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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.517 of 2019

Shri Chandraprabhuji Maharaj Jain
Juna Mandir Rust, 345, Mint Street
Sowcarpet, Chennai 600079
PAN No.AACTS6101J ... Appellant

- Vs -

The Deputy Commissioner of Income Tax
(Exemptions)-II, Chennai ... Respondent

Prayer : Appeal under Section 260A of the Income Tax Act, 1961, against the order dated 13.02.2017 passed by the Income Tax Appellate Tribunal "B" Bench, Chennai in I.T.A.No.2379/Mds/2016.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.J.Narayanaswamy, Senior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

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This appeal under Section 260A of the Income Tax Act, 1961 ('the Act') is directed against the order dated 13.02.2017 passed by the Income Tax Appellate Tribunal "B" Bench, Chennai (hereinafter referred to as 'Tribunal') in I.T.A.No.2379/Mds/2016, for the assessment year 2008-09. The appeal has been filed raising the following substantial questions of law.

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"1. Whether the Appellate Tribunal is correct in law in not admitting the appeal filed belatedly even though the powers vested with them were discretionary in nature so as to consider the reasonable cause shown for the belated filing of the said appeal in passing the order of admission as well as passing the order on merits?

2. Whether the Appellate Tribunal is correct in law in not admitting the appeal filed belatedly in overlooking the principles/law laid down by the Apex Court in the case reported in 167 ITR 471 while recording perverse / irrelevant findings in para 4 of the impugned order?

3. Whether the Appellate Tribunal in correct in law in not admitting the appeal filed belatedly even after noticing the wrong order passed by the First Appellate Authority in not recognizing his power to entertain Form No.10 as per Section 11(2) of the Act to grant deemed application of income in the tax exemption computation u/s 11 of the Act?."

2. The assessee is a Trust, which has established and administering a temple, where persons from a particular community offer worship. In the assessment year 2008-09, the assessee filed return of income on 02.04.2009, which was processed by issuance of an intimation dated 21.01.2011 under Section 143(1) of the Act. After about two months, the assessee filed a petition under Section 154 of the Act, stating that on verification of the intimation under Section 143(1), it was noticed that a mistake has crept in viz., the assessee

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Trust had not filed Form No.10 along with the extract of the Board Resolution dated 29.03.2008 for accumulation of finds to the extent of Rs.10,00,000/- for the specific purpose of construction of a temple at the property at No.370, Konnur High Road, Chennai 600012 as envisaged under Section 11(2) of the Act, which in turn permits the assessee not to include the said income for taxation purposes.

3. According to the assessee, they had excluded the said sum from taxation and the same is permissible under law. The assessee further stated that they intimated about the same vide their letter dated 01.04.2019 along with the enclosures comprising of Form No.10 and Board Resolution, while filing the return of income for the assessment year 2008-09 on 02.04.2009. It was stated that since the matter was omitted to be taken cognizance and being a mistake apparent from records, requested that the assessment be revised under Section 154 of the Act. The Deputy Director of Income Tax (Exemptions)-II, by an order dated 28.03.2011, rejected the request made by the assessee, holding that the return filed by the assessee was not accompanied with Form No.10 and Board Resolution, and even if the Board Resolution with Form No.10 has been enclosed with the return, such filing would have been beyond time under Section 139(9), which prescribes the time limit, and the return having been filed only on 02.04.2009 beyond the time limit allowable under Section 139(9), the belated filing of Form No.10 cannot be accepted and consequently, there is no mistake apparent from the record and the assessee cannot be allowed for accumulation of income under Section 11(2).

