



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P.[MD]No.16263 of 2021
and W.M.P.[MD]Nos.13106 & 13108 of 2021

Aiman Education and Welfare Society,
Represented by its Treasurer,
Mr.A.Abdul Majeed,No.16, 17, K.Sathanur,
Azad Nagar, K.K. Nagar,
Tiruchirappalli - 620 021.

... Petitioner

Vs.

1.The National Faceless Appeal Centre,
Income Tax Department,Ministry of Finance,
New Delhi.

2.The Commissioner of Income Tax (Exemptions),
No.122, Nungamakkam High Road, Chennai - 600 034.

3.The National e Assessment Centre,
Income Tax Department, Ministry of Finance,
New Delhi.

4.The Income Tax Officer (Exemptions) cum
Tax Recovery Officer, 'Aayakar Bhavan',
No.44, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records in the Demand / Show Cause notice in DIN & Notice No.ITBA/RCV/S/221/2021-22/1034797134(1) dated 11.08.2021 issued by the fourth respondent and quash the same and further direct the first respondent to dispose of the appeal filed by the petitioner challenging the order of assessment dated 13.04.2021 made by the third respondent for the Assessment Year 2018-19 within a time to be fixed by this Court.

For Petitioner : Mr.N.Ramakrishnan

For Respondents : Mr.N.Dilip Kumar,
Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records in the Demand / Show Cause notice in DIN & Notice No.ITBA/RCV/S/221/2021-22/1034797134(1) dated



11.08.2021 issued by the fourth respondent and quash the same and further direct the first respondent to dispose of the appeal filed by the petitioner challenging the order of assessment dated 13.04.2021 made by the third respondent for the Assessment Year 2018-19.

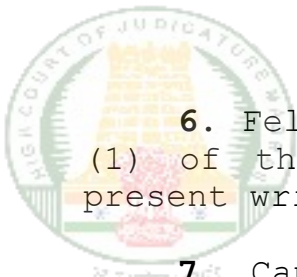
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2. The petitioner is a Society, registered under the Societies Registration Act, 1975 and also under the Income Tax Act, 1961, [in short, 'the Act']. The petitioner is an assessee on the file of the third respondent in PAN No.AAATA95470H. The petitioner Society was originally established in the year 1982, with a primary object of establishing and managing Schools, Colleges, Educational Institutions in different fields. However, subsequently, there has been an amendment in the articles of the association of the Society on 09.12.1998, whereby, Clause 3 Item 1 of the memorandum of association has been amended, to provide education to all communities in general and to promote the interests of the Muslim minority in particular.

3. With that background, when assessment order was passed for the assessment year 2018-19, by the third respondent, the assessing officer has stated that, the petitioner, claiming to be a charitable Society or Trust or Institution, can no more enjoy the benefit under Sections 11 or 12 of the Act, in view of the provisions namely Section 13 of the Act, under which, if any part of the income from the property held under a Trust for private religious purposes, which does not enure for the benefit of public, would not be excluded from taxable income as provided under Sections 11 and 12 of the Act and therefore, in that context, it is the stand of the revenue that the petitioner would not be entitled to get any such benefit under Sections 11 and 12 of the Act and accordingly, the assessment has been completed and assessment order was passed on 13.04.2021.

4. Felt aggrieved over the said stand taken by the revenue in working an assessment for the assessment year 2018-19 dated 13.04.2021, an appeal had been preferred under Section 246-A of the Act, originally to the Commissioner of Appeals, which stood transferred to the first respondent ie., The National Faceless Appeal Centre, Income Tax Department, New Delhi, where the petitioner's appeal dated 29.04.2021 is pending.

5. Though the said appeal has been pending before the first respondent, the fourth respondent, by show cause notice dated 11.08.2021, has directed the petitioner to show cause as to why a penalty should not be levied under Section 221(1) of the Act, and in this regard, the petitioner was directed to show cause on or before 18.08.2021.

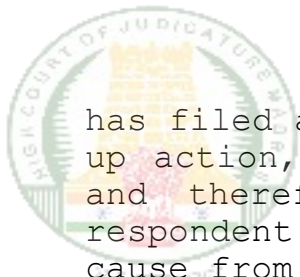


6. Felt aggrieved over the said notice issued under Section 221 (1) of the Act, dated 11.08.2021, the petitioner has filed the present writ petition.

