IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17760 of 2011

==

Ishan International Education, a Society Registered under the Societies Act, 1860 having its office at South end of Doctor's Colony, Malahi Pakri, Kankarbagh, Patna 800020 through its President, Dr. Arbind Kumar, Son of Late Durga Singh, Resident of South end of Doctor's Colony, Malahi Pakri, Kankarbagh Patna-800020.

... ... Petitioner/s

Versus

1. Chief Commissioner of Income Tax-1, Patna having its office at Central Revenue Building, Bir Chand Patel Path, Patna
2. Commissioner of Income Tax-1, Patna having its office at Central Revenue Building, Bir Chand Patel Path, Patna

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Advocate

For the Respondent/s : Mrs. Archana Sinha, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-09-2020

Petitioner has prayed for the following relief(s):

"i) the order dated 26.8.2011 for the assessment year 2002-03 (as contained in Annexure-4) passed by the respondent no. 1 under Section 10 (23C) (vi) or (via) of the Act be quashed;

ii) the respondent no. 1 be directed to accord approval under Section 10 (23C) (vi) or (via) of the Act for the assessment year 2002-03;

iii) for granting any other relief(s) to which the petitioner is otherwise found entitled to."

In view of disputed question of fact, and the law laid down by Hon'ble the Apex Court in **Commissioner of Income Tax & Anr. v. Karnataka Planters Coffee Curing Work Private Limited, (2016) 9 SCC 538**, we are not inclined to entertain the present petition, more so when we find that for a little less than a decade, petitioner failed to pursue any remedy in accordance with law.

We are concerned with the assessment proceedings pertaining to the Assessment Year 2002-03. Petitioner seeks to set up a claim for exemption under Section 10(23C) (vi) and (via) of the Income Tax Act, 1969.

Seeking such benefit, purportedly, petitioner submitted an application (Form No. 56D) before the authority on 31st of October, 2002. On record there is another application stated to have been filed on 4th of February, 2003.

The Chief Commissioner, Income Tax I, Patna has dealt with the petitioner's claim, seeking exemption, vide impugned order dated 26th of August, 2011 (Annexure-4) which is extracted as under:

"Ishan International Educational Society, Malahi Pakri, Kankarbagh, Patna-800020 (the applicant) has filed an application dated 12^{th} May, 2011 enclosing therewith photocopy of an application in Form No. 56D dated 30/10/2002 for grant of exemption u/s 10(23C) (vi) & (via) of the Income-tax Act, 1961 for the A.Y. 2002-03 filed on 04/02/2003 before Commissioner of Income-tax, Patna-I, Patna.

The stipulation as per 14^{th} proviso to section 10(23C) inserted vide Finance Act, 2006 with effect from 01^{st} June, 2006, requires that an application made on or after 01^{st} June, 2006 for the purposes of grant of exemption or continuance thereof, is filed before the appropriate authority at any time during the financial year immediately preceding the assessment year from which the exemption is sought. Thus, the application in Form No. 56D seeking exemption u/s 10 (23C)(vi) & (via) of the Income-tax Act, 1961 for the AY-2002-03 should have been filed in the office of Chief Commissioner of Income-tax-I, Patna and not in the office of Commissioner of Income-tax-I, Patna, as CCIT-I, Patna is the appropriate authority for the purposes of grant of exemption u/s 10(23C)(vi) & (via) of the Income-tax Act, 1961. Further, the application of the assessee filed on 04/02/2003 even if treated as a pending application could not be proceeded with as the application is invalid being time barred as it should have been filed on or before 31/03/2002. The competent authority is not vested with power of condonation of delay.

Hence, the application of the assessee filed on 12/05/2011 seeking grant of exemption u/s 10(23C)(vi) & (via) for the A.Y. 2002-03 is rejected being invalid and without considering the request on merits. While disposing of the applications as aforesaid, the facts stated in the letter dated 19/08/2011 filed suo motu by the applicant have also been considered"

From the material on record, it is evident that similar application(s) filed by the petitioner for the subsequent periods were dealt with by the competent authority.

However, with respect to the year in question, it is the case of the Revenue that the application filed, if any, was not before the competent authority, and as such, none other than the authorized authority was under any obligation to deal with the same. We are in agreement.

That apart, we notice that even though the petitioner diligently pursued similar application for the period subsequent to the one in question, but did not take any steps for pursuing the application purportedly filed on 31^{st} of October, 2002/ refiled on 4^{th} of February, 2003. For more than eight years petitioner allowed the matter to be slept over.

Here only we may clarify that the Revenue does not admit filing of the application (Annexures P-1 and P-2), but only avers that neither any application was filed nor was it pending with the competent authority.

For all the aforesaid reasons, more so in view of disputed question of fact, applying the ratio laid down in **Commissioner of Income Tax & Anr. v. Karnataka Planters Coffee Curing Work Private Limited** (supra) we refrain from passing any order which the petitioner so desires. Hence, the instant petition, instituted on 30.09.2011 is dismissed in the aforesaid terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.09.2020
Transmission Date	