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4. The assessee filed an appeal before Commissioner of Income Tax Appeals-XII, Chennai (hereinafter referrected to as 'CIT(A)'). The appeal was dismissed by an order dated 19.12.2012, holding that the non-furnishing of statutory Form No.10 before due date for filing the return, which is a compulsory requirement to claim accumulation of income for future use, is an "incorrect claim" falling within the ambit of Explanation -(a)(iii) to Section 143(1) and the same becomes a required adjustment to be made under Section 143(1) of the Act, within the meaning of Section 143(1)(a)(ii). The Assessing Officer is duty bound to examine such claims and make necessary adjustments wherever the claims are incorrect claims apparent from any information in the return. The CIT (A) held that the Assessing Officer has rightly disallowed the assessee's claim of accumulation in the absence of statutory Form No.10 filed within the due date. The assessing Officer's determination of shortfall in applying 85% of income for the objects of the Trust, as prescribed u/s 11(1) of the Act, is as per the law and justified. The assessee did not prefer an appeal against this order before the Tribunal, within the statutory period of limitation, and the appeal was out of time by nearly 3½ years.

5. In the appeal, the assessee, apart from seeking for condonation of delay, contended that Form No.10 filed by the assessee when the assessment proceedings were in progress and the assesee ought to have been allowed the accumulation of income under Section 11(2) of the Act. The Tribunal, did not examine the merits of the matter, as it was satisfied that the delay of more than 3½ years remained unexplained and the assessee was not in a position to give any satisfactory explanation and accordingly, dismissed the appeal, by the impugned order. The assessee filed the present appeal before this Court as against the said

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order and this appeal is also filed with a delay of 427 days. By our order dated 21.06.2019, we condoned the delay on the ground that we did not want to non-suit the assessee Trust on technicalities and accordingly the appeal was numbered.

6. We have heard Mr.A.S.Sriraman, learned counsel for the appellant and Mr.J.Narayaswamy, learned Senior Standing Counsel, for the respondent.

7. Admittedly, the statute does not prescribe any time limit for filing statutory Form No.10. This aspect of the matter was considered by the Honourable Supreme Court in **"CIT -Vs- Nagpur Hotel Owners Association (247 ITR 201)"** . In the said decision, it was pointed out that it is necessary that the Assessing Officer must have information as required under Rule 17 by furnishing Form No.10 and this information should be available with the Assessing Officer at the time when he completes the assessment and in the absence of any such information, it will not be possible for the Assessing Officer to give the assessee, the benefit of such exclusion and once the assessment is complete, it would be futile to find fault with the Assessing Officer. Further, it was pointed out that even assuming that there is no valid limitation prescribed under the Act and Rules, yet it is reasonable to presume that the intimation required under Section 11 has to be furnished before the Assessing Officer completes the concerned assessment, because such requirement is mandatory and without the particulars of the assessee's income, the Assessing Officer cannot entertain the claim of the assessee under Section 11 and therefore, compliance of the requirement o fthe Act will have to be any time before the assessment proceedings are completed. The ultimate decision

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went in favour of the Revenue. Yet, we take note of the findings rendered in the decision, stating that before completion of the assessment, the information should be made available to be Assessing Officer.

8. As noted by us earlier, the assessee filed the return of income for the assessment year under consideration on 02.04.2009, which was processed and intimation under Section 143(1) of the Act was issued on 21.01.2011. Thus, there was no assessment under Section 143(3) of the Act. The assessee, while filing the petition under Section 154 of the Act, on 22.03.2011, pointed out that the assessee filed the Form No.10 along with the Board Resolution along with the covering letter dated 01.04.2019. However, the mistake done by the assessee was to file hard copies before the Assessing Officer, and not filing the same along with the return of income, which they filed on 02.04.2019. Thus, on the date when the return was taken up for assessment, there was record to show that the assessee had intimated the department about the resolution passed by the Board of the assessee Trust and the statutory Form No.10. Admittedly, the assessment was not completed under Section 143(3) of the Act and therefore, there would have been no error had the assessing officer taken up the copy of the Board Resolution and Form No.10. Thus, on the date when the return was filed, the assessee had separately filed Form No.10 along with the Board Resolution along with a covering letter dated 01.04.2009. Thus, in our considered opinion, when the assessee was entitled to a statutory benefit, it would be incumbent upon the concerned authority to examine the admissibility of the benefit than to foreclose the assessee on technicalities.

