IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 05.09.2019

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
W.P.No.26226 of 2019
and
W.M.P.No.25613 of 2019

Caruna Bal Vikas,
No.2/19, Varadarajulu Road,
Egmore, Chennai 600 008,
rep. by its Secretary,
Ms.Samson. ...Petitioner

Vs.

1.Union of India,
Rep. through Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
North Block, New Delhi 110 001.

2.Chairman C&S,
Central Board of Direct Taxes,
North Block, Department of Revenue,
New Delhi 110 001.

3.The Principal Chief Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,
Chennai 600 034.

4.Local Committee to deal with Tax Payers
Grievances from High Pitched Scrutiny Assessment,
rep. by its Member Secretary,
Chief Commissioner of Income Tax (Exemptions),
Delhi, Pratyaksh Kar Bhavan,
25th Floor, Block-E-2,
Dr.S.P.Mukherjee Civic Centre,
New Delhi 110 002.

5.Commissioner of Income Tax (Appeals) 17,
Aayakar Bhavan, 2nd Floor,
No.121, MG Road, Chennai 600 034.

6.Deputy Commissioner of Income Tax (Exemptions),
Aayakar Bhavan, 2nd Floor,
No.121, Mahatma Gandhi Road,
Chennai 600 034. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records connected with the impugned order of the fourth respondent bearing F.No.CCIT(E)/Local Committee 2018-19/1295/6001 dated 14/18.03.2019, quash the same and consequently direct the fourth respondent to pass speaking orders after due consideration in accordance with the 2nd respondent's instruction No.17/2015 (F.No.225/290/2015-ITA-II) dated 09.11.2015.

For Petitioner : Mr.Ravikumar Paul
Senior Counsel
for M/s.Paul and Paul

For Respondent : Mr.Hema Muralikrishnan for R1 to R6
Senior Standing Counsel (I.T)
Mr.Prabhu Mukunth Arunkumar
Junior Standing Counsel (I.T)

O R D E R

This writ petition is filed challenging the proceedings of the fourth respondent dated 14/18.03.2019 with consequential direction to the fourth respondent to pass speaking order.

2.Heard Mr.Ravikumar Paul, learned Senior Counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

3.Through the impugned order, the fourth respondent informed the petitioner that the Local Committee to deal with tax payers grievances from High Pitched Scrutiny Assessment is of the opinion that the assessments for the Assessment Years 2010-2011 to 2015-2016, cannot be termed as high pitched as per instruction No.7 of 2015.

4.Brief facts, which lead to the filing of the present writ petition, as projected by the petitioner, are as follows:

The petitioner is a Charitable Society registered under Section 12AA of the Income Tax Act, 1961. In the course of its activities, the petitioner has been receiving restricted grant and providing such grants to various registered organizations who are also registered under Section 12AA of the Act. The petitioner has been duly filing its returns under the Income Tax Act and is being assessed by the sixth respondent/Assessing Officer. Right from the beginning upto the Assessment Year 2009-2010, the petitioner has been assessed with 'nil' income. The Income

Tax Department initiated scrutiny assessment for the Assessment Year 2010-11 and passed an order of assessment dated 30.03.2013, raising a tax demand of Rs.24,56,24,000/-, inter alia making an addition of Rs.58,48,05,020/- towards inter charity grant made to channel partners. Subsequently, orders of assessment were also passed for the Assessment Years 2011-2012 and 2012-2013, raising tax demands and making additions referred to therein respectively. The petitioner filed an appeal before the Commissioner of Income Tax (Appeal) challenging those assessment orders. As against the orders made by the Appellate Authority in respect of the Assessment Year 2010-2011, the petitioner approached the Income Tax Appellate Tribunal and filed an appeal, which in turn by order dated 05.02.2015, remitted the matter back to the Assessing Officer for fresh assessment in accordance with law on the two issues relating to inter charity grant made to channel partners and depreciation. The Assessing Officer by order dated 31.12.2016, though answered the two issues in favour of the petitioner and reversed the two additions made on that score in the original order of assessment, however made new additions by disallowing a portion of restricted project grants received from Compassion international which are directly incurred by the petitioner on programs as well as in the administration of the programs. These new additions were made by the Assessing Officer notwithstanding the fact that these deductions were earlier allowed in the original order of assessment dated 30.03.2013. Challenging the said order of assessment, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals) for the Assessment Year 2010-2011 and the same is pending. Likewise, the appeals filed for the Assessment Years 2011-12 and 2012-13 are also pending. While those three appeals are pending before the First Appellate Authority, the Assessing Authority initiated scrutiny assessments for the Assessment Years 2013-14 and 2014-15. Consequently, the Assessing Officer has passed orders of assessment dated 04.11.2016 and 31.12.2016, raising tax demand. Challenging the said order, appeal is filed before the Commissioner of Income Tax (Appeals) and thus, all the appeals for the Assessment Years 2010-2011 to 2015-16 are pending before the fifth respondent. Since the appeals are pending for a long time and the second respondent also issued instruction No.17 of 15, providing for institutional grievance redressal mechanism to solve the grievances quickly in respect of high pitched orders by approaching the Local Committee, the petitioner invoked the Authority of such Local Committee and filed a complaint on

