

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 07.03.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P. (MD) .No.5328 of 2019****and****W.M.P. (MD) No.4244 of 2019**

M/s.TVS Charities,
TVS Building,
7-B, West Veli Street,
Madurai 625 001

Rep., by its

Secretary & Treasurer Sri R.Haresh

... Petitioner

-vs-

1) The Income Tax Officer (Exemptions),
Income Tax Office,
No-2 V.P.Rathinasamy Nadar Roadm
CR Building, Bibikulam,
Madurai 625 002

2) The Commissioner of Income Tax (Appeals)
Madurai 625 002

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the Income Tax Officer (Exemptions) the 1st respondent herein in PAN:AAATT1082B dated 19/02/2019 in the case of the petitioner for the Assessment year 2016-17 and quash the same and forbear the 1st respondent from initiating recovery proceedings till the disposal of the appeal by the 2nd respondent .

For Petitioner : Mr.Vijayaraghavan

for Parthasarathy

For Respondents : Mrs.S.Srimathy,
Standing Counsel

O R D E R

<https://hcservices.ecourts.gov.in/hcservices/>

The instant writ petition has been filed challenging the order dated 19.02.2019 passed by the first respondent in PAN:AAATT1082B.



2. It is the case of the petitioner that they are a Public Charitable Trust having obtained exemption under section 12A(a) of the Income Tax Act, 1961. It is their case that they have been filing returns under the Income Tax Act right from the year 1973. It is the case of the Assessing Officer that the petitioner has let out the property to their Associate Company, who is a specified person under section 13(3) of the Income Tax Act.

3. It is the case of the Department that the market rent for the said properties are much higher than what the petitioner is collecting from them as rent. It is the petitioner's case that the Department has wrongly assessed the market rent for the properties let out by the petitioner at Rs.1,79,67,636/- whereas, as per the returns filed by the petitioner, the actual rent received from the respective tenants is only Rs.5,34,372/-. The Income Tax Officer passed an order dated 14.12.2018 directing the petitioner to pay Rs.82,70,246/- as tax, together with interest. Aggrieved by the order of the Income Tax Officer, dated 14.12.2018, the petitioner preferred an appeal before the second respondent on 19.01.2019.

4. It is also the case of the petitioner that they had filed a petition for stay of recovery of tax as per the order dated 14.12.2018 passed by the Income Tax Officer, pending disposal of the appeal filed before the second respondent. The Assessing Officer dismissed the application for stay filed by the petitioner on the ground that as per the internal circular in Instruction No.1914 dated 31.07.2017, the petitioner is liable to deposit 20% of the assessed tax and interest for obtaining stay of recovery. It is the case of the petitioner that 20% of the assessed tax and interest will work out to Rs.16,54,000/-. It is also stated in the affidavit that the petitioner has already deposited Rs.5,00,000/- with the assessing officer after filing of the appeal before the second respondent. According to the petitioner, the Associate Companies have been their tenants for more than two decades and the department is also aware of the same. Therefore, according to the petitioner, arbitrarily the department is now raising an issue that the said tenants are not paying market rent to the petitioner and therefore, the petitioner is liable to pay tax on the market rent. According to the petitioner, without receipt of any excess amount from their associate companies towards rent, the petitioner is not liable to pay tax as per the Central Board of Direct Taxes (CBDT)'s circular in No.5-P(LXX-6) dated 19.05.1968 which reads as follows:-

"2. Section 11(1) provides that subject to the provisions of ss.60 to 63, the following income shall not be included in the total income of the previous year...'The reference in sub-s.(1)(a) is invariably to 'income' and not to 'total income'. The expression 'total income' has been specifically defined in s.2(45) of the Act as 'the total amount of income...computed in the manner laid down in this Act.' It would, accordingly, be incorrect to assign to the word 'income', used in s.11(1)(a), the same meaning



as has been specifically assigned to the expression 'total income', vide s.2(45)...

4. Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word "income" should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted in this connection, that the amounts so added back will become chargeable to tax under s.11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should not be less than 75 per cent of the latter, if the trust is to get the full benefit of the exemption under s11(1).

5.....(page 9)"

5. According to the petitioner, the circular makes it clear that the word "income" in section 11(i)(a) must be understood in a commercial sense. According to the petitioner, the entire income of the trust in the commercial sense has been spent for the purpose of charity. According to them there is no reason to tax the petitioner/trust in respect of a notional income never charged or receivable by the trust.