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9. In **"CIT -Vs- Sakal Relief Fund (295 CTR 561) Bom",** it was held that even if the Form No.10 is filed during the re-assessment proceedings, the benefit of accumulation under Section 11(2) of the Act is available. So also, the time allowed in Rule 17 of the Rules for furnishing the form before the expiry of time to file the return of income under Section 139(1) of the Act get extended to include the time within which a return of income could be filed under Section 139(4) of the Act. It was held that filling of Form No.10 during re-assessment proceedings is filing of the same within the time allowed for furnishing the return of income under Section 139(4) of the Act.

10. In **"CIT -Vs- AKS Alloys Pvt Ltd (18 Taxmann.com 25 Mad)",** it was held that for claiming deduction under Section 80-IB, audit report in Form 10CCB can be filed before the assessment is completed, if the same has not been filed along with the return of income. In arriving at such a decision, the Court referred to the decisions cited below.

- **CIT -Vs- Ace Multitaxes Systems (P) Ltd., (2009) 317 ITR 2017 (Kar.)**
- **CIT -Vs- Contimeters Electricals (P) Ltd., (2009) 317 ITR 249 (Del.)**
- **CIT -Vs- A.N.Arunachalam (1994) 208 ITR 481 (Mad.)**
- **CIT -Vs- Jayant Patel (2001) 248 ITR 199 (Mad.)**
- **CIT -Vs- Shivanand Electronics (1994) 209 ITR 63 (Bom.)**
- **Zenith Processing Mills -Vs- CIT (1996) 219 ITR 721 (Guj.)**
- **CIT -Vs- Mahalaxmi Rice Factory (2007) 294 ITR 631 (Punj.&Har.)**
- **CIT -Vs- Berger Paints (India) Ltd., (2002) 254 ITR 503 (Cal.)**

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11. The decision in **"CIT -Vs- AKS Alloys Pvt Ltd (18 Taxmann.com 25 Mad)"** was affirmed by the Honourable Supreme Court in **"CIT -Vs- G.M.Knitting Industries Pvt Ltd., 376 ITR 456"**. Though the case arose out of non-filing of audit report in Form 10CCB to claim deduction under Section 80-IB of the Act, the ratio laid down in the decision squarely applies to the case on hand. Further, we note that the Central Board of Direct Taxes in Circular No.7/2018 [F.No.197/55/2018-ITA-I] dated 20.12.2018, had directed the Commissioner of Income Tax to condone the delay in filing Form No.10. However, in the said relief was granted only for the assessment year 2016-17. In a recent circular issued by the Central Board of Direct Taxes in Circular No.10[F.No.197/55/2108-ITA-I] dated 22.05.2019, the Board has directed the Commissioners to condone the delay in Form 10B for Charitable and Religious Trusts, for years prior to Assessment Year 2018-19.

12. After taking note of the above decisions, we are of the considered view that under the facts and circumstances of the case, more particularly when there was no assessment under Section 143(3) of the Act and the fact that the assessee has separately filed Form No.10 along with the Board Resolution, along with the covering letter dated 01.04.2009, it is a fit case where the assessing officer should be directed to take note of Form No.10 accompanied by the Board Resolution and take a decision on merits. As we have taken a decision on the assessee's entitlement to file Form No.10, the substantial questions of law, which have been framed by the assessee are not required to be answered and are left open.

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13. For the above reasons, the appeal is allowed and the order passed by the Tribunal as well as the CIT (A) are set aside and the order passed by the Deputy Director of Income Tax (Exemptions)-II dated 28.03.2011 is also set aside. The authority is directed to take note of the Form No.10 and the Board Resolution and take a decision on merits and in accordance with law. No costs.

(T.S.S.J.) (V.B.S.J.)
26-07-2019

KST

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order

To

1. The The Deputy Commissioner of Income Tax
   (Exemptions)-II, Chennai

2. Income Tax Appellate Tribunal "B" Bench,
   Chennai.

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T.S.SIVAGNANAM, J.
AND
V.BHAVANI SUBBAROYAN, J.

(KST)

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