IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.13465, 13474, 13476 to 13478, 13485, 13490 of 2024
&
W.M.P.Nos.14627 to 14629, 14632 to 14638,
14641, 14642, 14647, 14649, 14651, 14654 & 14656 of 2024

W.P.No.13474 of 2024
Sri Seshadri Swamigal Trust,
Rep., by its Secretary,
Mr.A.Balamurugan,
Chengam Road,
Thiruvannamalai 606 603.

...Petitioner

-Vs-

1. National e-Assessment Centre,
   Mayur Bhawan,
   Connaught Lane,
   Barakhamba, New Delhi 110 001.
2. The Commissioner of Income Tax,
   Aayakar Bhawan,
   121, M.G.Road,
   Nungambakkam,
   Chennai 600 034.
3. Principal Commissioner of Income Tax,
   25, Valayalkara Street,
   Thiruvannamalai.
4. Exemption Ward-I,
   Income Tax Office,
   Aayakar Bhawan,
   Annexe Building,

No.121, M.G.Road,
Nungambakkam,
Chennai 600 034.

5. The Branch Manager,
Canara Bank,
No.19, Kosamad,
Thiruvannamalai 606 601.
6. The Branch Manager,
DPS Bank,
Thiruvannamalai Road,
Thamarai Nagar,
Thiruvannamalai 606 601.
7. Mr.Justice R.S.Ramanathan,
Ex.Administrator,
Seshadri Swamigal Trust,
Old No.39, new No.29,
L.I, Century Anchorage,
4th Sea Ward Road,
Thiruvanmaiyur,
Valmigi Nagar,
Chennai 600 041.

... Respondents

<u>Prayer in W.P.No.13465 of 2024 :</u> This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the Assessment order dated 19.01.2024 in Din.No.ITBA/AST/S/147/2023-2024/1059929219(1) for the Assessment year 2016-2017 in respect of Pan No.AAHTS6343P passed by the 1st respondent Assessment Unit and the same is not assessable as income under Sec.12A(a) of the Income Tax Act and quash the same and consequently directing the 1 to 4 respondents to serve appropriate papers to the newly appointed Board of Trustees as per the order of this Court in Crl.O.P.Nos.8272 and 13350 of 2020 order dated 09.09.2022 so as to enable the petitioner Trust to regularise the returns for the period 2015 to 2019 and pass appropriate relief after duly considering the impact of Sec.12A(a) of the Income Tax Act.

Appearance in all W.P's

For Petitioner : Mr.K.M.Vijayan
Senior Counsel
for R.T.Shyamala

For R1 to R4 : Mr.V.Mahalingam
Senior Standing Counsel
Assisted by Mrs.S.Premalatha,
Junior Standing Counsel

COMMON ORDER

Since the issue involved and the relief sought in all these Writ Petitions are identical in nature, the same were heard together and are disposed of vide this common order.

2. Challenging the respective impugned orders dated 03.08.2023, 21.03.2023, 15.09.2023, 06.03.2023, 21.09.2023 and 19.01.2024 passed by the first respondent herein, the petitioner has filed these Writ Petitions.

3. The case of the petitioner is that the petitioner is a registered trust started in the name of 'Sri Seshadri Swamigal'. The Trust was originally run by

a Society registered under the Tamil Nadu Societies Registration Act in the year 1974. One Muthukumaraswamy registered a Trust Deed on 15.04.2004 vide Doc.No.219/2004 on the file of the Sub-Registrar's Office at Puducherry, appointing himself as the Managing Director of the petitioner/Trust and he started to administer the affairs of the trust from 15.04.2004 onwards. During the tenure of said Muthukumaraswamy, a police complaint was lodged against him in Cr.No.1 of 2019 on 21.02.2019 on the file of the CBCID at Thiruvannamalai and the entire bank accounts of the Trust was freezed by CBCID. Pursuant to which, the said Muthukumaraswamy and the then Secretary of the Ashram filed Crl.O.P.Nos.8272 and 13350 of 2020 before this Court, seeking for defreeze the bank account. This Court vide order dated 17.09.2020 appointed the 7th respondent/Thiru Justice R.S.Ramanathan as an Administrator of the aforesaid trust. The said Administrator was in management of the aforesaid trust from 01.09.2020 till 09.09.2022 and thereafter, the Administrator got changed as per the order of this Court dated 09.09.2022 in Crl.O.P.Nos.8272 and 13350 of 2020. During the tenure of the 7th respondent/Administrator, he removed the Income Tax Practitioner of the Trust appointed by the said Muthukumaraswamy and collected all the accounts for the period 2015-2020 and handed over the same to the newly appointed Auditor of his choice. Further, the 7th respondent filed a report stating that the Income Tax returns for the period 2018-2019 and 2019-2020 were filed and a payment of Rs.64,68,860/- was made towards tax, though the Trust is entitled to the benefit of Section 12A(a) of the Income Tax Act. However, on verification, it stated that in fact, no return was filed for the period 2018-2019. Further, the present trustees took over the administration of the aforesaid trust as per the direction of this Court dated 16.09.2022. Subsequent to the taking over the management of the trust, the present trustees appointed a local Auditor, who started filing the returns without default and get exemption under Section 12A(a) of the Act every year. However, the petitioner/trust sought the return of the accounts book from the 7th respondent and erstwhile Auditor several times, but all the efforts ended in futile. Till date none of the documents were returned by the 7th respondent and his auditor and due to that, the present trustees are not in a position to rectify the non-filing of the returns. It is pertinent to note that now the Income Tax Department started re-opening the assessments for the period 2015-2016, 2016-2017, 2017-2018 and 2018-2019 and proposing to impose penalties.

