IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 625 OF 2018

The South Indian Education Society ....Petitioner

V/s.

Deputy Commissioner Income Tax (TDS, Circle 2(2)A and anr.) ....Respondents

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Mr. Madhur Agrawal i/by. Mr. Atual Jasani, Advocate for the petitioner.

Mr. Suresh Kumar, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 22ND MARCH, 2018.

P.C. :-

1. At the request of the Counsel, the petition itself is being disposed of finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the order dated 18th

December, 2017 passed by respondent no.1, the Assessing Officer under Section 197 of the Income Tax Act, 1961 (the Act). The impugned order rejects the petitioner's application dated 17th October, 2017 seeking nil tax deduction certificate under Section 197 of the Act for Assessment Year 2018-19.

3. The petitioner is a charitable organisation in the field of education in the possession of a valid registration as a charitable trust under Section 12AA of the Act. By a letter dated 17th October, 2017, the petitioner made its application under Section 197 of the Act claiming that since it is a charitable institution its income is exempted under Section 11 of the Act. Therefore, a Certificate for nil tax deduction at source under Section 197 of the Act be granted.

4. On 13th November, 2017 the Assessing Officer issued a show cause notice seeking to reject the petitioner's claim for nil tax deduction at source under Section 197 of the Act on the ground that its claim for

exemption under Section 10(23C)(iiiab) of the Act has been rejected for the earlier years. Thus, called upon the petitioner to show cause why its application for nil tax deduction certificate should not be rejected.

5. In response, the petitioner by its letter dated 20th November, 2017 pointed out to the Assessing Officer that their claim for nil deduction of taxes is on the basis of it being exempted under Section 11 of the Act and not under Section 10(23C)(iiiab) of the Act. It was specifically mentioned in the reply to the notice that no claim under Section 10(23C)(iiiab) has been made by the petitioner w.e.f. Assessment Year 2015-16 till date in view of amendment to that section.

6. Inspite of the above, the Assessing Officer by an order dated 18th December, 2017 rejects the petitioner's application on the ground that there is a legal dispute pending regarding the grant of exemption under Section 10(23C) of the Act. Therefore, holding that the benefit of Nil tax deduction under Section 197 of the Act cannot be

granted.

7. We find that the impugned order dated 18th December, 2017 has been passed without due application of mind. This is evident from the fact that, the petitioner's claim for nil tax deduction under Section 197 is based on it being assessed to nil tax under Section 11 of the Act and not under Section 10(23C) of the Act. Inspite of this aforesaid fact being specifically pointed out by the petitioner in its reply dated 20th November 2017 to the show cause notice, the impugned order makes no reference to the aforesaid submission and proceeds to confirm the notice dated 13th November, 2017. In the above view, the impugned order dated 18th December, 2017 is quashed and set aside.

8. Mr. Agarwal, the Learned Counsel appearing for the petitioner states that, a large amount of their receipts on which tax is deducted are received as interest on the deposits from banks. In the absence of Certificate being available before 31st March, 2018 a large quantum

of amount would be deducted as tax at source by the banks. This in turn would create difficulties to the petitioner in expending 85% of its total income for the Assessment Year 2018-19. Therefore, the Learned Counsel appearing for the petitioner, states that in view of the above urgency, they do not seek any personal hearing . In view of the aforesaid circumstances, the Assessing Officer is directed to dispose of the petitioner's application dated 17th October, 2017 as expeditiously as possible and in any case on/or before 28th March, 2018.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**