THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.21534 OF 2002

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed seeking to declare the action of respondent in proposing to levy professional tax and penalty on the petitioner-society and the institutions run by it, as illegal and arbitrary and consequently, to direct the respondent to withdraw the impugned notices, dated 24.05.2002.

Petitioner is a Society established in the year 1940 running several institutions in its campus viz., primary school, high school for boys, high school for girls, junior college for boys, junior college for girls, high school (English Medium) and degree college. The respondent – Deputy Commercial Tax Officer and Professional Tax Officer, Narayanaguda Circle, has issued notices, dated 24.05.2002, demanding professional tax and penalty under the provisions of Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 (for short, 'the Act') for the tax periods from 1996 – 97 to 2002 – 03, treating the petitioner-society and each of its schools and colleges as separate units.

In this Writ Petition, it is the case of the petitioner that it was already registered under Section 6(1) of the Act to collect professional tax from the assessees, who are employed in the institutions run by it, and hence, it could not be treated as separate unit for the purpose of charging professional tax. It is also the case of the petitioner that all the schools and colleges run by it are in one campus and as such, they cannot be treated as separate units. It is also the case of the petitioner that the impugned notices were issued for the tax periods from 1996 – 97 to 2002 – 03, but under the provisions of the Act and the Rules made thereunder, the respondent has authority only to assess tax within a period of four years from the expiry of the assessment year.

At the stage of admission, this Court, by order, dated 07.11.2002, passed in W.P.MP.No.26972 of 2002, granted stay of all further proceedings including recovery of amount on condition of petitioner depositing 30% of the demanded amount within a period of four weeks. Though the Writ Petition is of the year 2002, no counter affidavit is filed.

Under the provisions of the Act, if the returns are not filed and tax is not paid, the respondent is empowered to make assessment demanding tax and penalty, by giving reasonable opportunity. From a perusal of the impugned notices, it is clear that neither prior notice nor an opportunity is given to the petitioner before determining the tax. Further, under Section 8 (2) of the Act, the amount of tax due from any assessee shall be assessed within four years from the expiry of the assessment year. The word 'year' is defined under Section 2 (o) of the Act, which means 12 months ending on the 31st day of March. In view of the said definition of 'year' coupled with the provision under Section 8 (2) of the Act, it is the case of the petitioner that the demand relating to some of the years in the impugned notices was barred by limitation.

In view of the fact that the impugned notices are not preceded by any show-cause notice or opportunity, and as no counter is filed before this Court, we are of the view that it is a fit case to treat the impugned notices as show-cause notices and permit the petitioner to file objections, so as to consider the same before passing orders for collecting tax and penalty, if any.

For the aforesaid reasons, impugned notices, dated 24.05.2002, shall be treated as show-cause notices and the petitioner shall file objections within a period of four weeks from today. On filing such objections or after expiry of four weeks from today, it is open to the assessing authority to pass appropriate orders by considering the matter afresh. It is made clear that the amount which was already deposited by the petitioner pursuant to the order of this Court, dated 07.11.2002, shall be subject to the final orders to be passed by the assessing authority. It is needless to observe that it is open to the petitioner to raise all the objections with regard to levy of penalty.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 10, 2015
MD