BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.5876 and 6213 to 6215 of 2022

and

W.M.P.(MD) Nos.4637, 4638, 4822, 4823, 4826, 4827, 4824 and 4825 of 2022

M/S.Aurolab Trust
represented by its President,
Thulasiraj Ravilla,
No.72, Kuruvikaran Salai,
Gandhi Nagar,
Madurai – 625 020.

... Petitioner in all W.Ps.,

/vs./

National Faceless Assessment Centre, Delhi
represented by Additional/Joint/Deputy/
Assistant Commissioner of Income Tax,
Room No.401, 2nd Floor, E.Ramp,
Jawaharlal Nehru Stadium
Delhi 110 003.

... Respondent in all W.Ps.,

PRAYER in W.P.(MD) No.5876 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the respondent relating to notice under Section 274 r.w.s. 271(1)(c) dated 30.12.2018 for Asst. Year 2016-17 in PAN. AAATA1142P and quash the same as invalid in the eyes of law.

PRAYER in W.P.(MD) No.6213 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the impugned order dated 25.03.2022 levying a penalty of Rs.5,69,21,498/- u/s.271(1)(c) of the Income tax Act, 1961 for Asst.Year 2011-12 having DIN:ITBA/PNL/F/271(1)(c) /2021 -22/1041481978(1) passed by the respondent, and quash the same as illegal.

PRAYER in W.P.(MD) No.6214 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the impugned order dated 26.03.2022 levying a penalty of Rs.2,53,07,576/- u/s.271(1)(c) of the Income tax Act, 1961 for Asst.Year 2013-14 having DIN:ITBA/PNL/F/271(1)(c) /2021 -22/1041607363(1) passed by the respondent, and quash the same as illegal.

PRAYER in W.P.(MD) No.6215 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the impugned order dated 25.03.2022 levying a penalty of Rs.39,04,295/- u/s.271(1)(c) of the Income tax Act, 1961 for Asst.Year 2014-15 having DIN:ITBA/PNL/F/271(1)(c) /2021 -22/1041483821(1) passed by the respondent, and quash the same as illegal.

For Petitioner in all W.Ps., : Mr.Ravi Kannan

For Respondent in all W.Ps., : Mr.N.Dilip Kumar Senior Standing Counsel

COMMON ORDER

In these writ petitions, the petitioners have challenged the impugned order passed under Section 274 r/w Section 271 (1) (c) of the Income Tax Act, 1961 *(herein after referred to as Act)*, dated 30.12.2018, 25.03.2022 and 26.03.2022 as detailed below:-

Case.No.	***Date***	***Assessment Year***
W.P.(MD) No.5876 of 2022	*30.12.2018*	*2016-2017*
W.P.(MD) No.6213 of 2022	*25.03.2022*	*2011-2012*
W.P.(MD) No.6214 of 2022	*26.03.2022*	*2013-2014*
W.P.(MD) No.6215 of 2022	*25.03.2022*	*2014-2015*

2.In W.P.(MD) No.5876 of 2022, the petitioner has challenged the impugned notice dated 30.12.2018 issued under Section 274 r/w Section 271 (1) (C) of the Act. Earlier, the petitioner had also challenged the impugned notices issued in respect of the assessment years 2011-2012, 2013-2014 and 2014-2015 in W.P.(MD) Nos.5873 to 5875 of 2022. As orders under Section 271 (1) (C) of the Act were passed on the date mentioned in the aforesaid table, which are now impugned in W.P.(MD) Nos.6213 to 6215 of 2022, the above mentioned writ petitions were closed with liberty to the petitioner to raise all issues relating to jurisdiction to issue notices under Section 274 r/w Section 271 (1) (C) of the Act.

3.The challenge to the impugned orders in W.P.MD) Nos.6213 to 6215 of 2022 and the impugned notice dated 30.12.2018 in W.P.(MD) No.5876 of 2022 is primarily on two grounds. i) The notice issued for the respective assessment years and the consequential orders for imposing penalty under these provisions were vague, inasmuch as it has not been clearly specified in the notice as to whether there was concealment of income or furnishing of inaccurate details by the petitioner. On this score, the learned counsel for the petitioner has placed reliance on the decisions of the High Court of Karnataka in the case of ***Commissioner of Income Tax Vs Manjunatha Cotton and Ginning Factory*** reported in ***(2013) 35 taxmann.com 250 (Karnataka)*** and the case of ***Commissioner of Income Tax, Bangalore Vs SSA'S Emerald Meadows*** reported in ***(2016) 73 taxmann.com 241 (Karnataka)***.

