BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.03.2021
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19837 of 2019
and
W.M.P.(MD)Nos.16341 & 16342 of 2019

AARK INDIA EDUCATIONAL TRUST
Rep. by its Trusteee,
C.Arun Babu,
Francis Xavier Engineering College Campus,
Vannarapettai,
Tirunelveli-627003,
Tirunelveli District. ... Petitioner

-Vs-

1.The Commissioner of Income Tax (Exemption)
AAYAKAR Bhavan,
No.121, Uthamar Gandhi Road,
Nungambakkam,
Chennai-600034.

2.The Incometax Officer (Exemptions)
Income Tax Department,
O/o Income Tax Officer,
Exempns Ward,
Maharaja Nagar Post,
Tirunelveli. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned notice dated 27.03.2019, vide Ref.No.ITBA/AST/S/148/2018-19/1015441229(1) issued by the second respondent and quash the same.

For Petitioner : Mrs.N.Krishnaveni
Senior Counsel
for Mr.P.Thiyagarajan

For Respondents : Mr.Parameswari
for Mrs.S.Srimathy
Standing Counsel

ORDER

Heard the learned Senior Counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent.

2.The petitioner is a Trust based in Tirunelveli. It has been registered under Section 12AA of Income Tax Act. The petitioner is running educational institutions. The petitioner was issued with notice under Section 148 of the Income Tax Act dated 27.03.2019 proposing to reassess the petitioner's assessment for the year 2012-13.In response thereto, the petitioner called upon the authority to furnish the reasons for reopening the assessment. Vide communication dated 07.05.2019, the second respondent furnished the reasons. The respondent proceeded further in the matter by issuing notice under Section 142(1) of the Act. Hence, this writ petition came to be filed challenging the move of the second respondent to reopen the assessment.

3.The respondents have filed a detailed counter affidavit and the learned standing counsel took me through its contents. The respondents pray for dismissal of the writ petition.

4.The Senior Counsel appearing for the petitioner submitted that though the impugned notice has been issued literally on the last date of limitation period. The jurisdictional facts that are required to be present for assumption of jurisdiction under Section 147 of the Act are totally absent in this case. The reasons furnished by the assessing authority for reopening the assessment read as follows:-

> "During the financial year 2-11-12 outstanding loans and advances of Rs.6,19,11,861/- in the names of eight various persons have been transferred as corpus fund. This conversion needs to be verified."

5.The pointed contention of the learned senior counsel is that for the purpose of conducting roving enquiry or verifying certain facts, a concluded assessment cannot be reopened. The learned Senior Counsel placed reliance on the decision of the Hon'ble Supreme Court made in Civil Appeal No.7731 of 2002, dated 25.11.2002 (*Gkn Driveshafts (India) Ltd., Vs. Income Tax Officer*). The Hon'ble Supreme Court, in the said decision, held that on receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order before proceeding with the assessment.

6.In the case on hand, after receiving the reasons, the assessee has lodged objections on 06.06.2019 and again on 17.07.2019. The grievance of the petitioner is that without giving a disposal to the said objections, notice under Section 142(1) of Income Tax Act was issued on 09.07.2019. Though quite a few other contentions were raised, I am of the view that on this short ground, the writ petition can be disposed of. The second respondent is directed to pass orders on the petitioner's objections made vide letter dated 06.06.2019 before proceeding further in the matter. The contentions of both the parties are left open. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Commissioner of Income Tax (Exemption)
AAYAKAR Bhavan,
No.121, Uthamar Gandhi Road,
Nungambakkam,
Chennai-600034.

2.The Incometax Officer (Exemptions)
Income Tax Department,
O/o Income Tax Officer,
Exempns Ward,
Maharaja Nagar Post,
Tirunelveli.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-14570[F] dated 30/03/2021)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-15154[F] dated 01/04/2021)

W.P.(MD)No.19837 of 2019
and
W.M.P.(MD)Nos.16341 & 16342 of 2019
30.03.2021

KG(CO)
KB(29.04.2021) 3P 5C