BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **02.09.2021**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)Nos.8412 and 8633 of 2021
and
W.M.P.(MD)No.6338, 6339, 6499 and 6501 of 2021

M/s. Ponnaiyah Ramajayam Institute of
Science and Technology Trust,
Rep. by its Managing Trustee,
Mr. M. Ponniyah Nageshwaran ...Petitioner in both Wps

-Vs-

The Assistant Commissioner of Income Tax,
TDS Circle, Madurai,
CR Building, 2, VP, VP Rathinasamy Nadar Road,
Bibikulam, Madurai - 625 002.
...Respondent in both WPs

Common Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in TAN CHEP10485G vide DIN and Order No.ITBA/COM/F/17/2020-21/1031656976(1) and Order No.ITBA/COM/F/17/2020-21/1031658278(1) dated 22.03.2021 for the AY 2014-15 & 2015-16 respectively and quash the same as illegal and against the principles of natural justice and fairplay and direct the respondent to grant opportunity to the petitioner to reconcile and produce Form 26A from the Contractor.

For Petitioner : Mr.P.Prithvi Chopda (in both WPs)
For Respondent : Mrs.S.Srimathy (in both WPs)
Standing Counsel for Income Tax

COMMON ORDER

The prayer sought in the Writ Petitions is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in TAN CHEP10485G vide DIN and Order No.ITBA/COM/F/17/2020-21/1031656976(1) and Order No.ITBA/COM/F/17/2020-21/1031658278(1) dated 22.03.2021 for the assessment years 2014-15 & 2015-16 respectively and quash the same as illegal and against the principles of natural justice and fairplay and direct the respondent to grant opportunity to the petitioner to reconcile and produce Form 26A from the Contractor.

2.In both the cases, assessee is the same and the issue with regard to the assessment years 2014-15, 2015-16 is also same. Therefore, with consent of both sides, both writ petitions are heard together and disposed of, by this common order.

3.It is the case of the petitioner that, there had been TDS inspection, which was conducted at the business premises of the petitioner assessee on 27.02.2015 and pursuant to which, in order to complete the proceedings under Section 201(1)/(1A) of Income Tax Act, 1961 (hereinafter referred to as "Act" in short), the petitioner had been given notices during the year 2015 itself and subsequently, further notice was also given on 30.11.2018 calling for books of accounts, profit and loss account, balance sheet, ledger, etc from the petitioner assesee. Since there was no response from the petitioner assessee, reminders were issued by the revenue on 08.12.2020, 08.03.2021 and lastly on 12.03.2021.

4.In the last such reminder dated 12.03.2021, the respondent revenue has issued the following reminder notice:

> "*Kindly refer to the above*
>
> *A TDS Inspection was conducted at your business premises on 27.02.2015, In order to complete the proceeding u/s. 201(1)(1A) of the Income Tax Act, 1961, you are requested to submit details of TDS made along with ledger copies and challans with e-TDS statement filed for all quarters for the F.Y:2013-14 on or before 17.03.2021.*
>
> *If you fail to respond/furnish the details on the above mentioned date, your case will be finalized based on the records available in this office."*

Similar notice had been given for the assessment year 2015-16 also.

5.On receipt of the notices, on behalf of the petitioner assessee, a mail communication had been sent on 16.03.2021 by the assessee. In the said interim reply, the petitioner assessee has stated that the Chairman of the Institution, due to affect of Covid-19 had been admitted in a hospital and he was in Critical Care Unit, as he was under the ventilator support. Therefore, nobody in the institution was able to contact him. Hence, on the said medical ground, as well as the other grounds, in the Institution, the workers, who were working in the year 2015 since have left the Institution, it requires some reasonable time to trace out those records, which were required to be submitted and therefore for these two reasons, further time upto 30.04.2021 was sought for on behalf of the petitioner assessee, The relevant letter of the petitioner assessee dated 16.03.3021 reads thus:

> "*Our chariman of the Trust is affected by covid pandemic and and he is admitted in Appollo Hospital, Chennai for treatment. Now he is in the Intensive Care Unit and kept under ventilator support. Hence he is not able to contact by any*

body.

