

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.21642 of 2019

&

W.M.P No.20866 of 2019

Uthangarai Sri Vidya Mandir Educational
and Social Welfare Trust
Represented by V.Chandrasekaran
The Correspondent /Managing Trustee

... Petitioner

Vs.

1. The Principal Commissioner of Income Tax
Salem
2. The Assistant Commissioner of Income Tax
Circle - I, Hosur
- 3.The Commissioner of Income Tax (Appeals)
Salem

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the first respondent dated 01.07.2019 in C.No.Stay PCIT/Salem/267 for the assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017 - 18 and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondents : Mr.A.P.Srinivas
Senior Standing counsel

ORDER

Mr.T.Vasudevan, learned counsel on record for the writ petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for Income Tax, who has accepted notice on behalf of all the respondents, are before this Court.

2.With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Subject matter of instant writ petition arises under 'Income Tax Act, 1961' ('IT Act' for brevity). It is the case of the writ petitioner that it is an Educational and Social Welfare Trust.

4. Writ petitioner Trust is assessee on the file of the second respondent with PAN No. AADTS6092D and writ petitioner Trust is inter alia running a school which goes by the name Sri Vidya Mandir Matric Higher Secondary School, Uthangarai from 1987. It is submitted that the school is affiliated to the Tamil Nadu Matriculation Board and it is an educational institution with a student strength of about 2800.

5. In the aforesaid backdrop, in 2016 there was a search in the premises of the writ petitioner Trust, pursuant to the search, assessments were completed under Section 153A read with Section 143(3) of IT Act by the second respondent. To be noted, these Assessment Orders under Section 153A read with Section 143(3) of IT Act are seven in number, all are dated 26.12.2018 and they pertain to 7 successive Assessment Years viz., 2011-12 to 2017-18.

6. Writ petitioner Trust carried aforesaid Assessment Orders in appeal to the statutory Appellate Authority, who is in instant writ petition third respondent and these appeals are dated 24.01.2019. While the appeals were pending before third respondent Appellate Authority, writ petitioner Trust moved a stay petition before the Assessing Officer as the Assessing Officer was insisting on payment pursuant to the aforementioned Assessment Orders dated 26.12.2018.

7. Assessing Officer disposed of these stay petitions directing the writ petitioner assessee to pay 20% of the total demand raised with regard to the seven Assessment Years within a specified time frame inter-alia saying that it is a pre-condition based on certain instructions. This order dated 13.02.2019 made by the second respondent i.e., directing payment of 20% of the total demand for seven Assessment years was assailed by the writ petitioner Trust by way of an earlier writ petition being W.P.No.5923 of 2019 and predecessor Hon'ble single Judge after hearing both sides i.e., after full contest, disposed of the said writ petition and by an order dated 06.03.2019. Most relevant portion of the order of Hon'ble single Judge is contained in Paragraphs 12 to 14 of the said order and the same read as follows:

'12. The petitioner will appear before the first respondent on 13.03.2019 with all materials in support

of its request for stay and the Assessing Officer shall consider the petitioners' request, afford an opportunity of personal hearing and pass a reasoned speaking order on the request for stay. Learned counsel for the petitioner states that the petitioner is in a position to offer security to protect the interests of the Revenue, pending appeal. Let the same be placed before the officer for his consideration. I hasten to add that the Assessing Officer is at liberty to pass such orders as he may think fit in the facts and circumstances on the present case, in accordance with law and bearing in mind the prevailing Circulars/Instructions issued by the CBDT and nothing contained in this order shall stand in the way of such adjudication. Such order shall be passed by the Assessing Officer on or before 22.03.2019. There shall be an order of status-quo as regards recovery, till then.

13. With the above observations, the impugned order is set-aside. The petitioner is also given liberty to approach the Commissioner of Income Tax (Appeals), seeking expeditious disposal of the Appeals filed on 24.01.2019, in accordance with law.

14. The writ petition is disposed of in the above terms. Consequently, the connected WMP is closed. There shall be no order as to costs. '

8. There is no disputation or disagreement before this Court that there is no intra-court appeal against aforesaid order dated 06.03.2019 and that the same has been given legal quietus. Pursuant to this order made by a predecessor Hon'ble single Judge, the writ petitioner filed stay petition afresh before second respondent and approached the third respondent for early hearing of the appeals. With regard to expeditious and early hearing of the appeals, it is submitted by learned counsel for writ petitioner that with regard to three out of seven Assessment Years and the appeals arising therefrom i.e., Assessment Years 2011-12, 2012-13 and 2013-14, writ petitioner/appellant has been heard and orders have been reserved on 29.04.2019. In other words, hearing has concluded and orders are awaited. With regard to the other four appeals arising out of other four Assessment years i.e., from 2014-15 to 2017-18, early listing prayer was acceded to and hearing is in the anvil, is learned writ petitioner counsel's say. With regard to the stay petition, first respondent passed an order dated 01.07.2019.

