IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.8077 of 2024 and
W.M.P.Nos.9029 & 9030 of 2024

Mylai Mahaperiyava Anusham Trust,
Represented by its Authorised Signatory,
Mr.S.Sethuraman,
New No.52, Old No.35, Sree Flats,
North Mada Street, Mylapore,
Chennai-600 004. ... Petitioner

-vs-

1. The Assessing Unit,
Income Tax Department,
New Delhi.

2.Commissioner of Income Tax (Exemptions),
No.121, Mahatma Gandhi Road,
Chennai, Tamil Nadu – 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 1st Respondent and quash the impugned order in Din:

ITBA/AST/S/143(3)/2023-24/1061755463(1) u/s 143(3) r.w.s 144 B of the Income Tax Act, 1961 dated 28.02.2024 for the Assessment year 2022-23 by the 1st Respondent as illegal and not in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.V.Mahalingam, Senior Standing Counsel

ORDER

An assessment order dated 28.02.2024 in respect of assessment year 2022-2023 is challenged in this writ petition on the ground of breach of principles of natural justice.

2. The petitioner filed the return of income for assessment year 2022-2023 on 07.11.2022. In relation thereto, notice dated 02.06.2023 under Section 143(2) of the Income Tax Act, 1961 (the Income Tax Act) was issued by the 1st respondent to the petitioner. This was followed by a notice dated 17.10.2023 under Section 142(1). By such notice, the petitioner was called upon to explain the source of investment for the purchase of a high value property in the relevant previous year. The petitioner replied to such

notice on 17.01.2024 and stated that the assessee had entered into a sale agreement during the relevant previous year and made part payments in advance. It was also stated that the source of funds was by way of contributions towards the corpus fund. This was followed by show cause notice dated 11.01.2024 calling upon the petitioner to show cause in respect of a proposed variation to the extent of Rs.6,63,45,460/- corresponding to amounts paid towards the purchase of the property. The show cause notice was replied to by the petitioner. Thereafter, a further notice under Section 142(1) was issued on 19.02.2024. In this notice, the petitioner was called upon to provide details of persons from whom the corpus donation of Rs.8,10,79,204/- was received. Such information was required to be submitted on or before 24.02.2024. The petitioner did not reply within the said time limit. Instead, the petitioner asserts that a grievance petition was uploaded on 29.02.2024 by stating that it was not possible to upload the reply to the Section 142(1) notice. The impugned assessment order was issued in these facts and circumstances.

3. Learned counsel for the petitioner submits that the petitioner was called upon to show cause with regard to the purchase of a high value property by paying a sum of Rs.6,63,45,460/-. Thereafter, by the Section 142(1) notice, the petitioner was called upon to provide details of the persons who made donations towards the corpus fund to the extent of Rs.8,10,79,204/-. Even without issuing a fresh show cause notice, he submits that the impugned assessment order was issued. He also points out that the petitioner endeavoured to upload the reply dated 29.02.2024. He points out that the petitioner has obtained confirmation letters from the principal donors. He seeks another opportunity. On the merits, learned counsel contends that Section 115BBC of the Income Tax Act is not applicable in respect of anonymous donations received by institutions created or established wholly for religious purposes. By referring to the registration of the petitioner under Section 12AA of the Income Tax Act, he points out that the Trust was set up for religious activities.

4. In response to these contentions, Mr.V.Mahalingam, learned senior standing counsel for the respondents, points out that the petitioner was

called upon to explain the sources of income for the purchase of a high value property. He also submits that sufficient opportunity was granted to the petitioner to respond adequately by providing complete details of the sources of funds, including particulars of donors. Therefore, he contends that interference with the impugned assessment order is not called for.

5. On examining the show cause notice dated 11.01.2024 and the preceding notice under Section 142(1), it is evident that the petitioner was called upon to provide information and documents relating to the purchase of a property on payment of Rs.6,63,45,460/-. The petitioner responded thereto by stating that the payments towards purchase of the property were made from corpus fund donations. After receiving this reply, the respondents issued a notice under Section 142(1) calling for information relating to the corpus fund donation of Rs.8,10,79,204/-. In effect, the scope of enquiry changed and, in fact, expanded. In those circumstances, the petitioner required a reasonable opportunity to respond. The notice called for reply on or before 24.02.2024. The petitioner has placed on record a grievance petition dated 29.02.2024, a reply dated 29.02.2024 and

documents from donors confirming the donations. Although it appears *prima facie* that the documentation placed on record by the petitioner may not be sufficient to explain the corpus fund donation to the extent of about Rs.8.10 crores, nonetheless, the interest of justice warrants that an opportunity be provided to the petitioner especially by taking note of the fact that this trust is discharging religious functions.

6. For reasons set out above, the impugned assessment order dated 28.02.2024 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the Section 142(1) notice within 15 days from the date of receipt of a copy of this order. In order to enable the petitioner to upload such reply, the respondents are directed to provide access to the portal. Upon receipt of such reply, the 1st respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing by video-conference, and thereafter issue a fresh order within four months from the date of receipt of the petitioner's reply. The respondents are directed to act on the web copy of the order.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

19.07.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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To

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SENTHILKUMAR RAMAMOORTHY,J

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