

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.29557 of 2016
and
W.M.P.No.25567 of 2016

M/s.Sriram Educational Trust,
Rep by its Secretary Mr.M.D.Rajkumar,
No.49, Anna Salai,
Chennai - 600 002. Petitioner

Vs.

- 1.The Commissioner of Income Tax Exemptions,
Income Tax Department,
121, Mahatma Gandhi Road,
Chennai - 600 034.
- 2.The Income Tax Appellate Tribunal,
Chennai Bench, Rajaji Bhavan,
Second Floor, Besant Nagar,
Chennai - 600 904.
- 3.The Deputy Commissioner of Income Tax (Exemptions),
Income Tax Department,
121, Mahatma Gandhi Road,
Chennai - 600 034. Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent to quash the impugned order in F.No.CIT(E)/No.26 (3)/2015-16 dated 23.11.2015 in PAN:AAATS2429R and consequently direct the first respondent to admit Form No.10 filed for the Assessment years 2006-07 to 2010-11 to fortify their claim of tax exemption u/s 11 of the Act.

For Petitioner : Mr.S.Sridhar

For Respondents : Mr.Prabhu Mukunth Arunkumar
Standing Counsel

O R D E R

The petitioner has challenged the impugned order dated 23.11.2015 passed by the first respondent under Section 119(2) (b) of the Income Tax Act, 1961. By the impugned order, the first respondent has rejected the request of the petitioner for delay in filing Form 10 for the Assessment years 2006-07,

2007-08, 2008-09, 2009-10 and 2010-2011.

2.The petitioner had filed an application for condonation of the delay in filing Form 10 on 23.06.2014 before the 1st respondent after the petitioner was denied the benefit of Section 10(23C)(vi) for these Assessment years in the re-assessment order dated 31.03.2014. The reasons given in the impugned order while rejecting the request of the petitioner read as under:

8.I have considered the applications for condonation of delay along with the enclosures, reports of the AO and Additional CIT(Exemptions), the record and the submissions of the assessee trust. It is undisputed that the assessee Trust filed Form 10 with CIT (Exemptions) along with a request for condonation of delay on 23.06.2014, while the assessments were already completed by 31.03.2014. The submissions of the assessee Trust that Form 10BB filed along with the original return when 10(23C)(vi) registration was valid has to be considered as Form 10 filed before the AO in reassessment proceedings initiated after cancellation of 10(23C)(vi) registration is not tenable. On the date of receipt of notice u/s148 the assessee was aware that registration u/s10(23C)(vi) was no longer available to it. Further Form 10 BB and Form 10 are not one and the same. This explanation of the assessee Trust therefore cannot add any strength to the request of the assessee Trust for condonation of delay in filing of Form 10.

10.In the present case, for Assessment years 2006-07 to 2010-11 the applicant did not file Form No.10 before assessing officer before completion of assessment. Therefore, following the decision of the Hon'ble Supreme Court (supra), the petitions requesting condonation of delay in filing Form No.10 for Ays 2006-07 to 2010-11 are rejected.

3.The impugned order relies on the decision of the Hon'ble Supreme Court in Commissioner of Income Tax Vs Nagpur Hotel Owner's Association [2001] 144 TaxMan 2559 when the Hon'ble Supreme Court held as under:-

''.....the intimation required under Section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income, the assessing authority cannot entertain the claim of the assessee under Section 11, therefore, compliance of the

requirement of the Act will have to be any time before the Assessment proceedings. Further, any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened in our opinion, the Act does not contemplate such reopening of the assessment.....''

4. Before the 1st respondent it was stated that the petitioner Trust had filed the return of Income declaring income as Nil claiming exemption under Section 10(23C)(vi). The Form 10BB was filed under a bona fide belief that the petitioner was entitled to exemption under Section 10(23C)(vi). However, subsequent to withdrawal of registration granted under Section 10(23C)(vi), fresh Form 10 was filed by the petitioner Trust claiming exemption under Section 11 and 12 of the Act.

5. It is therefore submitted that the revised Form 10 was only a replacement of the Form 10 that was originally filed claiming exemption under Section 10(23C)(vi). It is submitted that the petitioner had already filed Form 10 and the revised Form 10 was only a replacement to the original. Hence, the decision of the Hon'ble Supreme Court is for not applicable to the facts of the case of the petitioner.

6. It is further submitted that after the Assessment order dated 31.03.2014 were passed for these Assessment year, the Assessments were reopened by issuing notice under Section 148 of the Income Tax Act, 1961. Under these circumstances, the petitioner had filed appeal before the Commissioner of Income Tax (Appeals) who by his order dated 18.02.2015 rejected the appeal is filed by the petitioner. The petitioner therefore filed appeal before Income Tax Appellate Tribunal.

7. Pending disposal of the above appeals before Income Tax Appellate Tribunal, impugned order dated 23.11.2015 has been passed by the 1st respondent. It is submitted that by an order dated 04.03.2019, the Income Tax Appellate Tribunal has now remitted the case back to the Assessing Officer to re-examine the claim of the petitioner under Section 11 of the Act.

8. Learned counsel for the petitioner relies on the decision of the Hon'ble Supreme Court in Hon'ble Supreme Court in National Thermal Power Company Limited Vs. CIT [1998] 229 ITR 383 wherein it was held as follows:

As a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first

time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under Section 254.

Under Section 254 of the Income Tax Act, 1961, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeal is, thus, expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) is too narrow a view to take of the powers of the Tribunal.