4.The learned counsel for the petitioners further submits that the decision of the Karnataka High Court in the *Commissioner of Income Tax, Bangalore's case (referred supra)*, has been affirmed by the Hon'ble Supreme Court, inasmuch as the Special Leave Petition filed by the Department was dismissed on 05.08.2016, which is reported in ***(2016) 73 taxmann.com 248 (SC)***.

5.It is further submitted that the petitioner is a charitable institution and is engaged in charitable activity and therefore, neither there was furnishing of any inaccurate details nor concealment of any income. That apart, it is submitted that after the assessment orders were passed, the petitioner has also paid the tax due and no prejudice would be caused to the income tax Department, even if the proceedings are deferred as the petitioner's appeal in TCA.No.227 of 2011 against the order of the Tribunal rejecting/canceling the registration under Section 12A of the Act is pending before this Court and since the appeals filed against the respective assessment orders passed on 08.09.2016 and 28.03.2014 were dismissed, further appeal before the Tribunal is pending as on the date of these writ petitions.

6.It is submitted that even if the petitioner remains unsuccessful in the appeal before the Tribunal and before the High Court in TCA No.227 of 2011, the Department can initiate proceedings under Section 274 r/w Section 271 (1) (C) of the Act. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***CIT Vs. Reliance Petro Products Limited*** reported in ***(2010) 322 ITR 158 (SC)***.

7.It is further submitted that the proceedings under Section 274 r/w Section 271 (1) (C) of the Act were initiated immediately after the assessment orders were issued. However, no order was passed. It is therefore submitted that only the CIT appeal is competent to issue a notice under Section 274 r/w Section 271 (1) (C) of the Act and therefore, the impugned orders in W.P.(MD) Nos.6213 to 6215 of 2022 and the impugned notice dated 30.12.2018 in W.P.(MD) No.5876 of 2022 have to go.

8.The learned counsel for the petitioner further submits that the decision of the Division Bench of this Court in the case of

M/S.Gangotri Textiles Limited, Coimbatore Vs. the Deputy Commissioner of Income Tax, Coimbatore reported in (2020) SCC online (Mad) 16077 cannot be applied to the facts of the present case, inasmuch as the petitioner has been vigilant and has taken a categorical stand that the notices issued to the petitioner were vague and were therefore liable to be withdrawn in the light of the decisions of the Karnataka High Court *cited supra*.

9.Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that these writ petitions are liable to be dismissed. It is further submitted that W.P.(MD) No.5876 of 2022 is premature and is therefore liable to be dismissed. The learned Senior Standing Counsel for the respondent further submits that the issue is not only covered against the respondent by the decision of the Division Bench of this Court in the *Gangotri Textiles's case (referred supra)* but also the decision of this Court in the *Sundaram Finance's case*, wherein the two decisions of the Karnataka High Court were also distinguished. That apart, it is submitted that the impugned orders in W.P.MD) Nos.6213 to 6215 of 2022 has rightly placed reliance on the decision of this Court in W.P.No.16140 of 2019 ***(Amtex Software Solutions Private Limited, Chennai Vs. Assistant Commissioner of Income Tax (OSD), Chennai and other)***, dated 12.06.2019. It is therefore submitted that even on this count also, the writ petitions are liable to be dismissed.

10.The learned Senior Standing Counsel for the respondent further submits that the petitioner has taken a hypo-technical plea regarding the impugned notices issued under Section Section 271 (1)(C) of the Act. It is submitted that the petitioner was given a certificate as a charitable institution on 09.10.1992, which was later cancelled on 30.12.2010 and thereafter, the Tribunal passed an order on 11.05.2011 in ITA.No.135/Mds/2011, against which the petitioner is in appeal before the Division Bench of this Court in TCA.No.227 of 2011.

