IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVANGNANAM

W.P.No.34580 of 2015 and
M.P.No.1 of 2015

Shiri Anand Rishi Jain Society,
Rep. By its Secretary,
Mr.M.Ganapathiraj Surana
Chennai - 600 045. ... Petitioner

Vs

1.The Chief Commissioner of Income Tax - III,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2.The Income Tax Officer Ward -I(4),
West Tambaram, Chennai - 600 045. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records of the first respondent No.CCIT-3/10(23C)/2015-16 dated 30.09.2015 and quash the same and further direct the first respondent to grant exemption under Section 10(23C)(vi) of the Income Tax Act for the assessment year 2014-15.

For Petitioner : Mr.J.Naresh Kumar

For Respondents: Mr.T.Pramodkumar Chopda,
Senior Standing Counsel

ORDER

Heard Mr.J.Naresh Kumar, learned counsel for the petitioner and Mr.T.Pramodkumar Chopda, learned Senior Standing Counsel for the revenue and with the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is a registered Society under the provisions of the Societies Registration Act and they are running a school since 1977. The petitioner is an assessee on the file of the second respondent and they were filing income tax regularly and claiming exemption under Section 10(22) of the Income Tax Act 1961 (hereinafter referred to "the Act"), as the society is established solely for educational purpose, without profit motive.

3.The petitioner had filed their return of income for the assessment year 2009-2010, in time. But, Form No.56D was filed on 01.10.2009, with a delay of one day before the Chief Commissioner of Income Tax - III. This application was rejected holding that there is no power to condone the delay. This order was put to challenge by the petitioner in W.P.No.33485 of 2012 and the Court directed that the one day delay to be condoned.

4.The Revenue preferred an appeal against the said order in W.A.No.31 of 2015 which was also rejected thereby confirming the order in the writ petition. So far as the assessment years 2011-2012, 2012-2013, 2013-2014, the petitioner filed W.P.Nos.4272, 8637 & 28830 of 2014 and the said writ petitions were allowed by a common order dated 02.12.2014 and the matters were remanded back to the first respondent for fresh consideration, pursuant to the order passed in W.P.No.33485 of 2012 dated 07.11.2014. It is submitted that pursuant to such order, now the matters are pending before the first respondent for consideration.

5.In the instant case, the order which is impugned is identical to that of the order passed by the first respondent for the assessment years 2011-2012, 2012-2013 & 2013-2014 which were subject matter in W.P.Nos.4272, 8637& 28830 of 2014 dated 02.12.2014. Therefore, the learned counsel for the petitioner submits that the present writ petition is also squarely covered by the earlier order passed for the said assessment years.

6.The said contention raised by the learned counsel for the petitioner is not disputed by the learned Senior Standing Counsel for the Revenue. In the said order in W.P.Nos.4272, 8637& 28830 of 2014 dated 02.12.2014, the Court has taken into consideration the other contentions as well and disposed of the writ petitions on the following terms:-

> "11.Thus, though there has been an exercise made by the first respondent to reject the object of the Society, yet, the larger issue which prevailed upon the authority was with regard to the orders of rejection passed during the earlier years. As observed earlier for the assessment year

> 2009-10, already the Writ petition has been allowed and the matter has been remanded to the first respondent for the fresh consideration. In the light of the same, this Court is of the view that the impugned orders in these three Writ Petitions also calls for interference and to be remanded to the first respondent for fresh consideration in accordance with law. However, so far as the claim made by the petitioner with regard to the assessment year 2010-11 is concerned, the same cannot be acceded to, since the petitioner has not been able to establish before this Court that there was a valid application filed before the competent authority.
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> 12.In the result, the Writ Petitions allowed, the impugned orders are set aside and the matter is remanded to the first respondent for fresh consideration along with the application filed by the petitioner for the assessment year 2009-2010, which has been remanded for fresh consideration pursuant to the orders in W.P.No.33485 of 2012 dated 07.11.2014. It is made clear that this Court has not considered the legal issue as to the effect of the newly inserted objects to the society, as to whether they would satisfy the requirement for grant of approval under Section 10(23C) of the Act and it is open to the petitioner to canvass all points before the first respondent and the first respondent shall consider the same in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed."

7.In the light of the submissions made on either side, following the earlier orders passed in W.P.Nos.4272, 8637& 28830 of 2014 dated 02.12.2014, this writ petitions is also allowed and the impugned order is set aside and the matter is remanded to the file of the first respondent for fresh consideration along with the applications filed by the petitioner for the assessment years 2009-2010, 2011-2012, 2012-2013 & 2013-2014, which have been already remanded for fresh consideration. It is made clear that this Court has not considered the legal issue as to the effect of the newly inserted objects to the society, as to whether they would satisfy the requirement for grant of approval under Section 10(23C) of the Act and it is open to the petitioner to canvass all points before the first respondent and the first respondent shall consider the same in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2.The Income Tax Officer Ward -I(4),
West Tambaram, Chennai - 600 045.

+1cc to M/S.T.Pramodkumar Chopda, Senior Standing Counsel Sr.52007
+1cc to M/S.J.Nareshkumar, Advocate Sr.51947

W.P.No.34580 of 2015

cp[co]
srg 26/10/2016