IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.11735 to 11740 of 2006
and WPMP Nos.13352 to 13357 of 2006

Annamalai University, rep. by its
Registrar, Sri Rathinasabathi,
Annamalai Nagar,
Chidambaram-608 002. ... Petitioner in all W.Ps.

Vs.

The Income Tax Officer,
Ward I (1), S.N.Chavady,
Cuddalore. ... Respondent in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the respondent in P.A.N. AAALO 0031F dated 07.02.2006 relating to the assessment years 1999-2000, 2000-01, 20001-02, 2002-03, 2003-04 & 2004-05 respectively.

For Petitioner : Mr.K.Sathish Kumar

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel

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C O M M O N O R D E R

Heard Mr.K.Sathish Kumar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent.

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2.The petitioner is a University, called Annamalai University and they are aggrieved by the notices issued by the respondent proposing to reopen the income tax assessment for the assessment years 1999-2000 to 2004-05. Though several grounds have been raised by the petitioner in the affidavit filed in support of the writ petitions, which have been dealt with in the counter affidavit filed by the respondent, on account of certain subsequent developments, there may not be any necessity for this

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Court to adjudicate into the issues raised by the petitioner. This is so because, the petitioner/University has been taken over by the Government, pursuant to the Annamalai University Act, 2013 (Tamil Nadu Act, 20 of 2013) and from the date of commencement of the said Act, the petitioner/University established under the Annamalai University Act, 1928, shall be deemed to have been established and incorporated under the Act 20 of 2013. The entire administration of the University is now governed by the 2013 Act. Therefore, it is the Registrar or the Competent Authority, who is entitled to deal with subject matters under the 2013 Act should be the person, who has to prosecute the matter further.

3.Admittedly, the petitioner has approached this Court at the stage of issuance of notice under Section 148 of the Income Tax Act, 1961, (hereinafter referred to as "the Act"). In response to the impugned notice, the petitioner sent a reply dated 09.03.2006, stating that they had the benefit of exemption under the Indian Income-tax Act, 1922, by notification dated 23.11.1946. However, the copy of such exemption has not been placed in the typed set of papers filed along with the writ petitions. Therefore, this Court is unable to appreciate as to what is the effect of such exemption and whether it will enure in favour of the petitioner eternally. Prima facie it appears that even if such exemption was available, it may not have been an exemption for ever, more particularly, when the University has now been taken over by the Government pursuant to the Tamil Nadu Act, 20 of 2013.

4.So far as the exemption under Section 10(23C)(vi) of the Act is concerned, the petitioner/University themselves would admit in their letter dated 09.03.2006, that they have applied for such exemption and final orders are awaited.

5.The counter affidavit filed by the respondent stated that till date, no exemption as such under Section 10(23C) of the Act has been granted and it is only after issuance of the impugned notice, the petitioner has made an application for such exemption and even for considering such an application of exemption, documentary evidence is required to support their claim among other things. The other contentions raised by the petitioner have also been dealt with by the respondent in their counter affidavit. In any event, in terms of the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltdv v. ITO reported in (2003) 259 ITR 19, the guidelines have been prescribed as to what procedure the assessee has to adopt on being served with a notice under Section 148 of the Act.

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6.In terms of the said decision, the assessee is entitled to seek reasons for reopening of the assessment and if such request is made, the assessing officer is bound to furnish the reasons for reopening and on receipt of the reasons for reopening, the petitioner is entitled to submit their objections, which have to be dealt with by the assessing officer and an order has to be passed thereof. It is thereafter open to the assessee to question the order, if they are so advised. Therefore, the present writ petitions are premature in the sense that the petitioner has not sought for the reasons for reopening of the assessment.

7.Thus, for the above reasons, this Court is inclined to dispose of the writ petitions with the following direction:-

The petitioner/University through the competent authority in terms of Tamil Nadu Act 20 of 2013 is directed to address the respondent requesting for reasons for reopening and the respondent is directed to furnish the reasons for reopening giving sufficient time to the petitioner/University to submit their objections to the reopening proceedings. On receipt of the objections, the respondent shall consider the same and pass a speaking order on merits and in accordance with law and communicate the same to the petitioner. Since the petitioner has been granted an order of interim injunction, which has been remained in force from 26.04.2006, the same shall continue till the above direction/procedures is complete. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

abr

To

The Income Tax Officer,
Ward I (1), S.N.Chavady,
Cuddalore.
+1 cc to Mr.K.Sathish kumar Advocate sr 285

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