IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.9054 of 2020
and
W.M.P.No.11018 of 2020

Estate of V.S.Athmanathan(EVSA)
Rep. by its Executor Mr.L.Suresh
27, (Old No.8b) Thiagarajapuram
Vellore, Tamil Nadu 632 001 .. Petitioner

vs

1.1st Income Tax Officer,
First Floor,
Central Revenue Building,
No.2, Barracks Cross Street,
Officers Line,
Vellore - 632 001.

2.Joint Director(Systems)
Centralised Processing Centre,
Income Tax Department,
Bengaluru, Karnataka - 560 500.

3.Central Board of Direct Taxes,
Rep. by its Chairperson,
Ministry of Finance,
9th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to modify Form ITR-2 in such a manner as to enable the petitioner to file its return of income electronically under Form ITR-2 under the status of an Individual, and to accordingly forbear the respondents from initiating any coercive action against the petitioner either by way of penalty, interest or prosecution under Section 271F or otherwise for Assessment Year 2019 - 2020.

For Petitioner : Ms.Amritha Satyajith for Mr.Suhrith Parthasarathy

For Respondents : No appearance

ORDER

An identical issue has arisen in this writ petition has been considered by me in a batch of writ petitions being W.P.No.9057 of 2020 etc batch and by order dated 30.03.2020, I had held as follows:-

> *"The petitioners are family trusts that claim the status of private discretionary trusts. Their prayer is for a mandamus directing the respondents, who are the Income Tax Officer/R1, Joint Director (Systems), Centralised Processing Centre/R2 and Central Board of Direct Taxes/R3 to modify Form ITR-2 in a manner so as to enable the petitioners to file returns of income electronically under the status of individual.*
>
> *2. The petitioners also seeks a direction forbearing the respondents from initiating any coercive action against the petitioners either by way of penalty, interest or prosecution. The prayer relates to assessment years 2019-20, 2021-22 and 2022-23.*
>
> *3.Miscellaneous Petitions have been filed in 2022 seeking amendment of the prayer by insertion of the phrase 'all future assessment years' after the words 'for assessment years 2021-22' in prayer B. In light of the order that is proposed to be passed, I see no need to order these miscellaneous petitions now.*
>
> *4.It is the specific case of the petitioners,*

*that a private discretionary trust acquires the status of an individual, and that the trustees of a discretionary trust must be assessed under that status. Reliance is placed upon the judgements in (i) Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad v. Trustees of H.E.H Nizam's Family [(1977) 3 SCC 362], (ii) Commissioner of Income-Tax v. Venu Suresh Sanjay Trust and others [(1996) 221 ITR 649] and (iii) Commissioner of Income tax v. Shriram Ownership Trust [(2020) SCC Online Mad 6027].*

*5.The petitioners further rely upon press release of the Central Board of Direct Taxes (Board/CBDT) dated 31.07.2022 that provides for relaxation from compulsory e-filing of return of income for assessment year 2012-13 in the case of a representative assessee of non-residents and private discretionary trusts, on the ground that the e-filing software did not accept return of private discretionary trusts filed in the status of individuals.*

*6.At paragraph 4 (ii), the Board clarifies that it will not be mandatory for 'private discretionary trusts', if the total income exceeds ten lakh rupees, to electronically furnish return of income for assessment year 2012-13.According to the learned counsel for the petitioner, the petitioner was filing its returns electronically for a period thereafter taking benefit from the exemption granted as above.*

*7.However, it was unable to do so with effect from AY 2019-2020 and thereafter. The consequence is that the petitioners have been unable to claim the deductions under the Act as applicable to individuals, to which the petitioners believe they are entitled. They claim that they have been filing returns manually, forwarding the same by post, though the veracity of such returns remains to be seen.*

*8. The counter filed by the respondents proceeds on the basis that the petitioner is liable to be taxed in terms of Section 160(1)(iv) read with Section 164(1)(i) of the Income Tax*

*Act, 1961, at maximum marginal rate. The respondents also argue that there is no question of permitting the petitioner to file a return in ITR-2 as that Form would contain functionalities that are wholly irrelevant to a Trust.*

*9.The prayer for modifications in the return Form is wholly unnecessary as the inclusion of functionalities as sought for, would be unnecessary and redundant for more than Rs.2 crores of natural individuals and HUFs who presently use that very Form. In all, the respondents urge that the prayer of the petitioner is liable to be rejected in toto.*

*10.Having heard both Mr.Suhirth Parthasarathy, learned counsel for the petitioner and Dr.B.Ramaswamy, learned Senior Standing Counsel for the Income tax Department, I am of the considered view that mandamus as sought for by the petitioner is not liable to be granted. It does not fall within the domain of the Court to structure the Forms and contents thereof, as applicable to specific categories of assessees.*

*11.Rule 112 of the Income Tax Rules, 1962 provides for the prescription of Forms by the Board, and hence it is Board, which is the appropriate authority to take note of the grievances of the petitioners and do the needful, if found appropriate. Learned counsel for the petitioner is unsure as to whether such representation has already been filed before the Board.*

*12.Hence, the petitioners are hence permitted to file representations afresh before the Board, if not already filed, and pursue the same in order to obtain remedy, as appropriate. Let the representations/remainders be disposed within a period of twelve (12) weeks from date of receipt of the same by the Central Board of Direct Taxes, in accordance with law. These writ petitions are disposed in terms of the aforesaid order. No costs. Connected miscellaneous petitions are closed."*

2. In view of the identity of facts as well as legal position, the same order as above is passed in the present case as well.

3. Writ petition stands disposed. No costs. Connected miscellaneous petition is closed.

05.04.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To:

1.The 1st Income Tax Officer,
First Floor,
Central Revenue Building,
No.2, Barracks Cross Street,
Officers Line,
Vellore - 632 001.

2.The Joint Director(Systems)
Centralised Processing Centre,
Income Tax Department,
Bengaluru, Karnataka - 560 500.

3.The Chairperson,
Central Board of Direct Taxes,
Ministry of Finance,
9th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003.

DR. ANITA SUMANTH,J.

ssm

W.P.No.9054 of 2020

05.04.2023