IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Writ Petition Nos.4362 and 4367 of 2019
& WMP Nos.4898, 4906 and 4907 of 2019

Prathyusha Educational Trust
D-1 Ground Floor
Thiru Vi.Ka.Industrial Estate,
Guindy, Chennai – 32.
rep. By its Managing Trustee
Shri.P.Raja Rao

... Petitioner in the above W.Ps

-vs-

1. The Tax Recovery Officer,
Central – 2, No.46, M.G.road,
Nungambakkam, Chennai – 600 034.

2. The Principal Commissioner of Income-tax
Central – 2, No.46, M.G.road,
Nungambakkam, Chennai – 600 034.

3. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.

.. Respondents in the above W.Ps.

PETITIONs filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the petitioner on the files of the 1st respondent and declare the assessment orders for the assessment years 2010-11 and 2011-12 as invalid in law simultaneously quash the impugned order in TRC.No.38 & 39/CR-2/18-19 dated 28.01.2019 for the assessment years 2010-11 and 2011-12 and direct the 1st respondent not to take coercive action till the disposal of the writ petitions.

For Petitioner: Mr.Venkatraman, Senior Counsel

Mr.N.Venkatanarayanan

for M/s.Subbaraya Aiyar Padmanabhan

For Respondents : Mr.A.P.Srinivas

O R D E R

Mr.A.P.Srinivas, learned counsel takes notice for the respondent. By consent of both sides, the Writ Petitions are taken up for final disposal at the stage of admission.

2. Brief submissions of Mr.Venkatraman, learned senior counsel appearing for Mr.R.Venkatnarayanan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondents are as follows:

The petitioner is a trust formed under a deed of trust executed on 01.08.2000 and manages an Engineering College from 2001 onwards. Registration under Section 12 AA of the Income Tax Act, 1961 (in short the 'Act') was initially granted on 22.10.2002 and approval under Section 10(23C)(vi) was initially granted on 30.04.2008.

3. A search under Section 132 of the Act was conducted by the Income Tax Department consequent to which assessments were completed for assessment years 2010-11 under Section 143(3) read with Section 153 (A) and 2011-12 under Section 143(3), both dated 28.03.2018. The benefit of exemption under Section 10(23C)(vi) as well as under Section 11 were rejected. Other adjustments, including an addition towards collection of alleged unaccounted fees/capitation fees was made. The petitioner filed a first appeal challenging the assessments before the Commissioner of Income Tax (Appeals) (in short 'CIT(Appeals)').

4. Pending appeals, the Director General of Income Tax (Investigation) (in short 'DGIT(Inv)') initiated proceedings for cancellation of notification under Section 10(23C)(vi). Proceedings were also initiated for cancellation of registration under Section 12AA of the Act by issue of notice under section 12AA(3) on 18.07.2013. The proceedings for cancellation were not immediately pursued by the Department and were continued only after a gap of three years by issue of letter dated 26.09.2016 by the Principal Commissioner of Income Tax. Despite objections advanced filed by the petitioner, the registration was cancelled by order dated 19.06.2018 passed under Section 12AA(3) of the Act against which an appeal was preferred before the Income Tax Appellate Tribunal (in short the 'ITAT') on 13.02.2017 in ITA No.370 of 2017. The Approval under Section 10(23C)(vi) was cancelled by the DGIT(Inv) by Order dated 18.11.2014 retrospectively with effect from assessment year 2010-11 onwards.

5. The first appeals filed before the CIT(Appeals) challenging orders of assessment dated 28.03.2013 were dismissed on 12.01.2017. Appeals in ITA Nos. 637 and 638 of 2017 were filed before the Income Tax Appellate

Tribunal (in short 'Tribunal') challenging the order of the CIT(appeals) dated 12.01.2017.

6. All the appeals were dismissed on 19.6.2018 by the Tribunal as against which Miscellaneous Applications under section 254(2) of the Act have been filed in M.A.No.186 of 2018 (I.T.A.370/2017) and M.A.Nos.187 and 188 of 2018 (I.T.A.Nos.637 and 638 of 2017) seeking a rectification of the orders dated 19.06.2018 on the basis that the grounds of appeal raised by the petitioner have not been taken into consideration. The petitioner has also filed stay petitions before the ITAT in S.A.No.311/MDS/2018 and 312/MDS/2018 on 28.09.2018 seeking a stay of operation of the orders of the CIT (A) and the consequential demand for the assessment years 2010-11 and 2011-12.

7. The Miscellaneous Applications are being adjourned from time to time (05.10.2018, 26.10.2018, 09.11.2018, 01.02.2019 and 15.02.2019) on account of non-functioning of the specific Bench which is to hear them. The stay petitions were also listed on various dates, (05.10.2018, 26.10.2018, 09.11.2018, 01.02.2019), the last date of listing being 15.02.2019, but are yet to be decided.

8. While this is so, and even during the pendency of the Miscellaneous Applications as well as the Stay Petitions, coercive recovery action was initiated by the 1st respondent.

9. The petitioner filed a request before the Tax Recovery Officer, arrayed as the 1st respondent herein on 21.01.2019 requesting him to grant a months' time to arrive at a proposal for settlement of the disputed liability. A request was also made on 21.01.2019 for lifting of the attachments made by the 1st respondent. The request was rejected on 28.01.2019 by the TRO stating that, as on date of the order, an amount of Rs.6,09,14,857/- was pending against the petitioner in respect of which there was no stay of collection that had been granted by any Appellate Authority. The petitioner was thus, called upon to pay the entire demand immediately to avoid coercive action.

