IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.9057 of 2020 & 13195, 14796, 14800 & 19690 of 2022
and WMP.Nos.11021 of 2020 & 12545, 13998,
14001, 18736, 18738, 18740 & 19016 of 2022

Mahesh Family Trust
Represented by its Trustee Sukanya Mahesh,
No.27, Thiagarajapuram,
Vellore-632 001 ... Petitioner in WP.9057 of 2020 and WP.14796 of 2022

Bachi Family Trust
Represented by its Trustee P.V.Gopalakrishna,
No.27, Thiagarajapuram,
Vellore-632 001 ...Petitioner in WP.13195 of 2022

V.S.L.Descendants Trust
Represented by its Trustee, L.Suresh,
No.27, Thiagarajapuram,
Vellore-632 001 ...Petitioner in WP.14800 of 2022

Vijayalakshmi Family Trust
Represented by its trustee A.Karthick,
No.8B, Thiagarajapuram,
Vellore-632 001 ...Petitioner in WP.19690 of 2022

Vs.

1.1st Income Tax Officer,
First Floor,
Central Revenue Building,

No.2, Barracks Cross Street,
Officers Line,
Vellore - 632 001 ... R1 in WP.9057 of 2020 and WP.14796, 14800 & 19690 of 2022

2.Assistant Commissioner of Income Tax Officer,
Second Floor,
Central Revenue Building,
No.2, Barracks Cross Street,
Officers Line,
Vellore - 632 001 ... R1 in WP.13195 of 2022

3.Joint Director (Systems)
Centralised Processing Centre,
Income Tax Department,
Bengaluru, Karnataka - 560 500 ... R2 in all WPs

4.Central Board of Direct Taxes,
Represented by its Chairperson,
Ministry of Finance, Union of India,
9th Flooor, Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003 ... R3 in all WPs

Common Prayer in WP.No.9057 of 2020 & 19690 of 2022: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of Mandamus, directing the Respondents herein 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 Years 2019-2020 and 2022-23.

Common Prayer in WP.Nos.13195, 14796 & 14800 of 2022: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of Mandamus, directing the Respondents herein 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, to permit the petitioner to opt for the tax rates prescribed in sec.115BAC and to further 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 2021-2022.

(In all WPs)
For Petitioners : Mr.Suhirth Parthasarathy

For Respondents : Dr.B.Ramasamy
Senior Standing Counsel

COMMON ORDER

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.

30.03.2023

vs
Index: Yes
Speaking order
Neutral citation:Yes

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Vellore - 632 001

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Represented by its Chairperson,
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Dr.ANITA SUMANTH, J.

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