IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P. No.22955 of 2016

Jawaharlal Shanmugam .. Petitioner

-vs-

1.The Director General of Income Tax
(Investigation), Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2.The State of Tamilnadu,
rep. By The Principal Secretary,
Dept. of Health and Family Welfare,
Secretariat, Fort St. George,
Chennai 600 009.

3.The Secretary,
Medical Council of India,
Pocket 14, Sector 8, Dwarka Phase 1,
New Delhi 110 077.

4.The Secretary,
University Grants Commission (UGC)
Bahadur Shah Zafar Marg,
New Delhi 110 002. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the respondents to consider the following with regard to private medical and engineering institutions including deemed Universities in Tamil Nadu - A. All charitable educational institutions i.e. private medical and engineering institutions including deemed Universities in Tamil Nadu should furnish the complete details of their financial statements in their official website including all schedules to exhibit their financial transparency. Equally their annual report should contain the complete financial statements and put in public domain; B. Grant of exemption of income tax should be revoked by the IT department (Respondent 1), should the department find serious violations of rules and regulations. The IT department should report any adverse findings in their investigation to the regulators for their suitable actions; C. Based on the above, the Government of Tamil Nadu (Respondent 2) should cancel/revoke the Essentiality Certificate / No Objection Certificate accorded to any private educational institution i.e. private medical and engineering institutions including deemed Universities in Tamil Nadu and take over the complete functioning under its control or close the institution.

For Petitioner	:	Mr.Jawaharlal Shanmugam Party-in-person
For Respondents	:	Mr.Pramodkumar Chopda for R-1
	:	Mr.T.N.Rajagopalan Spl. Govt. Pleader for R-2

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The issue which was sought to be examined in the present petition is whether the benefit of charitable educational institution should continue by the Income-tax Department for the benefit of the institutions against whom, on investigation by the department itself, concealment of income is found or large amount of cash recovered during raids. Coupled with this issue is the question whether there should also be cancellation / revocation of the Essentiality Certificate / No Objection Certificate.

2.The counter-affidavit filed by the first respondent makes it clear that on the aforesaid eventuality arising, the cash is seized and the assessee is furnished with opportunity to participate in the proceedings and offer explanation on the documents recovered, more specifically in respect of the cash found, whereafter assessment would be made. On prima facie coming to the conclusion that there is concealment of income, the same is communicated to the approval granting authority, who, after giving reasonable opportunity of showing cause, is empowered to rescind the notification or withdraw the approval resulting in denial of exemption and consequent taxing of incomes at the hands of the institution at regular rates with consequential penal provisions. Naturally this is subject to the statutory appeals / revision remedies as also to the remedy before the High Court.

3.It has been categorically averred in para 7 of the counter that wherever the concealment of income was detected, exemption / approval granted under Section 10 (23C) and registration granted under Section 12 AA(3) are withdrawn and appropriate proceedings have been launched against the offending parties.

4.It has also been averred that de hors such rules, there is monitoring by the assessment authority, keeping in mind the observations of the Hon'ble Supreme Court in Queen's Educational Society vs. CIT, (2015) 372 ITR 699 (SC).

5.We may also note the oral submission of the learned counsel for the respondents that in some of the cases where such cancellation or withdrawal of exemption took place, the matters are pending before the High Court and there are interim orders operating against the department.

6.The aforesaid shows, in our view, the intent of the department to follow up the matter logically, but those would naturally be subject to the rights of the assessees to challenge the orders passed by the department and thus, no further directions can be passed in this matter.

7.Writ petition, accordingly, stands closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

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(Investigation), Mahatma Gandhi Road,
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University Grants Commission (UGC)
Bahadur Shah Zafar Marg,
New Delhi 110 002.

+1cc to Mr. T. Promodkumar chopta, Advocate, S.R.No.61758
+1cc to the Government Pleader, S.R.No.61927

scd(CO)
md (8/11/2016)

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