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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.25375 & 25379 of 2018
and
W.M.P.(MD)Nos. 22963 & 22965 of 2019 and 1531 & 1532 of 2018

M/s.St.Xavier Educational Trust,
Rep. by its Managing Trustee,
S.Cletus Babu,
No.102,G.2, Byepass Road,
Vannarapettai,
Tirunelveli-627 003.
... Petitioner in W.P.(MD)No.25375 of 2018

M/s.Social Change & Development Trust,
Rep. by its Chairman and Managing Trustee,
S.Cletus Babu,
No.102,G.2, Byepass Road,
Vannarapettai,
Tirunelveli-627 003. ... Petitioner in W.P.(MD)No.25379 of 2018

-Vs-

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

2.The Assistant Commissioner of Income Tax(OSD)
(Exemption)
2nd Floor, May Flower Midcity Building,
1510, Trichy Road,
Coimbatore-641018. ... Respondents in both W.Ps

Prayer in W.P.(MD)No.25375 of 2018: 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 show cause notice dated 12.12.2018 vide Ref.No.AABTS 1867 L/ACIT/(OSD) (E)/ CBE/2018-19 issued by the second respondent and quash the same.

Prayer in W.P.(MD)No.25379 of 2018: 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 show cause notice dated 12.12.2018 vide Ref.No.AABTS 7716 C/ACIT/(OSD) (E)/ CBE/2018-19 issued by the second respondent and quash the same.

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

For Respondents : Ms.M.Parameswari
for Mrs.S.Srimathy
(in both W.Ps.) Standing Counsel

COMMON ORDER

Heard the learned senior counsel appearing for the petitioners and the learned standing counsel appearing for the Income Tax Department.

2.The petitioners herein are the Public Charitable Trusts that have been registered under Section 12(A)(a) of Income Tax Act and are enjoying exemption under Section 11 of the Act. During the assessment years 2016-17, the Trusts were found to have made certain payments to M/s.Amali Builders Private Limited. In the said company, the Trustees being specified persons are found to be having substantial interest. These materials were discovered during the survey. That apart, substantial honorarium was paid to the Trustees and their family members. The department felt that these payments are substantially high and unreasonable and have been made directly for the benefit of the persons specified under Section 13(3) of Income Tax Act, 1961. Certain bogus bills and and vouchers were also allegedly found during the survey. Therefore, the impugned notices were issued calling upon the respective Trustees to show cause as to why the exemptions claimed by the Trusts under Section 11 of the Act should not be denied in these cases, as the payment out of income from property held under Trusts have been paid directly for the benefit of persons referred to sub section (3) of Section 13 of Income Tax Act. The stand of the department is that these payments are clear violation as per Section 13(1)(c) of Income Tax Act, 1961. Challenging these notices, the writ petitions came to be filed.

3.The respondents have filed a detailed counter affidavit controverting the stand taken in the writ petitions. The learned standing counsel took me through the contentions set out therein. It is strongly contented that these writ petitions having been filed at the show cause notice stage itself deserve dismissal. The learned Standing Counsel placed reliance on the decision of the Hon'ble Supreme Court reported in ***(2006) 12 SCC 28 (Union of India Vs. Kunisetty Satyanarayana***).

4.I carefully considered the rival contentions and went through the materials on record.

5.The learned Senior Counsel appearing for the petitioner submitted that the petitioners / Trusts have been constrained to

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move this Court at the show cause notice stage itself, because the impugned notices threatened to cancel the primary exemption enjoyed by the Trusts. She would point out that the impugned show cause notices are not in consonance with the circular issued by the Department. She drew my attention to Circular 387 of 1984 dated 06.07.1984 issued by CBDT. Paragraph 28.6 of the said circular reads as follows:-

> 28.6. It may be noted that new sub-section (1A) inserted in Section 161 of the Income-tax Act, which provides for taxation of the entire income received by trusts at the maximum marginal rate is applicable only in the case of private trusts having profits and gains of business. So far as the public charitable and religious trusts are concerned, their business profits are not exempt from tax, except in the cases filing under clause (a) of clause (b) of Section 11(4A) of the Income-Tax Act. As the maximum marginal rate of tax under the new proviso to Section 164(2) applies to the whole or a part of the relevant income of a charitable or religious trust which forfeits exemption by virtue of the provisions of the Income-Tax Act in regard to investment pattern or use of the trust property for the benefit of the settlor, etc, contained in Section 13(1)(c) and (d) of that Act, the said rate will not apply to the business profits of such trusts which are otherwise chargeable to tax. In other words, where such a trust contravenes the provisions of Section 13(1)(c) of (d) of the Act, the maximum marginal rate of income-tax will apply only to that part of the income which has forfeited exemption under the said provisions.

6.The said circular came up for consideration in ***Commissioner of Income Tax Vs. Working Women's Forum***. The question that arose for consideration in the said decision was whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the denial of exemption should only be to the extent of the income which is violative of Section 13(1)(d) and not the total denial of exemption under Section 11. The Tribunal order was confirmed and the appeal filed by the revenue was rejected by referring to the aforesaid circular.

7.I am therefore of the view that the apprehension expressed by the petitioner may not be having any basis. The second respondent is only proposing to forfeit the exemption only in respect of the offending payments. The Trusts need not entertain any fear that exemption granted to them under Section 11 of the Act itself would be denied. The petitioner is therefore given three more weeks from the date of receipt of a copy of this order to offer their explanation in response to the impugned notices. It is for the second respondent to consider the same and pass orders in accordance with law.

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8.With this clarification, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

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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.

+2 CC to M/s.S.SRIMATHY, Advocate (SR-13097[F] dated 23/03/2021)

+2 CC to M/s.P.THIYAGARAJAN, Advocate (SR-13131[F] dated 23/03/2021)

W.P.(MD)Nos.25375 & 25379 of 2018 and
W.M.P.(MD)Nos.1531 & 1532 of 2019 and 22963 & 22965 of 2018
23.03.2021

PM(CO)
KB(29.04.2021) 4P 5C