BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16143 of 2023
and
W.M.P.(MD).No.13534 of 2023

The Bharathidasan University,
Through its Registrar,
Palakalaiperur,
Tiruchirapalli. ... Petitioner

vs

The Deputy Commissioner,
Income Tax Department (Circle-1(1)),
Williams Road,
Cantonment,
Tiruchirapalli – 620 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings of the respondent, dated 13.09.2022 and quash the same.

For Petitioner : Mr.V.R.Shanmuganathan

For Respondent : Mr.N.Dilip Kumar,
Senior Standing Counsel.

*****

O R D E R

This Writ Petition is filed to quash the order dated 13.09.2022 passed by the respondent.

2. Through the impugned order, the respondents have imposed penalty of Rs.5,000/- for not filing of return under Section 139(1) of the Income Tax Act. The respondents have initiated proceedings were under Section 272 read with 271F of the Act by issuing show cause notice dated 31.03.2022 requiring the assessee to show cause as to why penalty shall not be imposed under Section 274 read with 271F for not filing returns for the assessment year 2014-2015. The contention of the petitioner is that through the amendment under Section 139(4C)(e) of the Act, the respondent has made the filing of return as mandatory, but the said amendment was given effect from the assessment year 2016-2017. But the respondent without taking into account that the amendment provision came into effect from the assessment year 2016-2017, has imposed penalty for the assessment year 2014-2015. Hence, the petitioner had challenged the impugned order.

3. The contention of the respondent is that the entitlement for exemption under Section 10(23C) is subject to two conditions. Firstly, the educational Institution or the University must be solely for the purpose of education and without any profit motive. Secondly, it must be wholly or substantially financed by the Government. Both conditions must be satisfied before exemption can be granted under the aforesaid provision. In order to verify whether the conditions are satisfied, the assessee / petitioner needs to furnish its return of income with Audit Report. Failure to do so will attract penal action under Section 274 read with 271 F of the Act. Hence, the respondent has objected to the plea of the petitioner stating that even though exemption is granted, the petitioner is bound to satisfy the conditions thereunder. To ascertain the conditions are satisfied, the petitioner is bound to file returns, then only the respondent can scrutinize and come to the conclusion whether the conditions are satisfied or not. Therefore, the plea cannot be accepted.

4. After hearing the arguments of the rival parties, this Court is of the considered opinion that there is no mandatory provision for filing of return by the Educational Institution prior to assessment year 2016-2017. When the amendment came into effect in the year 2016-2017, the University is bound to file any return from 2016-2017 only. When there is no liability to file returns, non-filing of

returns will not attract penalty and the respondents have no jurisdiction to impose penalty. As far as the plea of ascertaining the fulfillment of conditions is concerned, the respondents can very well scrutinize from the assessment year 2016-2017 onwards and hence the said plea of the respondents cannot be sustained. Hence, this Court is inclined to quash the impugned order and accordingly the impugned order is quashed.

5. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed. This order shall not be cited as precedent for any other assessee, since it is passed for the University alone.

14.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

The Deputy Commissioner,
Income Tax Department (Circle-1(1)),
Williams Road,
Cantonment,
Tiruchirapalli – 620 001.

S.SRIMATHY, J

Nsr

Order made in
W.P.(MD).No.16143 of 2023

14.09.2023