reason recorded in the order sheet for issuing of Notice u/s.148 by the assessing officer. However, during the assessment proceedings the assessing officer has mentioned that the trust is not granted u/s.12A for the assessment year 2006- 07 vide Commissioner of Income tax-II C.No.101/254/CITII/2008-09 Dt. 04.09.2009. The assessing officer has treated the income in AOP status, and passed the assessment order accordingly.

I am furnishing herewith the copies of Order sheet noting in the above case for the assessment year 2006-07 containing six pages.

Yours faithfully,

*Sd/-
(P.Raveendran)
Income-tax Officer (Exemptions),
Madurai.”*

The Tribunal had set aside the issue regarding validity of re-opening for AY 2006-2007 as well as 2003-2004, though in the latter year there was no admission by ITO (exemption) similar to the one given by him for AY 2006-2007. Relevant para 8.1 of the above order of the tribunal is reproduced hereunder:-

“8.1 No such letter was filed for the A.Y. 2004-05. In our opinion, since this issue is raised before us for the first time, all materials relating to reopening of assessment is required to be examined by the authorities concerned. Hence, it is appropriate to remit the issue of reopening to the file of the CIT(Appeals) for fresh consideration, as he has no occasion to examine the materials. Accordingly, this issue is remitted back to the file of the CIT(Appeals) for his adjudication. Since, we have not dealt with the legal issue, at this stage, we refrain from going to the other grounds raised by the assessee”.

9. The fact situation for impugned assessment year is similar to that for assessment year 2003-04. Considering the above ruling of the Co-ordinate Bench and also the judgment of Hon'ble Apex Court in the case of *NTPC vs. CIT (229 ITR 383)* we are of the opinion that the question regarding validity of re-assessment can be raised by the assessee even at appellate stage. We are therefore giving direction similar to those given by the Co-ordinate bench at para 8.1 of its order dated 24.08.2016 for A.Y. 2003-04 and 2006-07 in ITA no.2045 & 2046/Mds/2014 reproduced by us at para eight above. All other issues raised by the assessee are kept open.

10. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on Friday, the 28th day of October, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:28th October, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |