

In the High Court of Judicature at Madras

Dated: 19.12.2016

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.41038 of 2016
& WMP No.35043 of 2016

M/s.MLACO Vidyalaya Matriculation Higher
Secondary School,
rep. by its Trustee, Mr.C.Murugeswaran

.... Petitioner

Vs.

The Commissioner of Income-tax (Exemptions),
Chennai, Aayakar Bhawan,
Annexe III Floor,
121, Mahathma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

.... Respondent

PETITION under Article 226 of The Constitution of India
praying for the issuance of Writ of Certiorarified Mandamus
calling for the records in F.No.CIT(E)/No.3(17)/2015-16 dated
28.09.2016 relating to the Assessment Year 2015-16 on the file
of the respondent and quash the same and further direct the
respondent to grant the exemption sought under Section 10(23C)
(vi) of the Income Tax Act, 1961.

For Petitioner : Mr.P.Senthil Kumar
For Respondent : Mr.Joseph George

ORDER

1. This is a Writ Petition, which seeks to assail the order dated 28.09.2016, whereby, the petitioner's application for grant of exemption, under Section 10(23C)(vi) of the Income Tax Act, 1961, for the assessment year 2015-16, made on 29.09.2015, has been rejected.

2. A perusal of the impugned order would show that the said application has been, principally, rejected on two grounds: first, the petitioner has not been able to demonstrate as to

what its objects are; and second, that it runs solely for the purpose of education.

3. Notice in this petition was issued on 23.11.2016. Thereafter, the matter came up for hearing on 29.11.2016. Counter affidavit has not been filed by the respondent to date.

4. The record shows that the petitioner is an institution, i.e., a school, which is run under the aegis of a trust and that, the author of the trust is a company, by the name, The Madras Aluminium Company Limited (in short MALCO).

4.1. The petitioner, for this purpose, relies upon the trust deed dated 26.09.1986. It is the petitioner's case that the trust, set up by the MALCO, runs and manages the petitioner, i.e., the school.

5. Therefore, the stand of the petitioner before me, is that, the objects of the trust are, in fact, the objects of the petitioner.

5.1. The petitioner, for this purpose, relies upon the relevant clauses of the trust deed dated 26.09.1986, which set out the objects of the trust. In other words, it is the case of the petitioner that it has no objects, independent of the trust.

6. It appears that the respondent has not adverted to either this document, i.e., the trust deed or, this part of the petitioner's submission.

7. In these circumstances, in order to hasten the decision in the matter, I decline further time to the respondent to file a counter affidavit. Furthermore, since, the respondent has failed to deal with relevant material, clearly, the impugned order cannot be sustained.

8. Resultantly, the impugned order is set aside.

8.1. The Writ Petition is disposed of with a direction to the respondent to reconsider the application of the petitioner dated 29.09.2015.

8.2. The petitioner's authorised representative, for this purpose, will appear before the respondent on 04.01.2017 at 11.00 a.m. In case, the said date is not convenient to the respondent, the respondent, will have the liberty to fix another date, which will be proximate to the aforementioned date.

8.3. The petitioner will have the liberty to file additional documents, if necessary, to buttress its stand, for grant of exemption.

8.4. The respondent will, thereafter, pass a reasoned order. For this purpose, personal hearing will be accorded to the authorised representative of the petitioner.

9. Consequently, the connected Miscellaneous Petition shall stand closed. However, there will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Commissioner of Income-tax (Exemptions),
Chennai, Aayakar Bhawan,
Annexe III Floor,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1cc to Mr.J. Narayanan, Advocate, S.R.No.74281
+1cc to Mr.G. Baskar, Advocate, S.R.No.74094

(CO)
md(21/12/2016)

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