6. Further, the petitioner submits that they have already deposited Rs.5,00,000/-, with the Assessing Officer at the time of filing appeal before the second respondent as against the assessment order dated 14.12.2018 passed by the first respondent. According to the petitioner, the assessing officer ought to have granted stay of recovery of the amount as per the assessment order dated 14.12.2018. In such circumstances, the instant writ petition has been filed.

7. Heard Mr.Vijayaraghavan, learned counsel for the petitioner and Mrs.S.Srimathy, learned standing counsel accepts notice on behalf of the respondents.

8. The learned counsel for the petitioner drew the attention of this Court to the judgment made by the learned Single Judge of this Court in **Samms Juke Box vs., Assistant Commissioner of Income Tax** reported in **(2018) 409 ITR 33 (Mad)** wherein it was held that grant of stay is a discretionary relief and when a *prima facie* case has been shown involving high pitched assessment and financial burden on an assessee, stay on condition of 20% of the amount demanded as per the circular is not justified. The relevant paragraph is extracted hereunder:-



companies. The petitioner has already deposited Rs.5,00,000/-before the Assessing Officer, even at the time of filing the appeal before the second respondent as against the assessment order dated 14.12.2018. If 20 % of the tax amount is calculated, as per the first respondent's internal circular in Instruction No.1914 dated 31.07.2017, the amount will come to Rs.16,50,000/-. Therefore, the sum of Rs.5,00,000/- deposited by the petitioner with the assessing officer for obtaining stay will work out to 30% of Rs.16,50,000/- which is the amount to be deposited as per the internal circular.

11. The Commissioner of Income Tax (Appeals) has got inherent powers to grant stay of recovery as per the assessment order pending disposal of the appeal. This Court has already considered the said issue and held in the decision reported in **(2018) 409 ITR 33 (Mad)** referred to supra by the learned counsel for the petitioner that when a *prima facie* case has been made out, the Commissioner of Income Tax (Appeals) is not bound by the internal circular involving high pitched tax assessment. In the instant case also, it is an high pitched tax assessment as seen from the assessment order, which is subject matter of challenge before the Commissioner of Income Tax (Appeals).

12. This Court is of the considered view that *prima facie* case has been made out by the petitioner since the Associate Companies who are their tenants from the date when the petitioner obtained exemption from payment of income tax under Section 12A(a) of the Income Tax Act right from the year 1973 onwards. In the instant case, the Income Tax Department has raised the issue only for the Assessment Year 2016-17 even though income tax returns were filed by the petitioner disclosing the tenancy, right from the date when they got exemption from payment of Income tax under Section 12A(a) of the Income Tax Act. The Assessing Officer ought to have considered all these aspects and should have granted stay of the impugned order.

13. This Court is of the considered view that the Assessing Officer has committed an error and has not exercised his discretion available to him for the grant of stay in the instant case. However, since the appeal has already been filed by the petitioner as against the order dated 14.12.2018 before the second respondent and as it is a revenue matter involving substantial sums of money, the Appeal will have to be disposed of expeditiously.

14. In the result, the impugned order dated 19.02.2019 passed by the first respondent in PAN: AAATT1082B is hereby quashed and an order of injunction is granted restraining the first respondent from initiating recovery proceedings based on the assessment order dated 14.12.2018 for the assessment year 2016-2017, till the disposal of the appeal filed by the petitioner before the second respondent.

15. The second respondent shall dispose of the appeal filed by the petitioner as against the assessment order dated 14.12.2018 for



the assessment year 2016-2017 within a period of three (03) months from the date of receipt of a copy of this order. With the aforesaid direction, the **Writ Petition is disposed of**. No costs. Consequently, W.M.P.(MD)No.4244 of 2019 is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1) The Income Tax Officer (Exemptions),
Income Tax Office,
No-2 V.P.Rathinasamy Nadar Roadm
CR Building, Bibikulam,
Madurai 625 002

2) The Commissioner of
Income Tax (Appeals)
Madurai 625 002

+1 CC to M/s.S.SRIMATHY, Advocate (SR-52307[F] dated 07/03/2019)

+1 CC to MR.S.PARTHASARATHY, Advocate (SR-52363[F] dated 07/03/2019)

Order made in
W.P. (MD) .No.5328 of 2019
07.03.2019

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AE (26.04.2019) 6P 5C