IN HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.01.2020
CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN
W.P.No.25311 of 2013
and
M.P.No.1 of 2013

1.Santha Medical Foundation
(a Public Charitable Trust)
Rep. by its Charmian and Trustee
Dr.S.Saravanan
No.32-B, Trichy Trunk Road,
Villupuram - 605 602.

2.E.Swamikannu ...Petitioners

Vs.

1.The Commissioner of Rural
Development and Local Administration,
Government of Tamil Nadu,
Chepauk, Chennai - 600 005.

2.The Commissioner,
Villupuram Municipality,
Villupuram - 605 602. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in Ref. Na. Ka. No.878/2003/A1 dated 23.07.2013 on the file of the Villupuram Municipality relating to the levy of the property tax in respect of the property owned by "Santha Medical Foundation Trust - E.S.Hospital" functioning at No.32B, Trichy Trunk Road, Villupuram and quash the said proceedings for levy of property tax and further directing the respondents not to demand the property tax in respect of the property owned by "Santha Medical Foundation Trust - E.S.Hospital" functioning at No.32B, Trichy Trunk Road, Villupuram.

For Petitioner : Mr.S.A.Rajan
For Respondent : Mr.P.Srinivas
Standing Counsel

O R D E R

In this Writ Petition, the petitioner has challenged the impugned order dated 23.07.2013 bearing reference Na.Ka.No.878/2003/A1 demanding a sum of Rs.5,31,710/- from the 1st petitioner.

2. The demand is pursuant to the findings given by the Villupuram Municipality on 28.06.2013, wherein they have observed that the petitioner cannot be given exemption from the tax, as per Section 86(e) of the Tamil Nadu District Municipalities Act, 1920, as the 1st petitioner though being a Medical Foundation (Public Charitable Trust) collected amounts for treatment and cost of medicines from the patients/public. Therefore, the petitioner was liable to pay the tax.

3. It is contention of the petitioners that the 1st petitioner is a Public Charitable Hospital and is therefore exempt from payment of tax under Section 83(1)(e) of the Tamil Nadu District Municipalities Act, 1920. The learned counsel appearing for the petitioners has produced the copy of the letter dated 02.02.2000 of the Commissioner of Income Tax acknowledging the application filed by the 1st petitioner for grant of registration under Section 12A(a) of the Income Tax Act, 1961, in the prescribed form on 19.01.2000 within the stipulated time.

4. He submits that a post facto approval also has been given to the 1st petitioner on 29.08.2016 pursuant to the verification report of the Joint Commissioner of Income Tax, Villupuram Range, Villupuram. The copy of the aforesaid letter of the Income Tax Department, Office of the Principal Commissioner of Income Tax, Puducherry - 605 003 is reproduced below:-

Telephone: (0413) - 2210483 (Pers)
: (0413) - 2210480 (Fax)
GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
DEIVANAYAGAM PILLAI THOTTAM,
MAHATAMA GANDHI ROAD, PUDUCHERRY - 605 003.

C.No.9175/PCIT/PDY/2016-17 Dated: 29.08.2016

To

The Chief Commissioner of Income tax-4,
Chennai.

Sir,

Sub: Approval for getting exemption of medical benefits u/s 17(2) of the IT Act - in the case of M/s. Shantha Medical Foundation, Trichy Main road, Villupuram Forwarding of report - Reg.

Ref: Letter dated 16.02.2016 in C.No.28/Hospital Approval/2015-16/272 from O/o the CCIT-4, Chennai.

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Kindly refer to the above

The Joint Commissioner of Income tax, Villupuram range, Villupuram in his letter dated 29.07.2016 has endorsed the verification report dated 31.05.2016 submitted by the ITO, Ward-1, Villupuram. In his verification report, the ITO, Ward-1, Villupuram after inspecting and taking into account the facilities and general conditions of the hospital has opined that the hospital is satisfying the conditions prescribed in Rule 3A of the Income Tax Rules.

In connection to the above I am directed by the Pr.CIT to forward herewith the report submitted by the Assessing Officer and also endorsed by the Joint Commissioner of Income tax, Villupuram Range, Villupuram for the kind perusal of the CCIF-4, Chennai.

Yours faithfully

5. The learned counsel for the petitioners submits that under similar circumstances, this Court has granted relief and in this connection, he referred the recent decision of this Court in Govel Trust Vs. The Commissioner, Coimbatore City Municipal Corporation And Others, dated 13.11.2019 passed in W.P.Nos.6014 & 6015 of 2018, wherein, the Court after examining the records, found that the petitioner therein namely Goyel Trust running Aravind Eye Hospital was collecting the nominal fees from other people which was being used to cover the expenses of medicines and implements as well as for building more and more hospitals. The learned Single Judge noted that similar objections raised by the concerned Authority in respect of other Corporation. The extract from the said order reads as follows:-

> The petitioner has already explained in detail as to how the nominal fee collected from the other people are being used to cover the expenses of medicines and implements as well as for building more and more hospitals. Moreover, very similar objections raised by the concerned authorities in respect of the other Corporations, were rejected by this Court in W.P.Nos.14414 and 14415 of 1999 and the same has been upheld by the Apex Court.