9. Learned counsel for the petitioner also relies on the decision of the Gujarat High Court in Commissioner of Income-tax Vs. Mayur Foundations [2005] 274 ITR 562 (Gujarat), wherein it was held as follows:

Undoubtedly, the Tribunal has the discretion to allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

Thus, the proceedings before the Tribunal are meant to correctly assess the tax liability of an assessee: If this be so, it follows that the assessment proceeding cannot be said to be complete and is pending till the appeal is heard and disposed of by the Tribunal and the order of the Tribunal is given effect to by the Assessing authority by computing the correct tax liability of an assessee. In other words, whether an assessee is required to pay tax or becomes entitled to a refund, would be ascertained by the assessing authority after giving effect to the order of the Tribunal.

In these circumstances, in the present case, the Tribunal was well within its jurisdiction to entertain the new ground by which the assessee claimed the benefit under Section 11(2) of the Act and adjudicate the Tax liability of the assessee. As already noticed hereinbefore, the Tribunal has categorically found that "the additional ground involves the question relating to interpretation of Section 11(2) and the facts on the basis of which such a decision is to be given regarding interpretation of Section 11(2) are not at all in dispute". In the circumstances, there is no infirmity in the order of the tribunal, holding that the assessee is entitled to benefits allowable under Section 11(2) of the Act.

The question referred to the Court is accordingly answered in the light of the opinion expressed herein before in favour of the assessee and against the Revenue. There shall be no order as to costs.

10. It is therefore submitted that the above decision of the Gujarat High Court, squarely applies to the facts of the Act entertain new grounds by which the assessee claim benefit under Section 11(2) of the Act and adjudicate the liability of the assessee.

11. Defending the impugned order, the learned counsel for the Income Tax Department submits that since the matter has been remitted back to the Assessing officer by the Tribunal by its order dated 4.03.2019 referred to supra, the issues as to whether the petitioner was entitled to benefit of Section 11 of the Income Tax Act can be decided independently in the light of the decision of the Gujarat High Court and there is no necessity for setting aside the impugned order in as much as the application for condoning the delay in filing form 10 where beyond the limitation prescribed under Section 11(2) of the Income Tax Act. He therefore prays for a dismissal of the

writ petition.

12.I have considered the arguments advanced by the petitioner and the respondent. The application for condoning the delay in filing Form 10 for the Assessment years were filed on the strength of Circular No. 273 F.No.180/57/15 IT (A1) dated 03.06.1980. Subsequently, during the pendency of this writ petition, two others circular namely Circular No.7/18 dated 20.07.2018 and 10/19 dated 22.05.2019 have been issued for giving guidelines for condoning the delay.

13.No doubt, there was a delay in filing Form 10 as the original returns filed by the petitioner were predicated for exemption under Section 10(23C)(vi) of the Income Tax Act, 1961. However, the said recognition was withdrawn on 14.03.2013 and therefore the petitioner as now claimed for alternate exemption under Section 12(a) read with Section 11 of the Income Tax Act, 1961. Though section 11(ii) contemplates filing of the required form namely Form 10 has to be filed in the prescribed manner for the aforesaid purpose Rule 17 of the Income Tax Rules has been provided. Form 10 and Form 10B have been prescribed for the aforesaid purpose. The petitioner could not have filed the Form 10 at the time of filing of the original returns on various dates which have been referred to the impugned order at the time during 2007 for the respective Assessment years.

14.Since the benefit of Section 10(23C)(vi) of the Income Tax has been denied, the benefit of Section 11 of the Income Tax cannot be denied as the petitioner was otherwise eligible to avail such benefit. Ultimately, the purpose of Assessment and Re-assessment is to arrive at the correct tax liability and therefore substantive benefit available to the assessee cannot be denial merely on the ground that the Form 10 was not filed at the time of filing of the returns under Section 139 of the income tax act, 1961.

15.The facts of the case indicates that the respective Assessment orders came to be passed pursuant to the withdrawal of the registration under Section 10(23C)(vi). The Tribunal has also remitted the case back to the Assessing officer. Even though, the respondent has rejected the application for condonation of delay in filing Form 10 under Section 119 of Income Tax Act read with the aforesaid circular, I am of the view, the Assesssing officer has to pass an independent Assessment order uninfluenced by the reasons given in the impugned order rejecting condonation of delay. Benefit of exemption is to be extended to the assessee and it would be no part of the duty of the Assessing officer to deny benefit that are otherwise available to assessee under the provisions of the Income Tax Act, 1961.

16.In the light of the above discussion, I remit the case back to the respondent to pass a speaking order uninfluenced

by the reasons given in the impugned order for rejecting the application for condonation of delay in filing Form 10 by extending the benefit of Section 11. If the petitioner was otherwise entitled to exemption under Section 11 of the Income Tax Act, 1961, it should be extended. Since the case pertains to the Assessment years 2006-2007 to 2010 -2011 and the Assessments have been kept pending in view of the parallel proceedings before this Court and the Appellate Authority under the Income Tax Act, the Assessing Officer may take up the proceedings and complete the Assessment proceedings within a period of three months from the date of receipt of a copy of this order.

17.Writ petition disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas

To

1.The Commissioner of Income Tax Exemptions,
Income Tax Department,
121, Mahatma Gandhi Road,
Chennai - 600 034.

2.The Income Tax Appellate Tribunal,
Chennai Bench, Rajaji Bhavan,
Second Floor, Besant Nagar,
Chennai - 600 904.

3.The Deputy Commissioner of Income Tax (Exemptions),
Income Tax Department,
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to Mr.S.Sridhar, Advocate, S.R.No. 14467

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 13573

W.P.No.29557 of 2016

and

W.M.P.No.25567 of 2016

BR(CO)

GN(12/07/2021)