More ever the staff members of the administrative section in the Trust at the time of survey in 2015 are not at all in service. Hence the files and other records are not traceable presently, since the earlier survey had taken place nearly 5 years ago.

While the Chairman of the trust is under medical treatment none in the administration of the Trust can take any independent decision in this regard. Neither anybody at present is in the know of things.

Under these circumstances, it is submitted that the Assistant Commissioner may be pleaded to grant to us time till 30/4/2021 to furnish the required details called for as we have to contact the staff who were in charge at that time and we have to make a search of the same which is likely to take some more time."

6.Subsequently, within a few days, ie., on 19.03.2021, the Chairman of the Institution died and the certificate to that effect had also been produced by the petitioner assessee. However, by orders dated 22.03.2021, the respondent revenue has passed orders of assessment separately in respect of these two assessment years, whereby the tax demand had been made. Therefore, challenging the said proceedings dated 22.03.2021 issued by the respondent revenue, in respect of both assessment years 2014-15, 2015-16, these two writ petitions have been filed by the petitioner assessee with the aforesaid prayers.

7.Heard Mr.P.Prithvi Chopda, learned counsel for the petitioner assessee, who having reiterated the aforesaid facts would seek indulgence of this Court that normally these kind of assessment orders would be challenged before the appellate authority, but here in the case on hand, the fact remains that, on 12.03.2021, final reminder had been given requiring the petitioner to produce ledger and files. However, that was not possible, because of the unexpected situation, where the Chairman of the Institution was affected with Covid-19 and therefore on 16.03.2021, when he had requested time upto 30.04.2021, without giving shortest time which was asked for by the petitioner assessee, these impugned assessment orders had been passed on 22.03.2021. In the meanwhile, ie., on 19.03.2021, the Chairman of the Institution also expired. Therefore, in such mitigating circumstances, the plea raised by the petitioner assessee to the respondent revenue to give time upto 30.04.2021 could have been considered and granted and if it had been granted to the petitioner assessee, it could have been in a position to respond to the respondent revenue as required by them, for their notice dated 12.03.2021 and therefore, for the said reason alone, the petitioner had chosen to file these writ petitions. Therefore, the learned counsel for the petitioner assessee seeks indulgence as against the impugned orders.

8.Heard Mrs.S.Srimathy, learned Standing counsel for the respondent, who pointed out that, after the inspection was made on 27.02.2015, a notice was issued to the petitioner assessee to appear on 09.03.2015 along with the copy of paid challans and details of payment and no such documents were filed by the petitioner assessee. Therefore a notice under Section 201(1)(1A) of the Act was issued on 30.11.2018 calling for books of accounts, profit and loss account, balance sheet etc. Since, that was also not responded by the assessee, reminders were issued on 08.03.2021, 10.03.2021 and finally on 12.03.2021.

9.Therefore, 12.03.2021 reminder was the last reminder that was given after giving a long rope to the petitioner assessee nearly about 5 years and therefore, it cannot be stated that no opportunity was given to the petitioner to respond for the last reminder dated 12.03.2021. Therefore, the grounds urged by the petitioner for filing writ petitions against the impugned orders are untenable and therefore, the writ petitions are liable to be rejected *in-limine*, the learned standing counsel submitted.

10.I have considered the rival submissions made by learned counsel for both parties and have perused the materials placed before this Court.

11.It is no doubt clear that, the TDS inspection was conducted by the respondent revenue at the business premises of the petitioner assessee on 27.02.2015, following which, a notice was issued on 09.03.2015, where he was directed to appear for personal hearing along with records and challans. Since the same has not been responded and no one filed those documents, the respondent revenue issued notice under Section 201(1)(1A) of the Act calling for books of accounts, etc. Since this was also not responded by the assessee, it triggered the respondent revenue to issue three reminders, ie., on 08.03.2021, 10.03.2021 and 12.03.2021. After all these reminders only, according to the respondent revenue, they now passed the orders dated 22.03.2021. Therefore, the plea of the petitioner or the ground urged by the petitioner assessee that no opportunity was given to the petitioner is completely untenable.

