HIGH COURT FOR THE STATE OF TELANGANA
(Special Original Jurisdiction)

THURSDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO: 11043 OF 2020

Between:

M/s Vikas-The Concept School, Plot No.300/A, Sai Krishna Hills, Bachupally, Hyderabad - 500 090, State of Telangana. Rep. by its President and Authorized Signatory Mr.Nanda Kishore Surapaneni

...**PETITIONER**

AND

1. The Deputy Commercial Tax Officer, Gandhi Nagar Circle, Hyderabad Rural Division, Hyderabad.
2. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 1st Respondent in passing the Penalty and Interest Proceedings for the assessment year 2016-17 under the Telangana Tax on Professions, Trades, Callings and Employments Act, 1987, without granting sufficient opportunity of being heard, as arbitrary, contrary to law and the same is in violation of principles of natural justice consequently set aside the penalty and interest proceedings of the 1st respondent.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings pursuant to the Penalty and Interest Proceedings of the 1st respondent dated 10.06.2020, served on 19.06.2020 for the assessment year 2016-17 under the Telangana Tax on Professions, Trades, Callings and Employments Act, 1987, till the disposal of the above writ petition, as otherwise, the petitioner will be put to severe loss and hardship.

Counsel for the Petitioner: SRI. SHAIK JEELANI BASHA

Counsel for the Respondents: SRI. J. ANIL KUMAR, SPL. SC FOR COMMERCIAL TAXES

The Court made the following: ORDER

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

W.P.No.11043 of 2020

ORDER: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

In this Writ Petition, petitioner is questioning the proceedings dt.10.06.2020 passed by the Profession Tax Officer, IDA Gandhi Nagar Circle, Hyderabad Rural Division, Hyderabad, who is also the Deputy Commercial Tax Officer, IDA, Gandhi Nagar Circle, Hyderabad Rural Division, Hyderabad (for short '1st respondent'), for the assessment year 2016-17 under the Telangana Tax on Profession, Trades, Callings and Employments Act, 1987 (for short 'the Act').

2. Petitioner is a Society under the name and style of Vikas-the Concept School, registered under the Registrar of Societies, Ranga Reddy. It is engaged in imparting of Education and is registered on the rolls of the 1st respondent.

3. Under the Act, for the assessment year 2016-17, the 1st respondent had completed the assessment as far as profession tax is concerned vide proceedings dt.22.02.2020 and the tax due thereon was also paid by the petitioner and the assessment become final.

4. On 19.06.2020, petitioner received the impugned proceedings dt.10.06.2020 passed by the 1st respondent for the assessment year 2016-17 levying penalty and interest for the said year under the provisions of Sections 7, 11, 12 and Rule 24 of the Act- penalty for

late filing of monthly returns and late payment of taxes, and also levying interest for such late payments on the petitioner.

5. Prior to the passing of the impugned order, show cause notice dt.22.02.2020 was served on the petitioner on 27.02.2020 and representative of the petitioner appeared before the 1st respondent and sought one month time. Thereafter notice dt.20.03.2020 was issued and served on the petitioner on 21.03.2020, and in the said notice, petitioner was granted 7 days time from the date of its receipt to file objections.

6. However, on account of COVID-19 pandemic situation there was a lockdown imposed by the State Government as well as the Central Government which continued up to July, 2020. Therefore, the petitioner was disabled from filing objections on or before 28.03.2020.

7. The 1st respondent did not wait and proceeded to pass the impugned *ex-parte* orders on the ground that the petitioner had not availed the opportunities given to the petitioner.

8. Counsel for the petitioner contends that there has been violation of principles of natural justice because the petitioner did not file objections to the notices issued by the 1st respondent on account of the lockdown imposed by the State Government as well as the Central Government in view of COVID-19 pandemic situation; that levy of penalty can only be done if non-payment of tax, is without any

reasonable cause; that penalty cannot exceed 50% of the tax due; but in the instant case, maximum penalty has been imposed for the late filing of the returns as well as late payment of tax contrary to Section 7(3) of the Act and therefore, the impugned orders have to be set aside.

9. Sri J.Anil Kumar, Special Counsel for Commercial Taxes appearing for respondents does not deny that the petitioner was disabled from filing objections on account of the lockdown imposed in the State of Telangana both by the State Government and Central Government, and that the principles of natural justice were therefore not followed before passing of the impugned orders on 10.06.2020 by the 1st respondent.

10. Having regard to the admitted fact that there was a lockdown in the State of Telangana from 21.03.2020 till the 1st week of July, 2020, the petitioner cannot be blamed for not filing the objections to the show cause notice dt.20.03.2020 served on the petitioner on 21.03.2020 after the lockdown commenced.

11. Since there has been violation of principles of natural justice, remedy of appeal provided under Section 15 of the Act would not come in the way of the petitioner availing the jurisdiction of this Court under Article 226 of the Constitution of India.

12. Accordingly, this Writ Petition is allowed; the impugned order dt.10.06.2020 passed by the 1st respondent for the assessment year

2016-17 under the Act is set aside; petitioner is granted four weeks time to file objections to the show cause notice dt.22.02.2020 issued to it by the 1st respondent along with supporting material; the 1st respondent shall provide a personal hearing to the petitioner after receipt of such objections from the petitioner; and then the 1st respondent shall pass a reasoned order in accordance with law and communicate it to the petitioner. It is made clear that we have not expressed any opinion on the merits of the contentions of both sides. No costs.

13. Consequently, miscellaneous petitions, pending if any, shall stand closed.

SD/-B.SATYAVATHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Deputy Commercial Tax Officer, Gandhi Nagar Circle, Hyderabad Rural Division, Hyderabad.
2. The Principal Secretary, Revenue (CT) Department, State of Telangana, Telangana Secretariat, Hyderabad.
3. One CC to Sri. Shaik Jeelani Basha, Advocate (OPUC)
4. One CC to Sri. J. Anil Kumar, Spl. SC for Commercial Taxes, Advocate (OPUC)
5. Two CD Copies.

PM

HIGH COURT

DATED:06/08/2020

ORDER

WP.No.11043 of 2020

ALLOWING THE WP
WITHOUT COSTS.

SSV
6 copies
Dt 18/8/2020