IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 05.02.2020
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. No.8360 of 2019
and WMP Nos.15973, 8903 and 8904 of 2019

The Madras Bar Association Charitable
and Welfare Trust, Rep. by its Trustee,
First Floor, MBA High Court Buildings,
Chennai - 600 104. ...Petitioner

Vs

1.The Income Tax Officer,
Exemptions Ward 2 Chennai,
Aayakar Bhavan - Annexe Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2.The Commissioner of Income Tax (Exemptions),
Ayakar Bhavan, Chennai - 34.

(R2 suo motu impleaded vide order dated 06.01.2020)
.. Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the file of the Respondent in its impugned proceedings made in Order No.ITBA/AST/S/143(3)/2018-19/1014209118(1) dated 12.12.2018 and to quash the same as illegal.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mrs.Hema Muralikrishnan,
Senior Standing Counsel

O R D E R

The petitioner challenges an order of assessment for assessment year (A.Y.) 2016-17 passed in terms of the Income Tax Act, 1961 (in short 'Act'). The petitioner is the Madras Bar Association, a registered Public Charitable Trust. It holds a registration under Section 12AA of the Act.

2. The Trust was established in 1995 by the general body of the Bar Association for the purpose of carrying out avowed charitable objects including encouragement of the profession of law and the promotion of legal, cultural and philanthropic services. It also states that it provides medical relief for the benefit of the public, in particular lawyers and their dependents.

3. For A.Y.2016-17, the petitioner sought exemption under Section 11 of the Act requiring the petitioner to apply 80% of its gross receipts in respect of the financial year or, in the alternative, accumulating the amount in terms of Section 11(2) of the Act. The claim of accumulation requires filing of Form 10 within the specified time limit. This was however not done by the petitioner leading to the impugned order of assessment rejecting the claim of exemption under Section 11 in full.

4. The Supreme Court in the case of Commissioner of Income Tax V. Nagpur Hotel Owners Association (247 ITR 201) considered the question of whether the prescription of Form 10 for the purpose of accumulation under section 11(2) was mandatory or directory. The conclusion was that the requirement of filing Form 10 at the time of assessment was only directory and it would suffice if the same were filed even thereafter so long as relevant information in support of the claim of accumulation was furnished by the assessee even at the time of assessment.

5. The impugned order of assessment in this case refers to the claim of accumulation and the details of such accumulation. For this reason and in line with the judgment of Supreme Court in Nagpur Hotel (supra) that has also been followed by this Court in the case of Commissioner of Income Tax V. Spic Educational Foundation (T.C.(A)No.1593 of 2008 dated 12.12.2018), the petitioner was permitted on 06.01.2020 to file a petition for condonation of delay in filing Form 10 and the Commissioner of Income Tax (Exemptions), who is the proper authority to consider the condonation of delay was impleaded suo motu in the Writ Petition as second respondent. The second respondent was directed to consider the submissions of the petitioner, and to dispose the delay condonation petition within a specified time limit.

6. The matter was listed today for production of a copy of the order of the Commission either accepting or rejecting the request for condonation and it is seen that vide order dated

28.01.2020 passed under Section 119(2)(b) of the Act, R2 has, after consideration of the submissions of the petitioner, condoned the delay in the following terms:

'4. In obedience to the order of the Hon'ble High Court, the case has been posted for hearing on 21/1/2020 at 10.30 AM. The AR of the trust appeared and filed relevant particulars. The AR has been asked to file further information in respect of the claim for accumulation. The said details have been filed on 27.01.2020. The details filed have been considered.

5. It is submitted by the assessee that all the trustees are legal professionals and the meeting of the trust could not be held earlier due to non-availability of some of the office bearers. Further, AY 2016-17 being the first year of filing Form No.10 electronically, due to delay in getting DSC for the authorized signatory, Form No.10 could not be filed in time. The assessee filed F.No.10 electronically on 29/12/2016.

6. It is further submitted by the assessee that it has invested the accumulated funds in the modes prescribed under section 11 (5) of the Act for the purpose of carrying out objects of the trust. It is noticed that the funds to the extent of Rs.19,44,491/- (April 2015 to March, 2016) are kept in the account of the The Tamilnadu State Apex Co-operative Bank Limited, Head Office branch, NSC Bose Road, Chennai. The shortfall si worked out as under:

Gross Receipt (in Rs.)	33,20,035	
85% thereon		28,22,030
Application (Rs.)		13,12,392
Shortfall (Rs.)		15,09,638

7. I have carefully examined the facts of the case and the submissions of the Assessee Trust. As per CBDT Circular No.7/2018, dated 20/12/2018 “The Commissioner will, while entertaining such belated applications in Form No.10, satisfy himself that the assessee was prevented by reasonable cause from filing of applications in Form No.10 within the stipulated time. Further, in respect of Form No.10, the Commissioner shall also satisfy himself that the

aunt accumulated or set apart has been invested or deposited in any one or more of the forms or more specified in sub-section(5) of Section 11 of the Act”

8. The assessee fulfilled the above conditions and therefore, I am satisfied that it is a fit case for condonation of delay in filing Form No.10 and accordingly, the delay in filing Form No.10 by the assessee for accumulation of Rs.13,76,161/-, as claimed, for the Assessment Year 2016-17 is hereby condoned.'

7. The impugned assessment which rejects the claim of exemption solely on the ground of non-filing of Form 10 is thus set aside and the matter remitted to the file of the Assessing Authority to be re-done de novo, taking into account order of R2 dated 28.01.2020.

8. The Writ Petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sl

To
1.The Income Tax Officer,
Exemptions Ward 2 Chennai,
Aayakar Bhavan - Annexe Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
2.The Commissioner of Income Tax (Exemptions),
Ayakar Bhavan, Chennai - 34.
+1cc to Mr.S.Rajasekar, Advocate, S.R.No.9241
+1cc to Mr.Hema Murali Krishnan, Advocate, S.R.No.9318

W.P. No.8360 of 2019
and WMP Nos.15973, 8903 and 8904 of 2019

pm(CO)
smn(29/05/2020)