07.05.2018. After about ten months from the date of filing such complaint, the impugned order was communicated to the petitioner stating that the relevant assessments cannot be termed as high pitched, without giving any reasons or findings. Therefore, the present writ petition is filed with the relief as stated supra.

5. Mr.Ravikumar Paul, learned Senior Counsel for the petitioner submitted that when a mechanism is provided for resolving the grievances quickly and when the petitioner has approached the Authority constituted under the said mechanism viz.,Local Committee and filed a complaint that the assessment orders are high pitched one, the said Committee should have considered the grievances of the petitioner in detail and pass a speaking order with reasons and findings. Therefore, he submitted that the impugned order, being a non speaking one cannot be sustained.

6.On the other hand, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents, based on instructions, submitted that the mechanism provided under instruction No.17 of 2015 is not a mechanism in lieu of appeal or an alternative procedure. Therefore, she contended that when the Committee is of the opinion that the relevant assessment orders are not high pitched one, it is open to the petitioner to raise all the contentions before the Appellate Authority, where the appeals are still pending. Thus, she submitted that the Assessing Authority will consider the appeals and pass orders within the time frame fixed by this Court.

7. It is seen that the petitioner/assessee suffered orders of assessment, imposing tax as referred to therein in respect of Assessment Years 2010-2011 to 2015-2016. It is also an admitted fact that the assessee has challenged those assessment orders before the First Appellate Authority and those appeals are still pending consideration. It is seen that during the pendency of those appeals, the petitioner has filed a complaint before the fourth respondent on 07.05.2018, to seek some relief by contending that the subject matter assessment orders are high pitched orders.

8. Now, the Local Committee, after considering the complaint filed by the petitioner, formed an opinion that the assessments for the subject matter Assessment Years cannot be termed as high pitched.

9.As rightly pointed out by the learned Senior Standing Counsel for the respondents, the mechanism provided to approach the Local Committee is not in lieu of the appellate remedy and therefore, the rights and contentions of the assessee before the Appellate Authority in their appeal can very well be considered and decided by such Authorities notwithstanding the fact that the complaint filed by the petitioner before the Local Committee has resulted in passing the impugned communication. In other words, the Appellate Authority, being the fact finding Authority, has to consider the entire matter and passed an order on merits and in accordance with law. Therefore, this Court is of the view that the rejection of the petitioner's complaint by the Local Committee will not prejudice the rights of the petitioner to pursue the appeal already pending before the Appellate Authority by raising all the grounds and that all the appeals pending before the Appellate Authority can be disposed of on merits and in accordance with law, after giving due opportunity of hearing to the petitioner.

10. Accordingly, without expressing any view on the merits of the claim made by the petitioner in respect of the orders of assessment, this writ petition is disposed of, by directing the fifth respondent/Appellate Authority to take up the appeals filed in respect of the Assessment Years 2010-11 to 2015-2016 and pass orders on the same on merits and in accordance with law, after giving due opportunity of hearing to the petitioner, uninfluenced by the report, if any sent by the said Local Committee. Such exercise shall be done by the fifth respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,Union of India,
Department of Revenue,
Ministry of Finance,
Government of India,
North Block, New Delhi 110 001.

2.Chairman C&S,
Central Board of Direct Taxes,
North Block, Department of Revenue,
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No.121, Mahatma Gandhi Road,
Chennai 600 034.

+1cc to M/s.Paul and Paul , Advocate SR.No. 77356
+1cc to Mr.Hema Muralikrishnan , Advocate SR.No. 76835

W.P.No.26226 of 2019

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A.SK(01/10/2019)