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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2622 OF 2022

Peoples Education Society Thane

....Petitioner

V/s.

Assistant Commissioner of Income Tax,
Exemption Circle, Pune and Ors.

...Respondents

Mr. V. Sridharan, Senior Advocate a/w Ms. Neha Sharma i/b Mr. Tanmay Phadke for Petitioner.

Mr. Suresh Kumar for Respondents.

**CORAM : K.R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 7th NOVEMBER 2023**

P.C. :

1. Petitioner is a charitable trust registered under the Bombay Public Trust Act, 1950. Petitioner has been undertaking educational activities since 1926 in running English and Marathi medium schools and colleges.

2. Sometime in 2014 petitioner obtained necessary building plans approved from the Thane Municipal Corporation (T.M.C.) and commenced construction of the new school building within the same premises. Petitioner entered into an agreement on a build, lease and transfer basis with one Global Edu-Infra Development Private Limited on 6th August 2015. As per the agreement petitioner was to grant lease hold rights of certain portion of the newly constructed buildings/premises for a period of 45 years

to the developer. The ownership rights of the entire land as well as the superstructures was not parted with and same continues to belong to petitioner. The construction of new building/redevelopment of old building was completed during the Financial Year 2017-18 corresponding to Assessment Year 2018-19 at an approximate cost of Rs. 43 Crores to the developer. Occupancy Certificate was also received from T.M.C.

3. In its books of accounts for Financial Year 2017-18 corresponding to Assessment Year 2018-19 petitioner had shown an income of Rs.43 Crores representing total cost to the developer as arising from the transfer of lease hold rights. Since the transfer of lease hold right was nothing but a consideration for construction of new buildings of petitioner the said sum of Rs.43 Crores was also shown as cost of new school buildings by petitioner.

4. Petitioner had filed its return of income for the Assessment Year 2018-19 on 30th October 2018 showing Rs.43 Crores as consideration for transfer of lease hold rights that was also shown/taken as application of income in the form of new school buildings under Section 11 of the Income Tax Act, 1961 (the Act). The return filed by petitioner for Assessment Year 2018-19 was selected for scrutiny. During the course of assessment proceeding, petitioner placed on record copies of computation of income and financials and also explained the nature of agreement etc. Copy of the

agreement with the developer was also placed on record. A Show Cause Notice was also issued on the premise that the sum of Rs.43 Crores was duly considered and offered to tax as income by petitioner and petitioner was called upon to establish as to why the said amount which was equally claimed as a deduction in form of application of income could not be disallowed due to lack of documentary evidence. Petitioner filed a detailed reply that was accepted by the department and further notice dated 28th May 2021 under Section 142(1) of the Act was issued calling upon petitioner to show cause as to why the said income should not be disallowed on the non-compliance of TDS under Section 40(a)(ia) of the Act. Petitioner responded and subsequently an assessment order dated 27th August 2021 under Section 143(3) read with Section 144B of the Act was passed accepting the returned income of petitioner.

5. Prior to these events petitioner had filed a return of income for Assessment Year 2016-17 which was processed under Section 143(1) of the Act. A notice dated 31st March 2021 came to be issued under Section 143 of the Act proposing to assess the income of petitioner as having escaped income. The reasons were made available to petitioner and the reasons indicates that it was issued on the premise that petitioner had sold an immovable property of Rs. 40 Crores on 6th August 2015 and income arising there from was not offered to tax under the head “Capital Gains” in the return of income. The reasons also mentioned that the sum of Rs.40 Crores did not appear as part of the receipts/income.

6. Petitioner filed objections and in the objections to reopening brought to the notice of the Assessing Officer (A.O.) that the income of Rs.43 Crores pertaining to the transfer of lease hold rights was duly offered to tax by petitioner on its own in the year of transfer, i.e., Assessment Year 2018-19 ruling out any escapement of income for the year under consideration on the date of issuance of notice and thus taxability did not arise in the Financial Year 2016-17. Petitioner also mentioned that the aforesaid income of Rs.43 Crores as offered to tax for Assessment Year 2018-19 stood accepted by the department after a detailed examination. Of course, petitioner also dealt with the merits of the matter. Notwithstanding this the objections were rejected by an order dated 13th January 2022 which is also impugned in the petition.

7. Subsequently, notice under Section 142(1) of the Act came to be issued. Petitioner hence filed this petition.

8. In the affidavit in reply filed through one Mr. P. N. Nair, Joint Commissioner of Income Tax (OSD) affirmed on 30th May 2022 it is admitted that the assessment for Assessment Year 2018-19 was completed on 27th August 2021 while the notice under Section 148 of the Act was issued on 31st March 2021.

9. Mr. Suresh Kumar agrees to a query posed by the court that if the amount has already been considered in the subsequent assessment years and assessment order has been passed, the question of escapement of income for the same amount in the previous year will not arise. We are also informed that there is no change in the rate of tax.

10. In the circumstances, we allow the petition in terms of prayer clause – (a) which reads as under :

(a) That this Hon'ble Court may be pleased to issue under Articles 226 and 227 of the Constitution of India, an appropriate direction, order or a writ including a writ in the nature of 'certioraris' calling for the records of the case and after satisfying itself as to the legality thereof quash the impugned notice dated 31.03.2021 issued by the Respondent No.1 under section 148 of the Act being Exhibit – "F" and the impugned order dated 13.01.2022 being Exhibit "K" as bad in law.

11. Petition disposed. No order as to costs.

(DR. NEELA GOKHALE, J.)

(K.R. SHRIRAM, J.)