7. Canvassing the point to assail the said impugned notice, Mr.N.Ramakrishnan, learned Counsel appearing for the petitioner / assessee has submitted that, the petitioner is an Educational and Welfare Society and it is a charitable institution. Therefore, it is entitled to get exemptions or benefits whatever available under Sections 11 and 12 of the Act and that benefit has been continuously given. However, all of a sudden in the assessment made in the assessment year 2018-19, a stand has been taken by the respondent / Revenue in view of the amendment having been made in the year 1998 in the memorandum of articles of the Society, whereby, a clause has been inserted that the educational institutions established by the petitioner charitable Society is to provide education to all communities in general and to promote the interest of Muslim minority in particular. Merely because such an amendment has been made to make it as a charitable institution for the entire general public and particularly for Muslim minority people, the revenue has taken a stand in view of Section 13(1)(a) of the Act that, the benefit available under Sections 11 and 12 would not be made applicable to the petitioner institution.

8. According to the learned Counsel for the petitioner, the said stand taken by the respondent / Revenue is untenable because, the character of charitable nature is not changed or modified, merely because the amendment has been made and that is permissible under the provisions of the Constitution and therefore, the learned Counsel would further contend that, as against the said view taken by the Revenue, appeal has been preferred before the first respondent, where the said appeal is yet to be decided. When that being the position, in order to make a demand and also to impose a penalty under Section 221(1), the impugned order has been passed. Thus, the interest of the petitioner is prejudiced in the pending appeal and therefore, during the pendency of the appeal, this kind of further precipitative action cannot be permitted to be taken by the assessing officer. Therefore, on that ground, the impugned notice is infirm and hence, the learned Counsel seeks indulgence of this Court.

9. I have heard Mr.N.Dilip Kumar, learned Standing Counsel appearing for the Income Tax Department, who would submit that, no doubt, as against the assessment order, where the stand has been taken by the assessing officer that in view of Section 13 of the Act, the benefits available under Sections 11 and 12 of the Act would not be made available to the petitioner, appeal has been filed by the petitioner before the first respondent, where he can seek for any interim order. Suppose he has not obtained any interim order or he has not at all sought for any interim order, merely because he



has filed an appeal before the first respondent, the further follow-up action, pursuant to the assessment made, cannot be put to halt and therefore, there is no wrong on the part of the fourth respondent to make a demand and issue show cause notice to seek show cause from the petitioner, as to why penalty should not be imposed.

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10. Learned Counsel would further submit that, in this regard, if the petitioner feels aggrieved, as his appeal is pending, where he cannot get any disposal or get any interim order, during the pendency of the appeal, he can very well approach the assessing officer under Section 220(6) of the Act, by making an application to treat him as the assessee not in default and therefore, such a course of action, since is available to the petitioner, without exhausting the same, the petitioner cannot rush to this Court by filing the present writ petition, instead of giving the show cause to the said notice.

11. I have considered the rival submissions made by the learned Counsel appearing for the parties and have perused the materials placed before this Court.

12. Whether the petitioner would be entitled to get benefit under Sections 11 and 12 of the Act or not, in view of the provisions of Section 13(1)(a), because of the amendment made in the year 1998 in the articles of the petitioner Society, is the question to be decided by the appellate authority, where admittedly, the appeal filed by the petitioner dated 29.04.2021, is pending. Since the first respondent appellate authority is a National Forum, before whom a number of appeals throughout the country would have been filed, we cannot expect that within a particular time frame, appeal would be disposed of. But, in such cases, normally a mechanism would be provided to seek a plea to grant an interim order as against the order of assessments which are impugned before the appellate authority. If there is no such mechanism is available or such mechanism is not effectively administered, with a result, the parties who approach the appellate forum is not able to get any interim relief, certainly, there must be a way out.

13. In this regard, as pointed out by the learned Standing Counsel for the respondents, in such cases where appeal is filed and pending before the appellate forum either under Section 246 or 246 (A), the appellant can very well approach the assessing officer concerned by filing an application under sub-section 6 of Section 220 of the Act and in such cases, the assessing officer, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, may treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of. Therefore, it is an enabling provision for the appellant, for getting an interim relief, by



making an application before the Assessing Officer.

