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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 16681/2022 & CM APPL. 52554/2022**

Date of Decision: 16.12.2022

HUNGER HEROES

..... Petitioner

Through: Mr Ajay Vohra, Sr. Adv. with Mr
Kishore Kunal, Mr Manish Rastogi &
Ms Runjhun Pare, Advs.

versus

COMMISSIONER OF INCOME TAX
(EXEMPTION), DELHI

..... Respondent

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. On the previous date, we had heard the matter at some length and passed the following order:

"1. This writ petition is directed against the order dated 28.11.2022 issued by the Commissioner of Income Tax (Exemption), Delhi.

1.1 Via this order, the application filed by the petitioner under Section 12A(1)(ac)(v) of the Income Tax Act, 1961 [in short "Act"] has been rejected. The effect of the rejection of the said application is, that the petitioner's registration under Section 12A of the Act stands cancelled.

2. Mr Ajay Vohra, learned senior counsel, who appears on behalf of the petitioner, has taken us through the record.

2.1 It is Mr Vohra's submission, that in the first instance, registration certificate under Section 12A of the Act was issued on 18.11.2016, followed by a registration certificate issued on 28.05.2021, pursuant to the amendment of the Act with effect from 01.04.2021. [See Annexure-P2 appended on page 85 of the case file].

3. To be noted, the registration certificate issued on 28.05.2021 exemplified a provisional registration.

3.1 It is in this backdrop, that the petitioner was required to file an application, which it did, in the prescribed form i.e., Form 10AB. Thereupon, notice dated 12.10.2022 was issued by the CIT(Exemption), which raised queries, to which a response was furnished by the petitioner, on 21.10.2022.

4. We are told, that notices were also issued on 01.11.2022 and 11.11.2022.

4.1 These notices were replied to by the petitioner on 18.11.2022.

5. In the interregnum, an assessment order under Section 143(3) of the Act was passed concerning Assessment Year (AY) 2020-2021.

5.1 This assessment order was framed on 26.09.2022. [See Annexure-P9 appended on page 167 of the case file].

5.2 A perusal of the said order shows, that notice under Section 142(1) of the Act along with a detailed questionnaire was issued on 29.10.2021.

5.3 It also appears, that while framing the assessment order, the concerned assessing officer had the occasion to examine the audit report, balance sheet, income and expenditure account and other details.

5.4 Besides this, it appears that the petitioner had also submitted an audit report as required in the prescribed form i.e., Form 10B in consonance with the provisions of section 12A(b) of the Act.

6. Based on the material placed before the assessing officer, the assessing officer accepted the petitioner's version, that the total tax income was "nil".

7. The petitioner was, concededly, extended the exemption, on the ground that it was carrying out charitable activities.

8. For whatever reason, this assessment order, perhaps, was not brought to the notice of the CIT (Exemption), while he proceeded to pass the impugned order.

8.1 As noticed above, the impugned order was passed on 28.11.2022.

9. Prima facie, it appears, that at one level, there has been a detailed scrutiny of the charitable activities carried out by the petitioner.

10. The matter requires further examination.

11. Issue notice.

11.1 Mr Abhishek Maratha accepts notice on behalf of the respondent/revenue.

12. Mr Maratha says that he will return with instructions.

12.1 In case instructions are received to resist the writ petition, counter-affidavit will be filed before the next date of hearing.

13. List the matter on 16.12.2022."

2. As would be evident, from the above extract, Mr Abhishek Maratha, who appears on behalf of the respondent, indicated to us that he will return

with instructions.

2.1 In this context, we had observed that in case instructions are received to resist the writ petition, a counter-affidavit will be filed before the next date of hearing i.e., 16.12.2022.

2.2. Although, a counter-affidavit has not been filed, Mr Maratha says that he has received the following instructions:

i. *Via* the impugned order, only the petitioner's application in Form 10AB has been rejected. The petitioner's existing registration under Section 12A and Section 80G of the Income Tax Act, 1961 [in short "Act"] is operable as on date.

ii. There was no violation of principles of natural justice while passing the impugned order dated 28.11.2022.

iii. The petitioner could, at this stage, file a fresh application in Form 10AB for seeking registration under Section 12A(1)(ac)(v) of the Act.

iv. In the alternative, the petitioner may prefer an appeal under Section 253(1)(c) of the Act against the impugned order with the Income Tax Appellate Tribunal [in short, "Tribunal"]

3. It is important to note that in rejecting the petitioner's application *via* impugned order dated 28.11.2022, the Commissioner of Income Tax (Exemption), Delhi had, *inter alia*, not noticed the order passed under Section 143(3) of the Act concerning AY 2020-21, whereby the petitioner's version that his total income was 'nil' was accepted.

4. In our view, this was a crucial aspect of the matter which required the attention of the CIT (Exemption), Delhi.

5. We may note that suggestion of Mr Maratha that a fresh application may be filed, as the registration of the petitioner under Section 12A of the

Act is still operable, in our view, would not be the most efficacious approach in the matter, given the fact that a detailed application is already available with the CIT (Exemption), Delhi.

5.1 Therefore, in our opinion the best way forward would be to set aside the impugned order dated 28.11.2022, with a direction to the CIT (Exemption) Delhi to decide the application afresh after giving due opportunity to the petitioner and/or its authorized representatives to present the petitioner's case.

6. For this purpose, the authorized representatives of the petitioner will appear before the CIT (Exemption) Delhi on 06.01.2023 at 11 AM.

6.1. CIT (Exemption), Delhi will give due opportunity to the authorized representative of the petitioner to place on record the relevant document/material and thereafter, will pass a speaking order.

6.2. In case the order passed by the CIT (Exemption) Delhi is adverse to the interests of the petitioner, the petitioner will have liberty to assail the same, albeit, as per law.

6.3. If for any reason, the aforementioned date is not convenient to CIT (Exemption) Delhi, he/she will fix another date, which would be proximate to the date given above.

7. Accordingly, the writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 16, 2022/r

Click here to check corrigendum, if any