IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23392 of 2021
and
W.M.P.No.24674 of 2021

World Vision India,
Represented by its Power of Attorney Holder
Lisha John ... Petitioner

Vs.

1.The Additional / Joint / Deputy / Assistant
Commissioner of Income Tax / Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Deputy Commissioner of Income Tax (Exemptions),
Chennai Circle,
Room No.303,
3rd Annexe Building,
No.121, Mahatma Gandhi Road,
Chennai – 600 034,
Tamil Nadu.

3.The Assistant Commissioner of Income Tax (Exemptions),
Chennai,
Aayakar Bhawan,
Annexe 3rd Floor,
No.121, Mahatma Gandhi Road,
Chennai – 600 034,
Tamil Nadu.

4.The National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Government of Finance,
Delhi.

5.The National Faceless Appeals Centre,
North Block, New Delhi – 110 001.
(Email – Samadhan.faceless.appeal@incometax.gov.in)

(R5 *suo motu* impleaded vide Order dated
01.11.2021 made in W.P.No.23392 of 2021) ... Respondents

Prayer: 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 first respondent in Assessment Order bearing Identification No.ITBA/AST/S/143(3)/2021-2022/1035575010(1) dated 14.09.2021 in PAN No.AAAAW0007G passed in the petitioner's case for the Assessment Year 2018-2019, quashing the same.

For Petitioner	:	Mr.M.V.Swaroop
For Respondents	:	Mr.V.Mahalingam Senior Standing Counsel

ORDER

The petitioner has challenged the Impugned Assessment Order dated 14.09.2021 passed by the 1st respondent for the Assessment Year 2018-2019.

2. It appears that for the Assessment Year 2014-2015, a report under Section 142(2A) of the Income Tax Act, 1961 was prepared pursuant to which, the assessments were completed and Assessment Orders were passed for the Assessment Years 2014-2015, 2015-2016 and 2017-2018.

3. The petitioner is in appeal against those Assessment Orders for those Assessment Years before the Commissioner of Income Tax (Appeals) under Section 246A of the Income Tax Act, 1961. For the Assessment Year 2018-2019, the petitioner had filed a Return of Income on 04.10.2018.

4. The return was scrutinized and has culminated in the Impugned Assessment Order dated 14.09.2021 copiously placing reliance on the Special Audit Report dated 02.06.2017 as also the Assessment Orders passed for the Assessment Years 2014-2015, 2015-2016 and 2017-2018.

5. Ultimately, in the Impugned Order, the 1st respondent has concluded that the petitioner had a gross receipt of Rs.351,58,26,857/- and that the petitioner had applied a sum of Rs.263,31,43,492/- (67% of gross receipt) for

charitable purposes and that for the balance of Rs.115,26,83,365/-, the petitioner had failed to establish any documents to substantiate that the amount was utilized for charitable purposes and therefore the demand has been confirmed on the aforesaid amount.

6. The calculation in the Impugned Order is as under:-

Total Income as per Return of Income	Rs. Nil
Total Receipts	Rs. 351,58,26,857/-
Applied for Charitable Purpose	Rs. 236,31,43,492/- (67% of receipts)
Amount not applied during the year	Rs. 115,26,83,365/-
Less : 15% for Accumulation	Rs. 52,73,74,029/-
Additions	Rs. 62,53,09,336/-
Total Assessed Income	Rs. 62,53,09,336/-

7. The Impugned Order is assailed primarily on the ground that the basis for coming to the conclusion that the petitioner has failed to utilized the amount for charitable purpose is based on the Special Audit Report dated 02.06.2017 which was generated for the Assessment Year 2014-2015.

8. That apart, it is submitted that the entire amount claimed towards salary disbursed to the staffs has been added to the income of the petitioner and therefore the Impugned Assessment Order dated 14.09.2021 is liable to be interfered with as it is arbitrary.

9. Learned Senior Standing Counsel for the respondents on the other hand would submit that the Impugned Assessment Order is a detailed order similar to the Assessment Orders passed for the Assessment Years 2014-2015, 2015-2016 and 2017-2018.

10. It is submitted that in the Assessment Years mentioned above, the petitioner has filed Statutory Appeals before the Appellate Commissioner and these appeals are pending.

