BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.30164 of 2023
and W.M.P(MD).Nos.26000 and 26001 of 2023

Haji I.Asarab Ali .. Petitioner

vs.

1.The Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner,
Income Tax Department,
Madurai.

2.The Income Tax Officer,
Ward 1 Ramnad,
Income Tax Department,
Ramanathapuram.

3.The Income Tax Officer,
Exemptions Ward Madurai,
Income Tax Department,
Madurai.

4.Tamil Nadu Wakf Board,
Rep.by its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai-600 001. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent vide proceedings dated 27.10.2023 in ITBA/AST/F/142(1)/2023-24/1057460328(1) issued under Section 142(1) of the Income Tax Act, 1961 and the proceedings of the second respondent dated 29.09.2023 in ITBA/AST/F/17/2023-24/1056646470(1) under Sections 147 and 148 of the Income Tax Act, 1961 and quash the same and consequently, direct the respondents to treat the income of the petitioner as exempted by virtue of Section 10(23BBA) of Income Tax Act, 1961.

For Petitioner : Mr.I.Kowser Nissar

For Respondents : Mr.N.Dilip Kumar
Standing Counsel for R1 to R3
Mr.A.Ajmal Khan for R4

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ORDER

This Writ Petition has been filed challenging the impugned proceedings issued by the third respondent dated 27.10.2023 under Section 142(1) of the Income Tax Act, 1961, calling upon the petitioner to produce the documents on or before 15.11.2023 and the proceedings of the second respondent dated

29.09.2023, in and by which, the petitioner's case has been reopened under Section 147 of the said Act and the petitioner was directed to submit his return of income and response along with the documentary evidence in support of his claim, in response to the notice issued under Section 148 of the said Act.

2. The learned counsel appearing for the petitioner, by referring to Section 10(23BBA) of the Income Tax Act, 1961, submits that any income of any Body or Authority of Public Religious Institution or Charitable Trusts or Endowments is exempted from the income tax. The petitioner is a Religious Institution which involves in the religious activities and therefore, the petitioner is exempted under the Income Tax Act. However, the third respondent has issued the impugned show cause notice calling upon the petitioner to offer his explanation for the assessment year 2018-2019. The learned counsel appearing for the petitioner, by relying upon the order of this Court passed in W.P(MD).Nos.29312 and 29315 of 2019 dated 18.02.2021, submits that this Court has categorically held in paragraph Nos.14 to 16 of the said order that the Religious Institutions, who are not engaging in commercial

activity, are exempted under the Income Tax Act. Therefore, the petitioner is also to be exempted from the income tax.

3. Mr.N.Dilip Kumar, the learned Standing Counsel takes notice for the respondents and submits that the impugned show cause notice is only a notice calling upon the petitioner to offer his explanation for assessing the property which was noted by the Income Tax Officer. The Income Tax Officer has received an information that this petitioner Wakf Board was having cash to the tune of Rs.82,89,354/- (Rupees Eighty Two Lakhs Eighty Nine Thousand Three Hundred and Fifty Four only) in the bank account for the financial year 2018-2019 and the Income Tax Officer has also verified and found that the petitioner has not filed any return for the assessment year 2018-2019. Therefore, a show cause notice was issued under Section 148 of the Income Tax Act and an opportunity of hearing was also provided to the petitioner to offer his explanation on or before 28.03.2022, with the approval of the Commissioner of the Income Tax Department on 22.03.2022. The petitioner has not responded to the show cause notice and therefore, the assessee's case for the assessment year 2018-2019 was reopened under Section 147 of the

Income Tax Act. Notice was issued under Section 142(1) of the said Act calling for details from the petitioner for non-filing of returns for the cash deposits which were found in the bank account of the petitioner. The learned counsel further submits that in the event the petitioner produces relevant materials before the concerned Authority and establishes that the Wakf Board is not involved in any commercial activity, it would be considered in accordance with the Act and Rules. Since the petitioner has not availed the opportunity which was provided under Section 148 of the said Act and the assessment has also been reopened, he cannot maintain this writ petition as against the consequent notice issued under Section 142(1) of the said Act. By referring the very same order relied upon by the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents submits that this Court in paragraph Nos.34 and 35 of the said order held that the Religious Institution, if it is in commercial operation, is not entitled for exemption under section 10(23BBA) of the said Act and a similar request made by one Sri Amirthakadeswaraswamy Devasthanam under the same provision was rejected by the said order.

4. This Court considered the rival submissions made by both sides and perused the materials available on record.

5. The petitioner claims that he is the Managing Trustee of Wakf which is indulging in religious activities and therefore, they are exempted from the Income Tax. The respondents, on information, had found the cash deposits to the tune of Rs.82,89,354/- (Rupees Eighty Two Lakhs Eighty Nine Thousand Three Hundred and Fifty Four only) in the bank account of the petitioner during the assessment year 2018-2019, for which, the petitioner has not filed any Income Tax Return and therefore, the third respondent issued a show cause notice to the petitioner to offer his explanation for the said cash deposits and non-filing of return for the assessment year 2018-2019. The petitioner has not availed that opportunity and has not appeared before the respondents. Therefore, a final order has been passed under Section 148(A) of the Income Tax Act on 07.04.2022 and thereafter, the petitioner has given his reply to the respondents on 11.04.2022. Till date, the petitioner has not challenged the order passed under Section 148(A) of the Income Tax Act. The orders impugned in this Writ Petition are only the consequential notices

issued under Sections 142(1) and 147 of the Income Tax Act. Since the petitioner has failed to question the order passed under Section 148(A) of the Income Tax Act, this Court is not inclined to entertain this Writ Petition. However, liberty is granted to the petitioner to appear before the respondents and offer his explanation to the proceedings initiated under Section 142(1) of the Income Tax Act. The respondents shall consider the case of the petitioner in accordance with law, in view of the fact that the petitioner is a wakf. In the event the petitioner is eligible for exemption as provided under Section 10(23BBA) of the said Act, the same shall be extended to the petitioner also. The petitioner shall furnish the reply, if any, within a period of three weeks from the date of receipt of a copy of this order. Let the entire exercise be completed within a period of six months from the date of receipt of a copy of this order. Till such time, the respondents shall not take any coercive action against the petitioner.

6. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Connected miscellaneous petitions are closed.

19.12.2023

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

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B.PUGALENDHI, J.

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