IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.11494 & 11495 of 2012

P.T.Lee Chengalvaraya Naicker Trust
Rep.by its Secretary Mr.J.R.Sadasivam ...Petitioner

--Vs--

1. The Director of Income Tax (Exemptions)
   Ayakar Bhavan, Annex III Floor
   121, Mahatma Gandhi Road
   Chennai-600034
2. The Joint Commissioner of Income Tax (OSD)
   (Exemptions) II, Chennai-600034 ...Respondents

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Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, calling for the records of the 1st respondent herein in Proceedings No.DIT(E) No.26(25)/10-11 & No.DIT(E) No.26(1)/10-11 and quash the order dated 15.12.2011 for the assessment year 2008-09 & 2009-10 and further direct the 1st respondent herein to condone the delay in filing Form 10, and treat the income accumulated as having been done in accordance with sec.11(2) of the Income Tax Act.

For Petitioner : Ms.J.Sree Vidya

For Respondents: Mr.J.Narayanaswami
Senior Standing Counsel

O R D E R

The petitioner, a charitable Trust, has challenged two orders passed by the Director of Income Tax (Exemptions)/R1, passed in terms of Section 119(2)(b) of the Income Tax Act, 1961 ('Act'), rejecting the application for condonation of delay in accumulation of income in respect of financial years 2007-08 and 2008-09 relating to assessment years 2008-09 and 2009-10 respectively.

2. The petitioner is a Trust that was constituted under Will dated 04.10.1870 of one Lt.P.T.Lee Chengalvaraya Naicker. The objective of the trust are stated to be the dissemination of industrial education, running of orphanages, school and hospitals on charitable basis for the down trodden and sick.

3. The petitioner has been granted an exemption under Section 12AA of the Act that is stated to be current. While this is so, there was certain disputes that arose with regard to the functioning of the Trust and consequent litigation. By judgment dated 01.04.1999, in an Original Suit filed before this Court, a Scheme Decree was formulated. The Scheme Decree was challenged in OSA.Nos.115 and 144 of 1999 and 14 of 2001. By judgment dated 12.03.2002, the Scheme was settled by a Division Bench of this Court, a Board of Trustees constituted, headed by a retired Judge of this Court also appointed as ex-officio Chairman of the Trust. At the relevant point in time, the ex-officio Chairman was Mr.Justice K.M.Natarajan

4.The financial affairs of the Trust were being managed by M/s.C.Roy and Co., Chartered Accountants. In respect of the two assessment years in question, the accounts as well as all connected documents are stated to have been handed over for finalization to the Chartered Accountant, who had fallen sick and thereafter expired in October 2009. As a result, the Return of Income had not been filed within the due date. Necessary compliances for the purpose of accumulation of income for grant of exemption under Section 11 of the Act were also not pursued. The Trust, however, leaned counsel states came to be aware of this position only in October 2010.

5. Learned counsel for the petitioner states that the Trust was in the process of constructing a building to be utilised as school, polytechnic and engineering college. It had thus, resolved to accumulate its income for the aforesaid purposes, Rs.1.78 crores in financial year 2007-08 and Rs.1.92 crores in financial year 2008-09. All forms necessary for reporting the accumulation had been handed over to the Chartered Accountant, who had, as stated earlier, not filed the same before the authorities. Out of the accumulation sought in respect of the period 2007-08, an amount of Rs.1.34 crores is stated to have been spent in financial year 2008-09, as per the proposal.

6. Once the Secretary of the Trust had noticed the discrepancies and delays, a Resolution was once again passed and the requisite document in prescribed Form no.10 had been filed before the Director of Income Tax (Exemption)/R1 requesting condonation of delay in filing the Form and permission to accumulate the stated amounts for the subsequent five years. This application was filed on 26.11.2010.

7. R1 however, proceeded to dismiss the application vide the impugned orders dated 15.12.2011 being of the view that the delay has not been properly explained. He also states that the constitution of the Trust Board has itself changed and the Resolution dated 24.11.2010 had been passed by an entirely different set of Board members, who were not part of the Board during the relevant years.

8. Aggrieved by the aforesaid order, the petitioner has filed the present writ petition.

9. The respondent has filed a counter wherein it is argued that the Resolution relied upon is dated 24.11.2010 and cannot relate to the assessment years in question that are prior thereto.

10. Heard learned counsel for the parties.

11. My attention is drawn to a Resolution passed by the Trust at a meeting held on 30.11.2010 chaired by Mr.Justice K.M.Natarajan and eight other members. According to learned counsel for the petitioner, this Resolution had been passed well within the periods in question but inadvertently omitted to be brought to the notice of R1. owever states that.

12. One of the agendas approved by Resolution dated 30.11.2007 is the construction of womens' hostel, extracted below:

625	Matters relating to P.T.Lee.C.N.College of Engg. & Tech., Oovery, Kanchipuram. To consider approval for the proposal for construction of women's Hostel at P.T.Lee C.N.College of Engg. & Tech., Oovery, Kanchipuram	Approved in Principle to construct ground floor alone in phase-1. The Sr.Engineer is permited to get necessary drawings and detailed estimate shall be worked out from the drawings and place before the Board for sanction.

13. Had the aforesaid resolution had been brought to the notice of R1, his conclusion might, perhaps, have been different. Thus, and in the interests of justice, particularly, since the respondent does not deny that the petitioner holds a certificate in terms of Section 12A of the Act and exemption under Section 11 is being consistently granted, I set aside impugned order dated 15.12.2011 and remand the matter to the file of the first respondent, (re-designated as Commissioner of Income Tax (Exemptions)) for de novo hearing. Let the petitioner appear before the respondent on Wednesday, the 23rd of October,

2019 or a day as proximate thereto to be intimated to him, with the original Resolution book as well as any other material that it may wish to produce. The first respondent shall, after hearing the petitioner, pass orders de novo within a period of four weeks from date of personal hearing.

14. The orders of assessment passed for the assessment years 2008-09 & 2009-10 are stated to be pending in appeal before the Commissioner of Income Tax (Appeals)-17 numbered as I.T.A.No. 489 & 490/11-12. Let the aforesaid appeals be taken up for adjudication after an order is passed by the first respondent.

15. These writ petitions are allowed in the above terms. No costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Income Tax (Exemptions)
   Ayakar Bhavan, Annex III Floor
   121, Mahatma Gandhi Road
   Chennai-600034

2. The Joint Commissioner of Income Tax (OSD)
   (Exemptions) II, Chennai-600034

+2 ccs to M/s.J.Narayanaswami, Advocate, S.R.No.84274

+1 cc to M/s.Arun Kurian Joseph, Advocate, S.R.No.83883

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SAI(CO)
SSM(23/10/2019)