IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.12.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. Nos.1293 and 1312 of 2018
and WMP Nos.1624 and 1647 of 2018
and WMP Nos.27324 and 27325 of 2018

M/s. Medical Research Foundation,
41, Sankara Nethralaya,
College Road, Nungambakkam,
Chennai - 600 006
Represented by its Honorary Secretary,
Mr.G.Ramachandran ...Petitioner in W.P. No.1293 of 2018

M/s. Vision Research Foundation,
41, College Road, Nungambakkam,
Chennai - 600 006
Represented by its Honorary Secretary,
Dr S.Bhaskaran ...Petitioner in W.P. No.1312 of 2018
Vs

The Deputy Commissioner of Income Tax
(Exemptions), Chennai Circle,
Chennai - 600 034. ... Respondent in both WPs.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the Petitioner on the file of the Respondent in PAN:AAATM5984H & PAN:AAATV2725M and quash the impugned orders u/s.143(3) dt 28.12.2017 for the Assessment year 2015-16.

For Petitioner : Mr.Vijaya Raghavan
for Mr.Subbarayaaiyar Padmanabhan
For Respondents : Mrs.Hema Muralikrishnan,
Senior Standing Counsel

C O M M O N O R D E R

Heard Mr.Vijayaraghavan, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

2. Two orders of assessment passed under Section 143(3) of the Income Tax Act, 1961 (in short 'Act') are impugned in these Writ Petitions, both dated 28.12.2017, one in the case of

Medical Research Foundation (MRF) and the other in the case of Vision Research Foundation (VRF). Both MRF and VRF are societies registered in terms of the Societies Registration Act, 1860.

3. MRF was formed in the year 1975 with the avowed objects of engaging in research in Opthalmology and establishment of hospitals, schools, colleges and similar Institutions for advancement of research in all forms of medicine, particularly eye diseases. It manages several units, mostly under the name and style of 'Sankara Netralaya' and variants thereof. It is registered in terms of Section 12A(a) of the Act, by order dated 20.09.1978 and also holds an exemption under Section 80G dated 17.08.2007 and an approval dated 10.12.2015 in terms of Section 35 AC of the Act.

4. VRF was constituted in the year 1978 with the specified objects of furthering research in Opthalmology and eye diseases specifically the incidence of short sight and increased prevalence of cataract, among others. It is registered under Section 12A(a) of the Act by order dated 10.09.1985 and holds an 80G exemption vide order dated 25.02.2009. In addition, VRF is also approved under Section 35(1)(ii) of the Act by Notification dated 25.06.2009.

5. The two Societies are stated to be independent and distinct entities, assessed to tax separately, over the years.

6. Both the impugned assessments relate to Assessment Year 2014-15. The orders are identical and are wholly based upon a letter received from the Commissioner of Income Tax (Exemptions), Calcutta dated 19.11.2015 on the subject of 'money laundering through receipt of bogus donation and repayment in cash'. The aforesaid letter, styled as a Caution Notice, has been issued by the Departmental Officials at Calcutta pursuant to several complaints as well as information received that certain institutions were engaged in money laundering through the agency of bogus donations.

7. One of the entities named is VRF, the petitioner in W.P.No.1312 of 2018, which has received donations from two individuals, Mr.Ajay Kumar Shroff and Mr.Amarnath Shroff ('individuals') stated to have indulged in money laundering to several institutions including VRF. MRF, for its part, is stated to have entered into a construction agreement with one Alcove Industries Ltd. In which the two individuals referred to earlier are Directors. The respondent officer has examined the transactions between VRF and Mr.Ajay Kumar Shroff and Mr.Amarnath Shroff on the one hand and MRF and Alcove Industries Ltd. on the other in the light of the background provided by the Caution Notice from Calcutta.

8. The provisions of Section 13(3) of the Act are invoked, since the Officer notes that there is some commonality in the office bearers of MRF and VRF: Dr.SS.Badrinath, the President of MRF is a member of VRF, Dr.L.Gopal, the President of VRF is a member of MRF and Dr.TS.Surendran and Mr.V.Vaidyanathan are members in both the Societies. Thus, according to the Officer, the exemption claimed in terms of Section 11 is liable to be rejected, since the provisions of Section 13 stand violated.

9. The petitioners aver that they are two separate entities, both legally and activity-wise, the transaction of construction of a hospital at Kolkata on land allotted by the Government of West Bengal by and between MRF and Alcove Industries Ltd. is one at arms' length, the allegation foisted upon MRF of inflated cost of construction merely to accommodate bogus donations is baseless, the donations made by the two individuals to VRF is a donation simpliciter and unconnected to the transaction inter se the individuals with MRF, and that the rejection of the claims of exemption under section 11, legally and factually erroneous.

10. However, there is really no necessity to examine the relevant provisions of law or the merits of the claims of the petitioners since there is a more fundamental aspect of the matter that appeals, the gross violation of the principles of natural justice. Apart from the fact that the two orders of assessment are entirely identical, word to word, except for the differences in the figures in the computation, there is nothing in the order itself to indicate that the petitioners have been put to notice of the proposals for assessment prior to finalization thereof and this aspect of the matter is really not disputed or contested by the revenue. The stand of the Assessing Authority as revealed from a perusal of the impugned orders is that the donations by the two individuals to VRF have been received back by them through MRF by way of a circular transaction which amounts to money laundering. However, such a conclusion has to be arrived at only after soliciting an explanation for the proposed assessment from the petitioners as well as a proper consideration of the explanations furnished as well as materials filed, if any, by the petitioners.

11. Though the provisions of the Income Tax Act do not provide for the issuance of a show cause notice in all cases, in matters such as the present, where the Assessing Authority has formulated a specific issue based upon his understanding of a transaction, it is incumbent upon him to reveal his mind to the assessee, in order that the assessee is put to notice of the proposed basis of assessment and can reply/respond to the same. This not having been done, the impugned orders are set aside.

12. The impugned orders of assessment in both Writ Petitions shall be treated as show cause notices and the petitioners will appear before the Assessing Officer on Tuesday, the 07^{th} January, 2020 at 10.30 a.m. without expecting any further notice in this regard along with a written reply as well as materials in support of their stand, if any.

13. I consciously refrain from adverting to the merits of the impugned assessments in the light of my conclusion that the assessments have been completed in violation of principles of natural justice and all contentions are left open to be appreciated and adjudicated upon de novo and by way of speaking orders. Let this exercise be carried out and completed within a period of six weeks from 07.01.2020.

14. Disposed in the aforesaid terms, with no order as to costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

sl

To

The Deputy Commissioner of Income Tax
(Exemptions), Chennai Circle,
Chennai - 600 034.

+2 ccs to M/s.Subbaraya Aiyar Advocate sr105730 & 105731

+1 cc to Mrs.Hema Muralikrishnan Standing Counsel
sr 105131

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aa02/01/2020