BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.1066 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015

Noorul Islam Educational Trust,
Represented by its Chairman
A.P.Majid Khan ... Petitioner

Vs.

1.The Commissioner of Income Tax (Appeals-I),
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai 0 625 002.

2.The Commissioner of Income Tax (Appeals III),
Ernakulam,
Kotchi – 16.

3.The Deputy Commissioner of Income Tax,
Central Circle-I,
Trivandrum

4.The Income Tax Officer,
Ward I (1),
Nagercoil

5.The Income Tax Officer (Exemption),
Tirunelveli,
Tirunelveli District ... Respondents

(R5 was impleaded vide court order
dated 25.03.2015 in M.PNo.3/15)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus calling for records relating to the impugned order made by the first respondent to I.T.A.NO.0026/2010-2011 dated 07.01.2015 and quash the same as illegal and consequently direct the first respondentto pass orders on the appeal in I.T.A.No.0026/2010-11 within the time that may stipulated by this Court and until then restrain the respondent from taking coercive action for recovery of the demand subject matter of the said appeal.

For Petitioner : Mr.Ajmal Khan
Senior Counsel for
M/s.Ajmal Associates

For Respondents : Mrs.S.Srimathy
Standing Counsel for the Income Tax

O R D E R

The petitioner challenges an order dated 07.01.2015 passed by the Commissioner of Income Tax (Appeals) in ITA No.0026 of 2010-2011 and for a consequential direction to the same respondent to pass orders in ITA No. 26 of 2010-2011 within a stipulated time frame.

2. The petitioner is a Public Educational Charitable Trust. A search was carried out under Section 132 of the Income Tax Act, 1961 (in short 'Act'). By order dated 24.09.2012, jurisdiction over the assessment of the petitioner was transferred to the Central Circle, Trivandrum by the Chief Commissioner of Income Tax, Trivandrum. A notice was issued under Section 158 BD of the Act on 14.03.2003 calling upon the petitioner to file a return of income for the block period 04.01.1995 to 11.09.2001.

3.The petitioner challenged order dated 24.09.2002 in W.P(MD) No.24865 of 2003 before this Court. During the pendency of the writ petition, the third respondent(R3) passed an order of assessment for the block period on 14.02.2009 and the aforesaid order was challenged by way of first appeal before the second respondent on 11.03.2009.

4. Coercive recovery was initiated by the third respondent triggering the writ petitioner to file a writ petition in W.P(Civil) No.12442 of 2009 before the High Court of Kerala seeking a direction to the second respondent to dispose of the appeal and stay petition and also a direction to keep in abeyance the recovery action in the mean time. The request was acceded to by the High Court vide order dated 21.04.2009.

5. While this is so, the writ petition, in W.P(MD) No.24865 of 2003, was disposed on 22.04.2008 setting aside order dated 01.04.2002 and remitting the matter for fresh consideration. The third respondent thereafter passed an order under Section 127 of the Act dated 16.12.2008 transferring the file of the petitioner to the Deputy Commissioner of Income Tax, Central Circle, Trivandram.

6. W.P(MD)No.60 of 2009 thus came to be filed challenging order dated 16.12.2008.

7. W.P(MD)No.60 of 2009 was allowed on 11.12.2009 as a result that the transfer of file was quashed.

8. The Revenue filed an appeal in W.A(MD) No.98 of 2010.

9. In the meanwhile, in the light of the order passed by the learned single Judge dated 11.02.2009, the appeal as well as stay petition were transferred by the Commissioner of Income Tax (Appeals) in Kerala to the Commissioner of Income Tax (Appeals) Madurai. The appeal as well as stay petition are still pending.

10. Recovery action was initiated and the petitioner filed a writ petition in W.P(MD)No.7212 of 2013 challenging the recovery. The aforesaid writ petition was disposed of on 26.04.2013 directing the first respondent to pass orders on the stay petition. The first respondent went a step further and posted the main appeal for hearing on 30.08.2014.

11.As far as the stay petition is concerned, the Officer rejected the request for stay but held that the appeal should be kept pending till a final decision was taken on the question of jurisdiction for assessment.

12. As against the order of rejection dated 07.01.2015 the petitioner has approached this Court with the present writ petition. The Department was directed at the time of admission not to take coercive action against the petitioner pending writ petition.

13. In the meanwhile W.A(MD) No.98 of 2010 was allowed on 20.03.2015 reversing the order of the learned single Judge upholding the order of transfer of file from Chennai to Trivandram.

14. In appeal preferred by the petitioner before the Supreme Court in Civil Appeal No.10234 of 2016 the order of the Division Bench dated 21.10.2016 was reversed confirming the order of the learned single Judge holding that the transfer of files from Chennai to Trivandram was illegal and incompetent.

15. Thus and as a result of the judgment of the Supreme Court dated 21.10.2016, it is the Assessing Officer in Tamilnadu who has jurisdiction to assess the petitioner.

16. The prayer in the writ petition is limited to a challenge to the impugned order of the first respondent dated 07.01.2015 where the Commissioner of Income Tax (Appeals), the first respondent, directs the petitioner to approach the Administrative Commissioner seeking stay of payment also stating that the appeal will be kept pending till a final decision on jurisdiction is arrived at.

17. In the light of the elapse of time as can be seen from the narration as aforesaid, time is ripe for the disposal of the appeal. The first respondent is thus directed to take the appeal up for disposal expeditiously. Having regard to the fact that the block period in question is 01.04.1995 to 11.09.2001, a direction is issued to the first respondent to take I.T.A. No.26 of 2010-2011 up for hearing forthwith, hear the petitioner and pass orders within a period of four weeks from date of receipt of a copy of this order.

The first respondent has in the impugned order referred to a remand report and hence, pleadings, as such, are complete before him.

18.Coercive recovery proceedings shall not be initiated till the disposal of the appeal as aforesaid.

19. This writ petition is disposed of in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To

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4.The Income Tax Officer,Ward I (1),Nagercoil

5.The Income Tax Officer (Exemption),Tirunelveli,
Tirunelveli District.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-71796[F] dated 27/06/2019)

W.P(MD)No.1066 of 2015 and
M.P.(MD)Nos.1 and 2 of 2015
27.06.2019

CM
MS/13.09.2019/4P.7C