6.The learned counsel for the petitioners further submits that the petitioner is a Charitable Trust running Hospital and has been recognised as charitable by the Income Tax Authority as well. Therefore, the exemption of tax can be given to the 1st petitioner.

7. The learned counsel for the petitioner further drew my attention to a decision of the Madurai Bench of this Court in the Principal, Sarada Krishana Homeopathic Medical College, Kulasekaram Vs. The District Collector, Kanyakumari District and Others, 2011 (2) CWC 793, wherein the court it was held as follows:-

> 12.The reading of the demand notice shows that it is addressed to the Medical College, it was not open to the Town Panchayat, to impose property tax, in violation of the provision of the Act.
>
> 13.The impugned demand notice does not make any distinction regarding the property falling under section 83(1)(c) of the Act, and other property, as contended by the learned counsel at time of arguments, so there is no application of mind. The demand notice also does not show that the building was not used for educational purposes or was being used for purpose other than the charitable trust. The impugned demand notices, therefore, being in violation of statutory provision of law, cannot be sustained in law.
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> 14.Consequently, the writ petition is allowed. The impugned demand notices are ordered to be quashed.

8. The learned counsel for the petitioners further referred to the decision of this Court in PSG & Sons Charities Vs. City Municipal Corporation, Coimbatore, 1997 (1) CTC 331, wherein the court held as follows:-

> 23. Now let me examine the rival contentions. This Court in the decision in S.N.R. Sons Charitable Trust, Coimbatore v. The Commissioner, Coimbatore City Municipal Corporation, Coimbatore, 1993 W.L.R. 769, has clearly held that payments made by the patients to the hospital by way of hospital charges cannot be equated to 'rent' as contemplated under the provisions of the Act and the denial of the benefit of exemption to the petitioner on

> that score cannot be sustainable. Hence, I hold that the petitioner is exempted from paying the tax and the benefit of Section 123(e) of the Act should be extended to the petitioner as far as the hospital is concerned and hence, WP No. 13190 of 1992 is allowed.
> 24. Now coming to the other contention of the learned counsel for the petitioner that the Commissioner can issue notice within three years from the date on which such person should have been assessed and beyond that the Commissioner has no power as found in Section 168 of the Act, there is considerable force. There is no dispute that in all these case notices were issued on 24.4.1992 and the notices as well as demand show that the Commissioner has taken action under Section 168 of the Act on the basis of escaped assessment and further, there is no reference to Sections 128 and 129 of the Act as contended by the learned counsel for the respondent in Section 168 of the Act. Under these circumstances, I am of the opinion that the Commissioner has got power to demand the tax for a period of three years and beyond that, it will be barred. Hence, in all these writ petitions, the tax claimed from the second half of 1989-90 will be within time and the tax claimed before that period is barred by time. Accordingly, I hold that the tax claimed before the second half of 1989-90 has to be set aside

9. Per contra, the learned Standing Counsel for the respondents submits that the impugned order is well reasoned and requires no interference. He further submits that at the time when the petitioner claimed the exemption, the petitioner did not have requisite certificate from the Income Tax Department. Therefore, the benefit of exemption cannot be granted to the 1st petitioner under Section Section 83(1)(e) of the Tamil Nadu District Municipalities Act, 1920.

10. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

11. The petitioners have now produced the copy of a letter dated 29.08.2016 granting approval to the petitioner. Further, the 1st petitioner was also issued with a notice on an earlier occasion also. The petitioners challenged the same in W.P.No.11105 of 2004. By an order dated 22.03.2013, the court had quashed the demand and remitted back the case to the 2nd

respondent therein to consider the claim of the petitioner whether the petitioner is indeed eligible for exemption or not. Since the Income Tax Department has given certificate post facto approval on 28.02.2016, eligibility for exemption would require fresh consideration on facts. Therefore, impugned order is set aside and the case is remitted back to the respondents.

12. Therefore, the respondents are directed to pass a fresh order in the light of the letter dated 29.08.2016 of the Income Tax Department for grant of certificate under Section 12AA of the Income Tax Act, 1961, as a charitable trust, within a period of three months from the date of receipt of a copy of this Order.

13. The present Writ Petition stands allowed by way of remand. No cost. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Rural
Development and Local Administration,
Government of Tamil Nadu,
Chepauk, Chennai - 600 005.

2. The Commissioner,
Villupuram Municipality,
Villupuram - 605 602.

+1cc to Mr.S.A.Rajan, Advocate, SR.No.7416.
+1cc to Mr.P.Srinivas, Advocate, SR.No.7437.

W.P.No.25311 of 2013
and
M.P.No.1 of 2013

CA(CO)
CSR: 05.03.2020