IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.9250 of 2022
and
W.M.P.Nos.9015 & 9019 of 2022

Sri Ponniah Ramajayathammal
Educational and Charitable Trust,
Rep. Herein by its Managing Trustee
Mr.C.M.Nageswaran,
Administrative Office,
Old No.8/New No.15,
West Cott Road, Royapettah,
Chennai - 600 014.

... Petitioner

Vs

1. The Deputy Commissioner of
Income Tax (Exemptions)
2nd Floor, May Flower Mid City Building,
1510, Trichy Road, Coimbatore - 641 018.

2. The Assistant Commissioner of
Income Tax (Exemptions),
2nd Floor, May Flower Mid City Building,
1510, Trichy Road,
Coimbatore - 641 018.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records in DIN & Letter No.ITBA/RCA/F/17/2021-22/1040222607 (1) dated 01.03.2022 relating to AY 2015-16 on the file of the 2nd respondent herein and quash the demand in respect for payment of penalty of Rs.1,99,90,267/- relating to AY 2015-16 raised on the petitioner.

For Petitioner	:	Mr.N.Ramakrishnan For M/s.Waraon and Sai Rams
For Respondents	:	Mr.D.Prabhu Mukunth Arunkumar Junior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the records in DIN & Letter No.ITBA/RCA/F/17/2021-22/ 1040222607(1) dated 01.03.2022 relating to AY 2015-16 on the file of the 2nd respondent herein and quash the demand in respect for payment of penalty of Rs.1,99,90,267/- relating to AY 2015-16 raised on the petitioner.

2. The petitioner is an assessee under the respondent.

3. For the assessment year 2015-16, assessment was made and assessment order was passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

4. As against the said assessment order, the petitioner assessee filed appeal before the Commissioner (Appeals) or Appellate Authority on 12.07.2018 and the said appeal is still pending before the Appellate Authority till date.

5. Subsequently, a penalty proceedings also was initiated for the said assessment year 2015-16 against the petitioner assessee under Section 271(1)(c) of the Act and that was also imposed against the petitioner. As against the said penalty order, appeal also has been filed, of course belatedly by the petitioner on 31.01.2019 and that appeal is also pending before the Appellate Authority.

6. When that being so, now by way of the impugned communication dated 01.03.2022, the Revenue has made a demand of payment of penalty for the assessment year 2015-16, which according to the Revenue, is a long over due on the part of the petitioner assessee.

7. Therefore, challenging the said portion of the impugned order dated 01.03.2022 as the same covering not only the assessment year 2015-16 but also other assessment years with regard to the alleged long over due of interest and regular tax for those years, the petitioner has moved the present writ petition.

8. Heard Mr.N.Ramakrishnan, learned counsel appearing for the petitioner, who would submit that, when the quantum appeal as well as the appeal filed against the penalty proceedings since are pending before the Appellate Authority without getting a decision in those appeals, now the demand made through the impugned order only in respect of the assessment year 2015-16 stating that, penalty long over due is to the extent of Rs.1,99,90,267/- is unsustainable, because, once a decision is

taken by the Appellate Authority on the quantum appeal as well as the appeal filed against the penalty proceedings, that will have a bearing on this demand. Therefore, at this juncture, the demand cannot be made against the petitioner in respect of the penalty over due as alleged by the respondent Revenue for the assessment year 2015-16.

9. Heard Mr.D.Prabhu Mukunth Arunkumar, learned Standing Counsel appearing for the respondent Revenue, who would submit that, if at all the petitioner has preferred a quantum appeal against the assessment order and subsequently appeal belatedly against the penalty proceedings, that position could have been stated by the petitioner before the Revenue by treating the impugned communication as a show cause notice, but without doing so, the petitioner has rushed to this Court challenging the said order.

10. Moreover, insofar as the other assessment years viz., 2011-2012, 2012-2013, 2013-2014 and 2015-2016, for regular tax also, as the same impugned proceedings seeks for a demand, the said proceedings cannot be challenged except the penalty long over due for 2015-2016. Therefore, the challenge now made against the impugned order even assuming it is restricted only for the assessment year 2015-16 relates to the penalty, that would be depending upon the decision to be taken on the condone delay petition filed by the petitioner as admittedly he has filed the appeal against the penalty proceedings belatedly and without the said condone delay petition is allowed, there is no scope for the petitioner to get reversal of the orders passed by the Revenue with regard to the imposition of penalty. Therefore, absolutely there can be no impediment for the Revenue to claim the long over due of penalty even for the assessment year 2015-16, therefore, the impugned demand cannot be found fault with, he contended.

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

12. As rightly pointed out by the learned counsel appearing for the petitioner assessee, as against the assessment order dated 19.12.2017 as well as the penalty proceedings subsequently issued, the petitioner assessee preferred appeal. The quantum appeal against the assessment order was filed in time, according to the learned counsel appearing for the petitioner and the appeal filed against the penalty proceedings issued under Section 271(1)(c) of the Act was of course delayed and the condone delay petition also seems to have been filed which is also pending before the Appellate Authority.

13. When the very quantum appeal is filed on 12.07.2018, subsequently penalty proceedings if at all is issued and given effect to like the present demand, then it will have a prejudice the interest of the petitioner, because, the decision with regard to the quantum of assessment pertaining to AY 2015-16 is to be decided conclusively only by the Appellate Authority, before which, if the penalty proceedings is given effect to by way of demanding the penalty as a long over due as claimed by the Revenue through the impugned order, that will hinder the effective adjudication of the appeal before the Appellate Authority. Therefore, this Court feels that, till a decision is taken by the Appellate Authority in the appeal filed by the petitioner assessee, the present attempt made in respect of assessment year 2015-16 only in respect of penalty can be kept in abeyance.

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

(i) That the impugned demand proceedings dated 01.03.2022, insofar as the penalty long over due to the extent of Rs.1,99,90,267/- for the assessment year 2015-16 is concerned, it shall be kept in abeyance till the appeal filed by the petitioner against the order of assessment dated 19.12.2017, pending before the Appellate Authority is decided one way or other.

(ii) It is made clear that, once the appeal is decided by the Appellate Authority, depending upon the outcome of the decision, the further course of action pursuant to the penalty proceedings issued under Section 271(1)(c) of the Act can be decided by the Revenue.

(iii) In view of the aforestated directions, a further direction is given to the Appellate Authority to decide the appeal of the petitioner assessee dated 12.07.2018 against the assessment order dated 19.12.2017 as early as possible preferably within six months from the date of receipt a copy of this order. It is also made clear that, the aforesaid orders are only related to the demand of penalty which is long over due to the extent of Rs.1,99,90,267/- for the assessment year 2015-16 alone. With regard to the demand made in respect of other assessment years viz., 2011-12, 2012-13, 2013-14 and regular tax for 2015-16, there is no impediment for the Revenue to proceed against the petitioner pursuant to the impugned demand.

15. With these clarifications, observation as well as directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Deputy Commissioner of
Income Tax (Exemptions)
2nd Floor, May Flower Mid City Building,
1510, Trichy Road, Coimbatore – 641 018.

2. The Assistant Commissioner of
Income Tax (Exemptions),
2nd Floor, May Flower Mid City Building,
1510, Trichy Road,
Coimbatore – 641 018.

+1cc to M/s.Waraon & Sairams, Advocate, S.R.No.25448

+1cc to Mrs.Hema Murali Krishnan, Advocate, S.R.No.25700

W.P.No.9250 of 2022

KK(CO)
UMA(18/07/2022)