IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.14794 of 2024
and W.M.P.Nos.16029, 16030, 16031 & 16032 of 2024

Congregation of the Sisters of
the Saint Joseph of Cluny -
Convent Karikal
Represented by the President
St Joseph's Convent
Karaikal 609 602
PAN: AAEAC2112Q ... Petitioner

-vs-

1.The Assessment Unit
Income Tax Department
National e-Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Income Tax Officer
Ward 3, Puducherry,
Income Tax Department
Deivanayagam Pillai Thottam
Muthailpet, Puducherry – 605 003.

3.The Principal Commissioner of Income Tax
Puducherry
Income Tax Department
Deivanayagam Pillai Thottam
Muthailpet, Puducherry – 605 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the writ petitioner on the file of the 1st respondent to quash the impugned order u/s 143(3) read with Section 144B of the Income Tax Act, 1961 dated 12.03.2024 in DIN: ITBA/AST/S/143(3)/2023-24/1062433548(1) for the assessment year 2022-23.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.V.Mahalingam, Sr. SC
Mrs.S.Premalatha, Jr. SC

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ORDER

An assessment order dated 12.03.2024 is challenged in this writ petition on the ground that material placed on record by the petitioner was not duly taken into consideration. The petitioner is a registered society. In respect of assessment year 2022-23, the society filed the return of income on 31.12.2023 declaring the total taxable income as nil. Upon the case of the assessee being selected for scrutiny on account of the large deduction claimed under Section 57 of the Income Tax Act, 1961 (the Income Tax Act), notices under Section 143(2) and 142(1) were issued. This was followed by show cause notices dated 10.02.2024 and 17.02.2024. Both the show cause notices were responded to by the assessee on 16.02.2024 and 23.02.2024, respectively, and the impugned assessment order was issued on 12.03.2024.

2. Learned counsel for the petitioner referred to the show cause notice dated 17.02.2024 by which the petitioner was called upon to show cause as to why the expenses of Rs.6,69,88,685/- should not be added to the total income of the assessee. By referring to the

petitioner's reply dated 23.02.2024, learned counsel pointed out that the petitioner stated that the preparation of a profit and loss account is not necessary because the society is not engaged in business. He further pointed out that the income and expenditure account for the relevant assessment year was enclosed. He also pointed out that the break up of the expenditure into hospital expenses, pharmacy expenses and school expenses was provided and that several documents relating thereto, including the audit report, were attached to the reply.

3. In this context, learned counsel submits that the impugned order contains several errors. Learned counsel points out that it is recorded therein that the petitioner did not provide the income and expenditure account, whereas the income and expenditure account was attached to the petitioner's reply to the show cause notice. He also points out that the return of income was filed under new PAN AAEAC2112Q, but the assessing officer proceeded on the basis that the petitioner had filed the return as a partnership firm.

4. Mr.V.Mahalingam, learned senior standing counsel, accepts notice for the respondents. By referring to the show cause notice, he points out that the assessing officer called for information in a specific format, wherein the assessee was required to specify the name and PAN of the person to whom payments were made, provide details of amounts paid, mode of payment and nature and justification for the payment. By referring to the petitioner's reply, he contends that such information was not provided by the assessee. In the absence of such information, learned senior standing counsel contends that it is not possible for the assessing officer to verify the genuineness of expenses booked by the assessee and claimed as a deduction under Section 57 of the Income Tax Act. Since the assessment order was issued on appraisal of the material placed on record by the petitioner, learned senior standing counsel submits that no case is made out for interference under Article 226 of the Constitution.

5. The petitioner is a registered society engaged in charitable activities. Since the society is not engaged in business, it was not necessary to file a profit and loss account. Instead, the society has filed the income and expenditure statement accompanied by an audit report. On perusal of the reply dated 23.02.2024 and the attachments thereto, it appears that the computation of total income, details of expenses, expenses of hospice, repairs and maintenance expenses, acknowledgment for response filed on 16.02.2024 and the audit report were filed. Learned senior standing counsel is correct in contending that the petitioner failed to provide details such as the name and PAN of the person to whom payments were made or the nature and justification for payment.

6. In this factual context, the assessing officer recorded the following findings in the operative part of the impugned order:

> *"It is a fact that you have claimed deduction of Rs.6,69,88,685/- from the total income shown under different heads:- 1. School income 2. House hold income 3. Farm income 4.*

Other income. On perusal of the details filed, it was noticed that you have filed late return for AY: 2022-23 on 31.12.2022 and return have been filed in ITR-5 instead of ITR-7 which is the correct written form for claim of exemption under Section 10/11/12 of IT Act, 1961. Further, no details of any approval or registration under section 10/11/12 has been filed in support of the claim instead you have preferred to show your total receipts as business receipts and 100% of the business receipts have been claimed exempt under Section 57 of the I.T.Act, 1961. The reply to the Show Cause Notice has been perused you have furnished the reason for filing the return as farm, however, you have admitted that a new PAN AAEAC2112Q has been allotted to you as such you are required to furnish the income and expenditure account, receipt payment account, balance sheet and details of any approval/obligation under section 10/11 of 12 of I.T.Act along-with the computation of set-aside amount as per the aforesaid sections as no such details have been filed the entire income of

Rs.6,69,88,685/- total income as taxed accordingly. Further, as no statutory requirement have been complied and no expenses allowed out of this taxable income."

7. The above extract discloses that the entire expenditure of Rs.6,69,88,685/- was disallowed. The assessing officer has recorded that the petitioner was required to furnish the income and expenditure account and approval under Sections 10,11 or 12 of the Income Tax Act. The income and expenditure statement was provided and the petitioner did not provide approvals under Section 10, 11 or 12 because such approval had not been obtained. It is noticeable that the operative portion of the assessment order does not contain a discussion of the material placed on record by the petitioner or set out reasons as to why such material is insufficient to determine whether the expenses are allowable under Section 57 of the Income Tax Act. For these reasons, the impugned assessment order cannot be sustained.

8. As a corollary, impugned assessment order dated 12.03.2024 is set aside and the matter is remanded for reconsideration. The petitioner is directed to provide the information called for in the show cause notice dated 17.02.2024, including by providing the same in the format specified therein, within a maximum period of ***fifteen days*** from the date of receipt of a copy of this order. In order to enable the petitioner to upload such documents, the respondents are directed to provide access to the portal. Upon receipt of such additional documents, the first respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing through video conference, and thereafter issue a fresh assessment order within ***three months*** from the date of receipt of additional documents from the petitioner.

9. W.P.No.14794 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.16029, 16030, 16031 and 16032 of 2024 are closed.

14.06.2024

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

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SENTHILKUMAR RAMAMOORTHY,J

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