IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8707 OF 2024

Little Sisters of the Poor Sawantwadi, through Rosy Lopes D/o. John Lopes … Petitioner

vs.

The Commissioner of Income Tax (Exemption), Pune & Anr. …Respondents

Ms. Jinita Chatterjee i/b. Mr. Himanshu Patil for the petitioner.
Mr. A.K. Saxena for the respondents.

CORAM: G. S. KULKARNI & SOMASEKHAR SUNDARESAN, JJ.
DATED: 12 August, 2024

P.C.

1. Not on board. Upon mentioning, taken on board on a praecipe as moved on behalf of the petitioner.

2. The petitioner, which claims to be a non-profitable institution and running a Home for aged persons, is before the Court challenging an order dated 16 October, 2023 passed by respondent no. 1 whereby the petitioner's application is rejected and the provisional registration under section 12AB read with section 12A(1)(ac)(vi) of the Income-tax Act (for short **"the Act"**) has been cancelled.

3. The petitioner claims that it had commenced its activities as a public trust on 25 October, 2021. On 6 May, 2023, respondent no. 2 had approved

the provisional registration under section 12AB as per Form No. 10AC, which was to expire on 6 May, 2026. The petitioner accordingly made an application on 9 May, 2023 for registration by filing Form 10AB under Rule 17A of the I.T. Rules. On 8 August, 2023 respondent no. 1 issued the impugned notice to process the said application under section 12A(1)(ac)(iii) of the Act. The petitioner has contended that such notice was in fact dispatched from the office of respondent no. 1 on 22 August, 2023. By such notice, the petitioner was called upon to attend a hearing which was fixed on 21 August, 2023 at 5.30 p.m. The said notice was received by the petitioner on 25 August, 2023 which was after the scheduled date of hearing.

4. The claim of the department is that such notice was sent to the petitioner by email on 8 August, 2023. However, it appears that e-mail address, as urged by the respondent and as referred, was not the correct address, as according to the portal, the petitioner had two email addresses, namely, lspmssawantwadi@gmail.com and splspindia@gmail.com, being the primary and secondary e-mail IDs respectively. However, it appears that the respondent's notice which was forwarded to the petitioner by e-mail was to the email ID sigmajobsawantwadi@gmail.com, which is not the email ID of the petitioner as per its registration on the portal. Learned counsel for the

petitioner has contended that the two email IDs as referred by us hereinabove were already updated on the portal of the Income-tax Department.

5. Be that as it may, we do not intend to delve on such issues, suffice it to observe that not only the portal but the record also indicated the correct email address of the petitioner as contained in the form being a copy of the portal registration (at Exhibit R-2) annexed to the rejoinder affidavit dated 5 August, 2024 of Rosy Lopes filed on behalf of the petitioner.

6. It appears that an erroneous communication of the notice has resulted into the impugned order dated 16 October, 2023 being passed by respondent no. 1 without the petitioner being heard. Admittedly no opportunity of reply or a personal hearing was granted to the petitioner before the petitioner's application could be rejected.

7. In the light of the above discussion, we are of the opinion that it is in the interest of justice that the impugned order dated 16 October, 2023 be quashed and set aside and the proceedings remanded to the Assessing officer, so that a fresh opportunity is made available by respondent no. 1 to the petitioner to reply to the notice dated 8 August, 2023. We permit the petitioner to reply to the show cause notice dated 8 August, 2023 within two weeks from today. After the petitioner's reply is received, respondent no. 1

shall grant an opportunity of a hearing to the petitioner, of which intimation be given to the petitioner at least 7 days in advance by forwarding an email on both the email addresses of the petitioner as referred hereinabove. After the petitioner is granted an opportunity of being heard, an appropriate order in accordance with law be passed on the petitioner's application dated 9 May, 2023. All contentions of the parties on the pending application are kept open.

8. Disposed of on the aforesaid terms. No costs.

(SOMASEKHAR SUNDARESAN, J.) **(G. S. KULKARNI , J.)**

Signed by: Vidya S. Amin
Designation: PS To Honourable Judge
Date: 17/08/2024 13:15:04