IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 34903 of 2011 (K)

PETITIONER :

JANATHA CHARITABLE SOCIETY
VELLUR (P.O.), PAYYANNUR, KANNUR
PIN -670 307
REPRESENTED BY ITS SECRETARY SRI. E. BHASKARAN

BY ADV. SRI.S.ARUN RAJ

RESPONDENT(S) :
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1. COMMISSIONER OF INCOME TAX
   MANACHIRA, CALICUT – 673 001.

2. DEPUTY COMMISSIONER OF INCOME TAX
   CIRCLE I, KANNUR RANGE, KANNUR – 670 001.

3. CHIEF COMMISSIONER OF INCOME TAX
   COCHIN – 682 018.

R1 TO R3 BY ADV. SRI.JOSE JOSEPH, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 34903 of 2011 (K)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	COPY OF THE CONSTITUTION AND THE BYE LAW OF THE PETITIONER SOCIETY.
EXT.P2		COPY OF THE ORDER DATED 15-12-2009 PASSED UNDER SECTION 12AA(3) PASSED BY THE COMMISSIONER OF INCOME TAX, KANNUR.
EXT.P3		COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER SOCIETY BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN.
EXT.P4		COPY OF THE ORDER DATED 28-6-2011 PASSED BY THE HON'BLE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COHIN IN EXHIBIT P-3 APPEAL.
EXT.P5(a)		COPY OF THE RE-ASSESSMENT ORDER DATED 4-11-2011 UNDER SECTION 147 OF THE INCOME TAX ACT PASSED BY THE 2ND RESPONDENT FOR THE AY'S 2003-04.
EXT.P5(b)		COPY OF THE RE-ASSESSMENT ORDER DATED 4-11-2011 UNDER SECTION 147 OF THE INCOME TAX ACT PASSED BY THE 2ND RESPONDENT FOR THE AY'S 2004-05.
EXT.P5(c)		COPY OF THE RE-ASSESSMENT ORDER DATED 4-11-2011 UNDER SECTION 147 OF THE INCOME TAX ACT PASSED BY THE 2ND RESPONDENT FOR THE AY'S 2005-06.
EXT.P5(d)		COPY OF THE RE-ASSESSMENT ORDER DATED 4-11-2011 UNDER SECTION 147 OF THE INCOME TAX ACT PASSED BY THE 2ND RESPONDENT FOR THE AY'S 2006-07.
EXT.P5(e)		COPY OF THE RE-ASSESSMENT ORDER DATED 4-11-2011 UNDER SECTION 147 OF THE INCOME TAX ACT PASSED BY THE 2ND RESPONDENT FOR THE AY'S 2007-08.
EXT.P5(f)		COPY OF THE RE-ASSESSMENT ORDER DATED 4-11-2011 UNDER SECTION 147 OF THE INCOME TAX ACT PASSED BY THE 2ND RESPONDENT FOR THE AY'S 2008-09.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

C.K. ABDUL REHIM, J.

W.P.(C)No.34903 of 2011

Dated this the 7th day of January, 2015

JUDGMENT

Ext.P5 series orders of assessment issued under Section 143(3) read with Section 147 of the Income Tax Act, is under challenge in this writ petition. The petitioner society was granted registration under Section 12 A of Income Tax Act with effect from 30/11/1982 and assessments for the subsequent years were finalised by granting exemption from payment of Income Tax, under Section 11 of the Act. Consequent to amendment brought with respect to the definition of charitable purpose, by virtue of Finance Act 2008 with effect from 01/04/2009, the 1st respondent had cancelled the registration of the petitioner society granted under Section 12A, with retrospective effect from the assessment year 2003-2004 onwards, by virtue of Ext.P2 proceedings. Ext.P2 order was subjected to challenge before the tribunal in appeal. In

Ext.P4 order the tribunal held that the cancellation of registration with retrospective effect is not sustainable and that the cancellation can be treated as valid only on a prospective basis from the assessment year 2009-2010 onwards. Despite Ext.P4 order passed by the tribunal the reopened assessment for the years 2003-2004 to 2008-2009 were finalised through Ext.P5 series orders impugned herein. It is specifically stated in Ext.P5 series orders that the department has not accepted Ext.P4 order and the Chief Commissioner of Income Tax was authorised for filing appeal before the High Court. Therefore the assessments were finalised as if the society is not entitled for exemption under Section 11.

2. It is submitted that Ext.P4 order of the tribunal was challenged in appeal by the revenue before this court in ITA No. 193/2011. It is further submitted that the said appeal was dismissed by this court through judgment dated 22/2/2012. The above fact is not disputed by learned Standing Counsel appearing for the respondents.

3. In view of the fact that cancellation of exemption for the period up to 2009-2010 stands set aside and confirmed in appeal by this court, the impugned assessments cannot be sustained, because the petitioner society was enjoying exemption under Section 11. Therefore the impugned orders are liable to be quashed.

In the result, the writ petition is allowed and Ext.P5 series orders of assessment are hereby quashed.

Sd/- **C.K. ABDUL REHIM**
JUDGE

MJL