IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM

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

W.P.Nos.16033 & 16037 of 2022
and
W.M.P.Nos.15365, 15366, 15371 & 15374 of 2022

1. Ponnaiyah Ramajayam Institute of Science and Technology Trust,
   Represented herein by its Managing Trustee,
   Mr.M.P.Nageswaran ... Petitioner in W.P.No.16033 of 2022

2. Ponnaiyah Ramajayam Institute of Science and Technology Trust,
   Represented herein by its Managing Trustee,
   Mrs.Menaka Murugesan ... Petitioner in W.P.No.16037 of 2022

Vs

1. The Assistant Commissioner of Income Tax (Exemptions),
   2nd Floor, May Flower Mid City Building,
   1510, Trichy Road,
   Coimbatore – 641 018.

2. The Assistant Director of Income Tax CPC,
   Centralized Processing Centre,
   Income Tax Department,
   Bengaluru. ... Respondents in both W.Ps.

Prayer in W.P.No.16033 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in the Intimation under Section 143(1) of the Income Tax Act and the consequent Demand under Reference.No.2021202037030617543T for the payment of Rs.47,87,07,840/- dated 24.12.2021 issued by the 2nd respondent to the petitioner in respect of the Assessment Year 2020-2021 and quash the same and further direct the 1st and 2nd respondents to re-do the assessment of the Petitioner for the Assessment Year 2020-2021 after giving a proper opportunity of being heard in the matter.

Prayer in W.P.No.16037 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in the Intimation under Section 143(1) of the Income Tax Act and the consequent Demand under Reference.No.2021202037030584153T for the payment of Rs.1,97,49,930/- dated 24.12.2021 issued by the 2nd respondent to the petitioner in respect of the Assessment Year 2020-2021 and quash the same and further direct the 1st and 2nd respondents to re-do the assessment of the Petitioner for the Assessment Year 2020-2021 after giving a proper opportunity of being heard in the matter.

For Petitioners	:	Mr.N.Ramakrishnan for Waraon and Sai Rams (in both W.Ps)
For Respondents	:	Mr.R.Mahalingam Senior Standing Counsel (in both W.Ps)

COMMON ORDER

The petitioner has challenged the respective Impugned Intimation Notice and Demand Order passed under Section 143(1) of the Income Tax, 1961. Along with the aforesaid notice, the petitioner has also been called upon to pay the disputed tax which is challenged by the petitioner on the ground that the requirements of thirty (30) days notice contemplated proviso to 143(1) has not been complied by the Department which is admitted in the counter explaining the background of the case.

2. The learned counsel for the petitioner submits that the petitioner is an Educational Charitable Trust and was all along availing the benefit of exemption under Section 11 of the Income Tax, 1961 read with Section 12 of the Income Tax Act, 1961.

3. The normal period for filing Returns expired on 31.07.2021 for the Assessment Year 2020-2021. However, the Returns were not be filed in time. The time stood extended to 15.02.2021 on account of outbreak of covid 19 pandemic in March 2020. The petitioner filed the returns belatedly only on 31.03.2021 as both the Trustee and the Managing Trustee of the petitioner fell ill after the time was extended.

4. It is submitted that Mr.P.Murugesan, the Managing Trustee of the petitioner was admitted in the hospital on 03.03.2021 and later died on 19.03.2021.

5. It is submitted that other Trustee namely Mrs.Menaka Murugesan wife of Mr.P.Murugesan was also admitted in the hospital on 04.03.2021.

6. Apart from the above, the Auditor and the Auditor's parents were also admitted in the hospital during the second wave of covid 19 pandemic and that the Auditor's parents also died. Since there were a large scale disruption, the son of the Managing Trustee and the other

surviving Trustee took over the affairs but were unable to access the IT Portal for filing the Returns in absence of the password. Thus, there was further delay in filing Returns.

7. It is submitted that there were several factors which contributed delay in filing of the returns and the relevant Form under Section 12(1)(b) in Form 10B to avail the exemption available to a Charitable Trust.

8. It is submitted that the procedure adopted by the respondent while passing the Impugned Order contrary proviso to Section 143 of the Income Tax Act. Hence, the petitioner prays for a remand.

9. It is submitted that the petitioner will file appropriate application in condoing the delay in filing Form 10-B under Section 12A(1)(b) of the Income Tax Act.

10. It is further submitted that for the period prior to and for the period thereafter, the benefit of Section 11 of the Income Tax Act has

been allowed and therefore, on this count also it is a fit case for interfering with the Impugned Order.

11. The learned Senior Standing Counsel for the respondents on the other hand would submit that although there is a procedural irregularity while passing the Impugned Order as no notice contemplated under proviso to Section 143(1) of the Income Tax Act was not issued to the petitioner, the fact remains that the petitioner has not approached the Commissioner for condoning the delay in filing Form 10B under Section 119(2)(b) of the Income Tax Act.

12. That apart, it is submitted that although there is a procedural irregularity in not issuing Notice, it is not fatal to the proceedings as admittedly the petitioner has not filed any document to substantiate that the petitioner was entitled for exemption under Section 11 of the Income Tax Act. Hence, prays for dismissal of the writ petition.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

14. The dispute in these two cases for the Assessment Year 2020-2021 and 2021-2022. Relevant financial years coincides with the period when the country was under the first and second wave of Covid 19 pandemic.

15. Thus, the delay in filing the Returns was not willful as is evident from the facts that has been narrated above. The petitioner Trustee died on 19.03.2021 and the other Trustee namely Mrs.Menaka Murugesan was also admitted in hospital on 04.03.2021 one day after the Managing Trustee was admitted in the hospital.

16. There are several factors which are contributed to the delay in filing of the returns. The benefit which has been enjoyed by the petitioner during the previous assessment years has been denied only because the

Petitioners' Trust was unable to access the Income Tax Portal, where the assessment order and notices were being communicated. The other compounding factor was that the auditor was also admitted in the hospital and that the parents of the auditor were also admitted who later died.

17. Considering the overall circumstances, Court is inclined to interfere with the Impugned Order by setting aside the Impugned Order and remits the case back to the respondents to pass a fresh order on merits and in accordance with law within a period of sixty (60) days from the date of receipt of a copy of this order.

18. It is made clear that the petitioner will have to obtain suitable from the Commissioner under Section 119(2)(b) of the Income Tax Act, to condonation of the delay in filing Form 10B under Section 12(1)(b) of the Income Tax Act.

19. These writ petitions stand disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

12.07.2023

Neutral Citation: Yes/No
Index : Yes/No
Speaking/Non-Speaking Order
rgm

To

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   2nd Floor, May Flower Mid City Building,
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   Coimbatore – 641 018.

2. The Assistant Director of Income Tax CPC,
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C.SARAVANAN, J.

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