10. On 07.02.2019, a certificate in Form No. ITCP 2 was issued attaching movables, being four buses belonging to the petitioner, to be kept in the custody of the Income tax Department in its premises at the Aayakar Bhavan at Nungambakkam High Road.

11. It is in the aforesaid circumstances that the petitioner has approached this Court praying for a declaration that the orders of assessment for assessment years 2010-2011 and 2011-12 are invalid in law and seeking a quashing of TRC Nos.38 & 39/CR/2/18-19 dated 28.01.2019 in respect of assessment years 2010-2011 and

2011-2012 respectively and a direction to the TRO not to initiate any further coercive proceedings till the disposal of the writ petition.

12. Mr.A.P.Srinivas, learned senior standing counsel who has taken notice for the respondents defends the impugned proceedings and states that the writ petitions are liable to be dismissed in limine since the Petitioner has already approached the statutory authorities for appropriate relief.

13. The sequence and events as noted by me above reveal that the petitioner has rightly approached the appellate authorities challenging the cancellation of registration under section 12AA as well as the orders of assessment dated 28.03.2013. The litigation has travelled through the hierarchy of appeals and is now pending before the Appellate Tribunal, the final fact finding authority. As such, there is no avenue to interfere with the orders of assessment orders at this juncture, also for the reason that the orders of assessment impugned before me stand telescoped into appellate orders dated 12.01.2017 passed by the CIT(A) and 19.06.2018 by the Tribunal. I am thus not inclined to consider the first prayer of the petitioner for a declaration that the assessments in question are invalid.

14. In this context, Mr.Venkatraman has drawn attention to the provisions of Section 143(3), as amended by insertion of the first proviso thereto vide Finance Act, 2002 with effect from 01.04.2003 that reads thus:

> (1) ......
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> (2).........
>
> (3) On the day specified in the notice
>
> (i) issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence and after taking into account such particulars as the assessee may produce, the Assessing Officer shall, by an order in writing, allow or reject the claim or claims specified in such notice and make an assessment determining the total income or loss accordingly, and determine the sum payable by the assessee on the basis of such assessment;
>
> (ii) issued under clause (ii) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee mayproduce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and and

determine the sum payable by him or refund of any amount due to him on the basis of such assessment:

Provided that in the case of a—

(a) research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10,

which is required to furnish the return of income under sub-section (4C) of section 139, no order making an assessment of the total income or loss of such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless—

(i) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, by such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and

(ii) the approval granted to such research association or other association or fund or trust or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded :'

15. The specific argument advanced by him is that the assessments themselves are invalid in the light of the proviso to Section 143(3) of the Act that casts a mandate upon the Assessing Officer to frame an assessment denying the benefit of Section 10(23C) of the

Act unless the officer had intimated the Central Government or the prescribed authority the specifics of the contravention of the statutory provision and such approval had consequently been withdrawn. According to the learned senior counsel, this mandatory exercise had not been carried out and this vitiated the proceedings in entirety.

16. However, in the light of the fact that the Miscellaneous Applications of the Petitioner are pending before the Tribunal, and in the light of my conclusion in paragraph 13 of this order, I do not propose to delve upon this legal submission at this juncture as it will, no doubt, be considered by the Tribunal while disposing the Miscellaneous Applications, in accordance with law.

17. The second limb of the prayer in the writ petitions is to direct the 1st respondent not to take coercive action till the disposal of the Writ Petition. The interests of justice, I believe, will be served if the Tribunal should take up the Stay Petitions in S.A.Nos.311 and 312/Mds/2018 filed on 28.09.2018 for hearing and disposal forthwith.

18. Accordingly, with the express consent of learned counsel before me, I direct the Tribunal to list the stay applications on Friday, 22.02.2019, and dispose the same after hearing the parties and in accordance with law. No separate notice of hearing need be issued by the Registry of the Income tax Appellate Tribunal and both learned counsel before me will instruct the parties to appear for the hearing of the stay petitions on 22.02.2019 and cooperate in their conduct and disposal.

19. As regards the attachment of the movables, it is brought to my notice that the buses are used to facilitate the movement of students between their homes and the college. Students should not be made to suffer on account of the conflict inter se the petitioner and the Income Tax Department. Thus, while the attachment dated 07.02.2019 will continue, the Department is directed to release the buses to the petitioner solely for use in college activities. Mr.Srinivas is directed to convey this direction for immediate release of the vehicles bearing description (i) TN49 H 2846 Ashok Leyland, Semi - Saloon, MFT - 07/2001, No. of cylinders - 6 Chassis No.WLE468941, (ii) TN28 M 2693, (iii) TN29 H 7117 and (iv) TN29 F 8788, to the petitioner forthwith.

20. It is specifically stated that this court has not concerned itself with the merits of the issues pending resolution before the Tribunal and the Tribunal will proceed to hear the miscellaneous applications and the stay petitions, unfettered and in accordance with law.

21. These writ petitions are disposed of with the above directions and connected miscellaneous petitions are closed with no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sl/ska
To

1. The Tax Recovery Officer,
Central - 2, No.46, M.G.road,
Nungambakkam, Chennai - 600 034.

2. The Principal Commissioner of Income-tax
Central - 2, No.46, M.G.road,
Nungambakkam, Chennai - 600 034.

3. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.

+2ccs to M/s.Subbaraya Aiyar Padmanabhan , Advocate SR.No. 13908
+1cc to Mr.A.P.Srinivas , Advocate SR.No. 14347

Writ Petition Nos.4362 and 4367 of 2019

& WMP Nos.4898, 4906 and 4907 of 2019

A.SK(20/02/2019)