12.However, it is to be noted that it is the stand of the respondent revenue that upto 12,03.2021, the proceedings was continued with ofcourse reminders after reminders and communication had been sent on behalf of the revenue to the petitioner assessee. Last such communication by way of reminder was sent on 12.03.2021 and the copy of the same was extracted hereinabove, where the respondent revenue directed the petitioner assessee to submit details of TDS made along with copies of ledger and challans with e-TDS statement filed for all quarters for the Financial Years 2014-15, 2015-16 on or before 17.03.2021.

13. On receipt of this last communication on behalf of the petitioner assessee, a short reply has been given with a request by the petitioner assessee on 16.03.2021 and the contend of the same has already been extracted hereinabove, where unfortunate circumstances faced by the head of the Institution had been explained by the assessee as he was hospitalized due to Covid-19 and therefore on that ground, the petitioner assessee sought time upto 30.04.2021. Within the short span of time, ie., on 19.03.2021, the Chairman of the Institution succumbed to Covid-19. However, on 22.03.2021, the impugned orders have been passed by the respondent revenue.

14. In this context, it is to be taken note of the fact that, if the Chairman of the Institution was in dead-bed due to severe attack of Covid-19, definitely the administration of the entire Institution would be crippled. At this juncture, it cannot be expected that the lower level sub staff would have acted upon swiftly in response to the notice issued by the respondent revenue dated 12.03.2021. Despite these factors, on 16.03.2021, an interim reply with request had been given by the petitioner assessee explaining the glooming situation faced by the institution, because of the health condition of the head of the Institution and therefore, sought for time upto 30.04.2021.

15. Though a longer rope has also been taken by the petitioner, as already pointed out by the learned Standing Counsel for the respondent in this matter, after 12.03.2021 last notice, in view of such peculiar situation that has been explained hereinabove, some more little bit rope could have been extended to the petitioner assessee, which the petitioner wanted only upto 30.04.2021. But the respondent revenue have not chosen to give any time and passed orders on 22.03.2021.

16. In view of these peculiar circumstances, where a final opportunity reasonably upto 30.04.2021 or any other date that would have been decided by the revenue, might have been given to the petitioner assessee to respond and still if the petitioner had not definitely responded, the respondent revenue might have taken action, to conclude the proceedings.

17. However, such sympathy has not been shown by the respondent to the petitioner taking into account the peculiar circumstances, as has been explained above, where the entire Institution would have been crippled, because of the unexpected death of the head of the Institution on 19.03.2021. Hence, this Court feels that it is a reasonable cause, where such opportunity sought for by the petitioner assessee could have very well been extended to it and therefore, for that reason, this Court feels that the impugned orders can be set aside and remanded to the respondent for re-consideration.

18.In view of the aforesaid reasons, this Court is inclined to pass the following order:

> that the impugned orders in both the writ petitions are quashed and the matters are remanded back to the respondent for re-consideration. While making such re-consideration, an opportunity to respond as required by the respondent can be given to the petitioner assessee for a period of 30 days, within which, the petitioner assessee shall file the necessary inputs as required by the respondent revenue. If such inputs are filed, the same can be taken into account and the proceedings can be concluded. If no such inputs filed by the petitioner assessee, then it is open to the respondent revenue to proceed further based on the available records and final orders can be passed.

19.With these directions, these Writ Petitions are ordered. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pnm/sm

To

The Assistant Commissioner of Income Tax,
TDS Circle, Madurai.
CR Building, 2, VP, VP Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-27968[F] dated 02/09/2021)

+2 CC to M/s.PRAMODKUMAR CHOPDA, Advocate (SR-28174[F],28172 dated 06/09/2021)

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SRK(CO)
KB(12.11.2021) 6P 5C