9. Assailing the aforesaid order dated 01.07.2019 made by the first respondent, instant writ petition has been filed. This order dated 01.07.2019 bearing reference C.No.Stay

PCIT/Salem/267 made by the first respondent, shall hereinafter be referred to as 'impugned order'. To be noted, first respondent after extracting copious portions of the earlier order of this Court as well as earlier order dated 22.03.2019 made by the Assessing Officer has passed an order declining to interfere with the stay order dated 22.03.2019 made by the Assessing Officer. Assailing the impugned order, learned counsel for writ petitioner pointed out that the writ petitioner Trust in the hearing offered as many as five unencumbered immovable properties as security giving the guideline value as well as the market value, but the same has been completely overlooked.

10. With regard to the bonafides of the writ petitioner Trust, learned counsel for writ petitioner pointed out that writ petitioner Trust has already paid Rs.3.75 Crores from and out of the total demand of Rs.59.67 Crores that has been made for all the seven Assessment Years together. The break up of the total demand is as follows:

'Details of Amount in Arrears

Asst Year	Demand (Rs.)	Int,u/s.220 (2) (Rs.)	Penal ty	Int u/s.220 (2)	Total (Rs.)
AY 2011- 12	8,05,43, 672	48, 32, 616	-	-	8,53,76, 288
AY 2012- 13	5,68,84, 510	34,13,070	-	-	6,02,97, 580
AY 2013- 14	9,04,93, 956	54,29,634	-	-	9,59,23, 590
AY 2014- 15	6,21,51, 470	37,29,084	-	-	6,58,80, 554
AY 2015- 16	15,30,17, 706	91,81,062	-	-	16,21,98, 768
AY 2016- 17	7,18,63, 818	43,11,828	-	-	7,61,75, 646
AY 2017- 18	4,80,62, 420	28,83,744	-	-	5,09,46, 264
Total	56,30,17, 552	3,37,81,038	-	-	59,67,98, 590

11. Adverting to the aforementioned tabular column learned counsel for writ petitioner submitted that while the tax

demanded for all the seven assessment years based on the impugned Assessment Order is little over Rs.56.30 Crores, interest component is little over Rs.3.37 Crores.

12. This Court has also carefully considered the order passed by the predecessor Hon'ble single Judge, which has been alluded to supra.

13. Most relevant and pithy paragraph of the order made by Hon'ble predecessor single Judge (order dated 06.03.2019 in W.P.No.5923 of 2019) is Paragraph 8 and the same reads as follows:

'8. Normally this Court would not interfere with the exercise of discretion by the assessing officer in the grant of stay of recovery, unless such exercise is shown to be perverse or excessive. The Assessing Officer, in exercise of jurisdiction under section 220(6) of the Act, has noted the following in the impugned order:-

'In the above case, warrant of authorization of search u/s 132 was obtained from Director of Income Tax (Inv.), Tamilnadu & Puducherry and the search was conducted on 25/04/2016. During the course of the search operations, cash of Rs.2,75 crores, gold coins, and books of account were found and seized. Consequently, assessments u/s.153A were concluded in the above case for A.Y.s 2011-12 to 2017-18 wherein additions were made under various heads raising a demand of Rs.58,41,20,946/-. The aforesaid assessee is a Trust not registered u/s. 12AA and running educational institution / hostel has filed application for stay of demand for A.Y.s 2011-12 to 2017-18 requesting to stay entire demand of Rs.58,41,20,946/- as appeal filed by the assessee is pending before the CIT (Appeals), Salem. The major issues on which such undisclosed income was arrived are discussed as under:-

i. Undisclosed Bank Deposits:- During the search proceedings, the assessee was asked to furnish receipts and payments accounts. It was noticed that the total credits by way of cash/transfer in various bank accounts maintained by the assessee was more than the total receipts as per receipts & payments account submitted. When the assessee was asked to explain sources for such bank deposits, no proper explanation was furnished during search proceedings and even during assessment proceedings, the assessee failed to furnish details of fixed deposits made by assessee in State Bank of India and also did not furnish details of F.D.s made with the return of income. In these circumstances, excess of credits in

bank accounts as compared to receipts shown in income & expenditure account have been brought to tax.

ii. Excess Salary claimed in books:- During the course of search, details of salaries paid to teaching and non teaching staff written in books were seized but, as per the returns of income filed, the claim made was more than the expenses noted in seized records. Further, the average salary paid to non-teaching staff was almost equal to teaching staff and also assessee failed to furnish details of TDS made on salaries paid. In these circumstances, salary claimed in excess of material found in seized materials were disallowed.

iii. Expenses claimed in seized materials:- During the course of search, certain books maintained by correspondent of the Trust containing payments made to various persons were seized. When the assessee was asked to explain the entries made in those registers, proper explanation for sources of such payments made were not furnished during assessment proceedings, which resulted in disallowance u/s.69C of I.T.Act.

iv. Annual Day and Food Expenses:- In the Income & Expenditure Account, assessee had claimed huge expenses under this head and when the assessee was asked to furnish details in this regard, it was claimed that assessee had incurred major expenditure on account of giving gold medals to students and also food expenses to students and their parents, but assessee could not produce vouchers in support of the claims made, which resulted in addition under this head.