4. The fourth respondent passed an order of attachment dated

09.11.2023, attaching the bank accounts of the Trust and thereby the accounts got freezed by the 5th respondent and due to that, the Trust could not pay the salary to its staffs. Hence, the petitioner filed the present Writ Petitions challenging the order of the Assessments and penalty passed by the first respondent.

5. The learned counsel for the petitioner would submit that the notices were issued under Sections 148 and 148A(b) of Income Tax Act in the month of March 2022. Thereafter, the intimation letter was issued by National Faceless Assessment Centre (NFAC) in the month of August 2022. Pursuant to which, notice under Section 142 was issued and the assessment orders came to be passed by the first respondent vide orders dated 06.03.2023, 21.03.2023 and 19.01.2024 in respect of the assessment years 2015-2016, 2016-2017 and 2018-2019 respectively. Further, he would submit that notices were issued only during the period when the Administrator appointed by this Court was in Office and there was a mis-communication between the Auditor and the Administrator and also the address of the Auditor was provided for communication. However, the said Auditor failed to bring the said notices issued by the Income Tax Department to the knowledge of the petitioner. Therefore, the petitioner/trust is

not in a position to file the reply, which resulted in passing the penalty proceedings passed by the Department.

6. Further, he fairly submitted that for some of the penalty proceedings, the reply was filed by one of the Directors and the appeal was also filed. The main contention of the learned counsel for the petitioner is that the main issue involved in these Writ Petitions is that without providing an opportunity of personal hearing to the petitioner, the present impugned assessment orders came to be passed and consequently, penalty proceedings were also initiated. He would further submit that due to non-filing of the returns, the impugned notices were issued and the assessment orders came to be passed by the first respondent. He would also submit that consequent to the impugned orders, the Bank accounts of the petitioner trust were freezed and a sum of Rs.51,13,643/- was debited from their account by the Department. Hence, the petitioner/trust requested this Court to grant a final opportunity to the petitioner to present their case before the first respondent by participating in the proceedings.

7. Mr.V.Mahalingam, learned Senior Standing Counsel appearing for

the respondents 1 to 4 would submit that as against the impugned assessment orders came to be passed by the first respondent, alternate remedy of appeal is available to the petitioner before the Appellate Authority. If at all the petitioner had any grievance, the petitioner has to file an appeal before the Appellate Authority, instead of doing so, the petitioner filed the present Writ Petitions before this Court, which is not sustainable. Further, he would submit that the petitioner has filed an appeal against one of the assessment orders and in similar way, the petitioner can approach the Appellate Authority and work out their remedy. Hence, he prayed for dismissal of the present Writ Petitions.

8. Heard both sides and perused the materials available on record.

9. In the present case, due to non-filing of the return, show cause notice was issued to the petitioner/trust. By virtue of order of this Court dated 17.09.2020, the Administrator was appointed as in-charge of the aforesaid trust and he hold the position till 09.09.2022. During the tenure of said Administrator, the show cause notice was issued. The reason assigned by the petitioner for non-filing of the return is that the Auditor, who had access to Income Tax portal and who only knows the password, failed to bring them

about the various show cause notices issued by the Income Tax Department. Further, it is submitted that the present trustees before this Court are newly appointed trustees with effect from 09.09.2022. After analysing the various records, the present managment trustees have come across the defaults committed by the erstwhile management trustee. Under these circumstances, the petitioner has come forward with the present Writ Petitions, seeking to provide an opportunity to the petitioner by setting aside the impugned orders.

10. Generally, when the change in the administration of trust takes place, it is incumbent upon the erstwhile Auditor to bring their notice about the Income Tax proceedings and notices issued by the Income Tax Department so as to enable the new trustees to respond the same. In the present case, it is specific case of the petitioner that the Auditor who had access to the Income Tax, had failed to give the details and password of the portal and the petitioner was not aware of the notices issued by the Department and thereby, they could not file the reply, which led to the passing of the ex parte impugned assessment orders and penlalty proceedings thereof. Further, during the tenure of erstwhile Administrator, who was appointed by this Court, show causes notices were issued and the petitioner was not aware of the same. Hence, the petitioner

would urge this Court to provide a final opportunity to rectify the defects and respond to the show cause notices.

11. Considering the submissions made on behalf of the petitoner and the circumstances under which the petitioner was unable to respond the show cause notices and in compliance to the principles of natural justice, this Court is inclined to set aside the impugned assessment orders in order to provide a reasonable opportunity to the petitoner to respond the show cause notices by filing their reply.

12. Accordingly, this Court passes the following directions:

(i) The orders impugned herein are set aside and the matter is remanded to the first respondent for fresh consideration in respect of the impugned assessment years in question. Since a sum of Rs.51,13,643/- has been debited from the petitioner's/trust Bank account, this Court is not inclined to impose any further condition. In the event, the petitioner ultimately succeeds, the petitioner/trust is entitled to the said amount.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of four weeks after the date of receipt of a copy of this order.

(iii) On filing of such reply/objection by the petitioner, the first respondent shall consider the same and issue a 14 days clear notice by fixing the date for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, as expeditiously as possible, after hearing the petitioner.

(iv) Considering the fact that the impugned orders have been set aside, this Court is of the opinion that the attachment made in respect of the Bank accounts of the petitioner's trust cannot sustain any longer and hence, it is hereby raised. The concerned Banks are directed to defreeze the Bank account of the petitioner's/trust immediately upon the production of a copy of this order, in case the petitioner's Bank accounts are attached.

13. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

11.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

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Krishnan Ramasamy,J.,

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