11. It is submitted that the petitioner should at best to be allowed to file a Statutory Appeal in filing a Writ Petition.

12. That apart, the learned Senior Standing Counsel for the respondents would submit that there are several disputed questions of fact and therefore this Writ Petition is also liable to be dismissed on this count.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

14. The demand has been confirmed in the Impugned Assessment Order dated 14.09.2021 based on the Special Audit Report dated 02.06.2017 of the External Auditor appointed for this purpose under Section 142(2A) of the Income Tax Act, 1961.

15. The Special Audit Report was for the Assessment Year 2014-2015. A reading of Section 142(2A) of the Income Tax Act, 1961 indicates that the report can relate only a particular Assessment Year as the expression used is, “if at any stage of the proceedings before him”, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the

accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, direct the assessee to get either or both of the following, namely:-

i. to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner of Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed, and such other particulars as the Assessing Officer may require;

ii. to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf and to furnish a report of such inventory valuation in the prescribed form duly signed an verified by such cost accountant and setting forth such particulars, as may be prescribed, and such other particulars as the Assessing Officer may require.

Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited or inventory so valued unless the assessee has been given a reasonable opportunity of being heard.

16. *Prima facie*, a reliance on the report generated for the earlier Assessment Years cannot be basis to conclude that the similar pattern would have been followed by an assessee during the subsequent Assessment Years to do so and would amounting to assessment by sampling which is frowned upon by this Court.

17. Therefore, to that extent, the Impugned Assessment Order dated 14.09.2021 deserves an interference.

18. That apart, it appears that the entire amount of expenses incurred by the petitioner towards the salaries of its staffs has been disallowed.

19. Thus, a reading of the table in the Impugned Assessment Order dated 14.09.2021 particularly the table which has been extracted above indicates that no allowance has been made for the expenses incurred by the petitioner towards administrative and salary expenses of the petitioner.

20. All that has been done is the petitioner has been allowed to accumulate 15% of the gross receipt amounting to Rs.52,73,74,029/- and therefore the total income of the petitioner has been arrived at Rs.62,53,09,336/-. However, in the operative portion of the Impugned Assessment Order it has been concluded as under:-

> *"7.7. In this case of Commissioner of Income-tax Vs. Calcutta Agency Limited quoted by the Assessee it is clearly held by the Hon'ble Supreme Court that, the primary onus of substantiating its claim lies on the Assessee. The same is the ruling in the case of Joint Commissioner of Income-tax Vs. Superior Manpower Services Limited. It is held in these rulings that only when the primary onus of proof is discharged by the Assessee, the burden of proof falls on the Revenue.* ***In the current case, the Assessee failed to discharge the onus of proof by not furnishing valid documentary evidence for expenses amounting to Rs.115,26,83,365/-. The failure on the part of the Assessee to discharge the primary onus makes these case laws not applicable to the Assessee, apart from that the profile of Assessees in both the cases is not similar to that of Assessee. Conversely in the case of Commissioner of Income-tax Vs. Calcutta Agency Limited, the Hon'ble Supreme Court stated that to claim an exemption the onus is on the Assessee to establish the same. The Assessee cannot take selective interpretation of case laws****.*
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> *Based on above observations, the Assessment is concluded as per the Draft Assessment Order sent to the Assessee as Show Cause Notice dated 15/08/2021."*

21. However, it is the contention of the respondents Department that if no other amount is to be allowed, the respondents Department has to make guess work by invoking Section 144 of the Income Tax Act, 1961.

22. Under these circumstances, the Impugned Assessment Order dated 14.09.2021 is liable to be set aside and is accordingly set aside and the case is remitted back to the respondents to pass a fresh order on merits and in accordance with law independently without getting influenced from the Special Audit Report dated 02.06.2017 under Section 142(2A) of the Income Tax Act, 1961 generated for the Assessment Year 2014-2015.

23. Since the redetermination will require a proper consideration, the petitioner is directed to give a proper reply with proper evidences in accordance with law explaining the expenses which it seeks to exclude.

24. Since the dispute pertains to the Assessment Year 2018-2019, it is expected that the *de novo* proceedings will be completed by the respondents within a period of six (6) months from the date of receipt of a copy of this order.

25. This Writ Petition stands disposed of with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

19.12.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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