11.The period in dispute in the present case pertains to the years 2011-2012, 2013-2014, 2014-2015 and 2016-2017. It is submitted that the petitioner was well aware of the fact that the petitioner was not entitled for exemption under Sections 11 and 12 of the Act, in view of the cancellation of the registration under Section 12A of the Act. It is therefore submitted that the petitioner ought to have declared the correct income and paid tax may be under protest. In this case, the tax amount paid much later after the assessment order came to be passed. It is therefore submitted that the writ petitions are devoid of merits.

12.I have heard the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

13.The impugned notices have been issued under Section 271 (1) (c) of the Income Tax Act, 1961. The said Section empowers that if the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person has concealed the particulars of his income or has furnished inaccurate particulars of such income, he may direct such person to pay penalty. Section 275 (1) of the said Act specifies the period, within which penalty can be imposed under Chapter XXI of the Income Tax Act, 1961.

14.As per Section 275 (1) (a) of the Income Tax Act, 1961, No order imposing penalty shall be passed after the expiry of the financial year, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month, in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever later expired, where the assessment order or other order is the subject matter of the appeal.

15.As per the proviso to the aforesaid Section, an order imposing penalty shall be passed before the expiry of the financial year, in which proceedings, in the course of which an action for imposition of penalty has been initiated, are completed within 1 year from the end of the financial year, in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever is later.

16.The facts on record indicate that the petitioner is well aware of the fact that the petitioner was not entitled to claim exemption under Sections 11 and 12 of the Income Tax Act, 1961, once the registration under Section 12A of the Act had been cancelled on 30.12.2010. The Tribunal has also affirmed the views and therefore, the petitioner is in appeal. As on date, the petitioner is not entitled to claim exemption as a charitable institution. Therefore, while filing the successive returns under Section 139 of the said Act, the petitioner has to arrived at the correct taxable income and pay the tax thereon. Even if the petitioner wants to claim exemption, it is for the petitioner to have arrived at the correct tax that was payable by the petitioner as ordinary tax assessee, who does not enjoy the exemption and file returns.

17.Considering the above, I am of the view that the petitioner was well aware of the fact that this is the case of filling of inaccurate particulars in the returns and the petitioner has also replied to the same in the notices issued to the petitioner. The petitioner had earlier filed writ petitions in W.P.(MD) Nos.5873 to 5875 of 2022 long after the notices were issued, after the assessment orders were passed by the Assessing Officer. It is only by way of an afterthought the petitioner had challenged the notices in W.P.(MD) Nos.5873 to 5875 of 2022. The said writ petitions were dismissed in view of the orders impugned W.P.(MD) Nos.6213 to 6215 of 2022.

18.There is no merits in the present writ petitions. The petitioner has to workout the remedy against the orders passed under Section 274 r/w Section 271 (1) (C) of the Income Tax, Act 1961 before the Appellate Commissioner. Likewise, the petitioner has to await for the orders to be passed in the notices issued on 30.12.2018, impugned in W.P.(MD) No.5876 of 2022, considering the fact that the petitioner has also paid the disputed tax, which may be a factor to be considered by the respondent to grant waiver under Section 220 (6) of the said Act.

19.In the light of the above discussion, these writ petitions are dismissed giving liberty to the petitioner to workout the remedy against the impugned orders and notices before the Appellate Commissioner and to submit to the orders to be passed by the Assigning Officer in the impugned notice in W.P.(MD) No.5876 of 2022. The petitioner is also given liberty to file a statutory appeal before the Appellate Commissioner within a period of 6 weeks from the date of receipt of a copy of this order. If such an appeal is filed within such time, the Appellate Commissioner shall consider and dispose of the same on merits and in accordance with law expeditiously. Insofar as W.P.(MD) No.5876 of 2022 is concerned, the 2nd respondent may pass orders as expeditiously as possible and thereafter, it is for the petitioner to workout the remedy before the Appellate Commissioner, if any adverse orders are passed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax,
Room No.401, 2nd Floor, E.Ramp,
Jawaharlal Nehru Stadium
Delhi 110 003.

2.The Assistant Commissioner of Income Tax Act Exempt(OSD),
Coimbatore.

+5 CC to M/s.J. JEYAKUMARAN, Advocate(SR.Nos.19555,19556,19557, 19558,19532)

W.P.(MD) Nos.5876 and 6213 to 6215 of 2022
18.04.2022

MGJ(01.06.2022) 6P 9C