14. In this context, an apprehension is raised by the petitioner that if such an application is filed under Section 220 (6), by using the discretion, the assessing officer may impose such an onerous condition of directing the petitioner assessee to pay certain percentage of the demand and in that case, again the petitioner would be prejudiced, as the very liability of paying the tax demanded by the assessing officer is the subject matter in appeal and thus, by one way or the other, the action of demand of anything would be a prejudicial to the petitioner. Therefore, such kind of conditions, if it is imposed, then again, that may not be an appropriate remedy for the petitioner assessee or like persons.

15. Be that as it may, merely because of some apprehensions as has arisen in the minds of the assessee, it cannot be stated that the assessing officer would not decide the issue in proper perspective, in view of the facts and circumstances of the case in hand.

16. In this context, it is to be noted that, in the case in hand, the petitioner had been enjoying the benefit of Sections 11 and 12 of the Act, hitherto and such a benefit all of a sudden is withdrawn or taken back by citing Section 13(1)(a) of the Act, whether such a levy of Tax made on behalf of the revenue by the assessing officer is justifiable or not is the subject matter before the appellate authority and therefore, once the appellate authority takes up the appeal and decide the same and before which, if any demand is made, even as a condition under Section 220(6), that will be a case of prejudice to the petitioner, if ultimately the appeal is decided otherwise. Therefore, this Court feels that in a case of this nature, when a *prima facie* case is made in this regard by the assessee that shall be taken into account. This has also been reiterated by this Court in an earlier order in W.P.[MD]No.5550 of 2020 dated 08.04.2021.

17. When that being the position, this Court feels that, no doubt, the petitioner assessee can very well approach the assessing officer, by invoking Section 220(6) of the Act and accordingly, the application to be filed in this regard, under the aforesaid provision can be decided by the assessing officer by taking into account the facts and circumstances of the case, especially in the context of the observations made hereinabove.

18. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

"that the petitioner is relegated to file an application under Section 220(6) of the Act, before the Assessing Authority ie., the third respondent within a period of two [2] weeks from the date of



receipt of a copy of this order. On receipt of such application, after giving an opportunity of being heard to the petitioner, the same shall be decided by the third respondent. While deciding the same, the third respondent shall borne in mind the fact situation of this case, where the petitioner, till the assessment year 2018-19 had enjoyed the benefit available under Sections 11 and 12 of the Act and therefore, such benefit, if it is taken away or the revenue wanted to take away, the same shall be decided and the issue to be decisively concluded. Hence, in this regard, since the petitioner has already filed an appeal before the first respondent which is admittedly pending before the first respondent, unless and until the appeal is decided one way or the other, the demand made in this regard by the assessing officer, which includes the amount otherwise to be exempted for the concerned assessment year ie., 2018-19, insofar as the claim of exemption made under the benefit of Sections 11 and 12, may not be considered to be a tax in default and therefore, the same shall be taken into account by the assessing officer within the meaning of the language used in sub-section 6 of Section 220 of the Act and accordingly, the order needful shall be passed by the third respondent / assessing officer, within a period of four [4] weeks, thereafter.

It is made clear that, till such a decision is made by the third respondent / assessing officer as indicated above, no persuasive or coercive action shall be taken, including the action pursuant to the impugned notice against the petitioner."

19. With the above directions, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

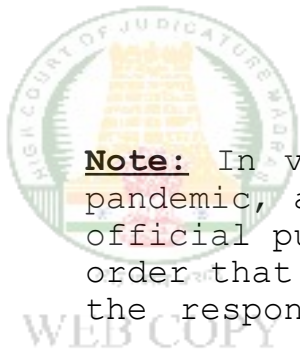
Assistant Registrar(Writs)

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/ /2021

Sub Assistant Registrar(CS)

MR



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The National Faceless Appeal Centre,
Income Tax Department,
Ministry of Finance,
New Delhi.
- 2.The Commissioner of Income Tax (Exemptions),
No.122, Nungamakkam High Road,
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Tiruchirappalli - 620 001.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-28886[F] dated 13/09/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-28735[F] dated 09/09/2021)

ORDER MADE IN
W.P.[MD]No.16263 of 2021
09.09.2021

TR(15.09.2021) 7P 7C