v. Depreciation claimed on fixed assets:- In the returns of income filed, assessee has claimed depreciation on fixed assets. As per Explanation-5 to Sec. 32 (1) introduced w.e.f. 1.4.2002, depreciation on fixed assets has to be allowed whether it is claimed or not. In the present case, the assessee had not claimed depreciation on fixed assets during earlier years and hence, the value of fixed assets right from A.Y.2012-13 was reduced by allowing deemed depreciation every year and opening WDV was reduced. Consequently, major amount of depreciation claimed was disallowed. Further, the assessee had claimed major additions to fixed assets but, did not produce invoices for purchase of assets in support of claim made in the return. Consequently, depreciation on such additions to fixed assets were also disallowed.

vi. Claim of Adjustment under Sections 10 & 11: In the computation of total income, assessee has claimed deduction on account of adjustment u/s.10 & 11. Since the assessee is not registered u/s.12AA of I.T.Act, such claim made was not admissible and hence same was disallowed.

vii. Seizure of cash during search:- During the course of search, cash of Rs.2.75 crores, gold coins of 245 gms were seized and the assessee had offered said cash partly in A.Y.2016-17 and 2017-18. But, as per Sec.69A of I.T.Act, unaccounted cash found has to be taxed in the previous year in which assessee was found to be owner of such cash and accordingly, entire cash seized was assessed to tax in A.Y.2017-18. Further, tax on such undisclosed cash and gold coins were taxed at 75% u/s.115BBE since addition was made u/s.69A of I.T.Act.

2. In the stay petition filed by the assessee, it is contended that high pitched assessment is made in its case, but as could be seen from the above, the additions have been made under each head since proper evidences were not furnished during assessment proceedings in support of the claims made. The assessee is not eligible for exemption u/s.11 since, it is not registered u/s.12AA but, had not filed the returns of income after paying due taxes before due date. As could be seen from the above, all the additions in this case are made on account of provisions of I.T.Act and facts of the case noticed during search proceedings and also as the assessee did not produce proper evidences during assessment proceedings.

3. Now, coming to the claim made by the assessee that it is not in position to pay the demand, as it will constrain the financial position of the trust, the assessee has not furnished details of fixed deposits / balances in bank accounts held by it in order to examine the claim made by it.'

14. If Paragraph 8 and the order in its entirety is construed in its letter and spirit, this Court is of the view that it would serve the ends of justice to direct the writ petitioner to pay a further sum of Rs.1.25 Crores (writ petitioner having already paid Rs.3.75 Crores) and provide one of the immovable properties offered as security (with a guideline value over Rs.5.52 Crores and a market value over Rs.7.61 Crores) as security. This view is being taken considering the advanced stage of the appeals. As already alluded to supra, three out of seven appeals have already been heard out and orders have been reserved and remaining four appeals are awaiting expeditious disposal.

15. Adverting to the impugned order, learned Revenue counsel submitted that the impugned order has been passed pursuant to the earlier order made by Hon'ble predecessor Judge. A perusal of the impugned order reveals that it has copiously extracted portions of the order made by Hon'ble predecessor Judge. This is the letter of the order, but in the considered view of this Court orders are to be implemented in letter and spirit. This Court has already expressed its considered view on letter and spirit of the order.

16. Considering the advanced stage of the appeal and bonafides of the writ petitioner in paying Rs.3.75 Crores, it would be appropriate to pass the following order:

a) Impugned order dated 01.07.2019 bearing reference C.No.Stay PCIT/Salem/267 made by the first respondent is set aside. Writ petitioner Trust shall pay a further sum of Rs.1.25 Crores towards tax and interest due for 7 successive assessment years i.e., Ays 2011-12 to 2017-18 pursuant to impugned Assessment Order. This sum of Rs.1.25 Crores shall be paid within three months from the date of receipt of a copy of this order. Writ petitioner shall provide one immovable property being Thottam in S.F.No.50/4, Patta No.154, Uthangarai Main Road, Thippampatti Village & Panchayat, Uthangarai Taluk, having guideline value of Rs.5,52,12,300/- and market value of Rs.7,61,48,000/- as security in a form required by the second respondent within a fortnight from the date of receipt of a copy of this order.

b) Third respondent shall dispose of the seven appeals as expeditiously as possible and in any event within four months from the date of receipt of a copy of this order.

c) There shall be no coercive action against the writ petitioner Trust or distraint proceedings in any form subject to the above conditions being complied with. Obviously, there shall be no coercive action till the disposal of the aforementioned statutory appeals and further action, if any and if required will be subject to the disposal of the appeals.

This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Principal Commissioner of Income Tax
Salem.
2. The Assistant Commissioner of Income Tax
Circle - I, Hosur.
- 3.The Commissioner of Income Tax (Appeals)
Salem.

+1cc to Mr.Srinivas, Advocate Sr.63940

+2c to to Mr.Janakiraman, Advocate Sr.63774

W.P.No.21642 of 2019 &
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