BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.2396 of 2024
and
W.M.P.(MD)Nos.2399 and 2400 of 2024

1. Muthu Kanakaraj

2. Thiruppuvanam Nadar Uravinmurai
Educational Hospital Welfare Trust,
Rep. by its President,
Thiruppuvanam.
(2nd petitioner is *suo motu* impleaded
by this Court by order dated 06.02.2024) ... Petitioners

versus

1. The Income Tax Officer,
Ward 1,
1st Floor, Sekkalai Street,
Karaikudi – 630 002.

2. The Assessment Unit,
Income Tax Department,
National Faceless Assessment Centre,
4th Floor, Mayur Bhawan,
Connaught Lane, Connaught Place,
New Delhi – 110 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records in DIN:ITBA/AST/S/147/2023-24/1052862350(1) dated 16.05.2023 on the file of the 2nd respondent relating to AY 2015-16 and quash the same.

For Petitioners : Mr.G.Baskar

For Respondents : Mr.N.Dilip Kumar, Standing Counsel

ORDER

The petitioner is a Correspondent of Kamarajar School at Thiruppuvanam. He has filed this writ petition as against the assessment order dated 16.05.2023 passed by the second respondent under Section 144 r/w. 147 r/w. 144B of the Income Tax Act, 1961.

2. By the order impugned in this writ petition, the assessment proceedings of the petitioner, for the assessment year 2015-2016, was re-opened that there was a cash deposit to the tune of Rs.70,24,000/- during the financial year using his PAN No.APPPK0902F, but, amount

of Rs.70,24,000/- has not been credited in the income tax returns filed for the assessment year 2015-2016. The petitioner was issued with show cause notices and thereafter, the impugned final order has been passed.

3. The learned counsel appearing for the petitioner submits that the amount of Rs.70,24,000/-, referred in the assessment order, for the assessment year 2015-2016, was credited in the account of Kamarajar Matriculation Higher Secondary School, however, inadvertently, by using the petitioner's PAN No.APPPK0902F. On receipt of the show cause notice, they have also ascertained it from the Indian Overseas Bank, where, they are maintaining a separate account for the Kamarajar Matriculation Higher Secondary School and the Bank has also issued a certificate that the amount of Rs.70,24,000/-, which has been mentioned by the second respondent as an escaped assessment, was credited in the School's Account No.052801000011918. Therefore, according to him, there is no mistake on the part of the petitioner. The

learned counsel further submits that the previous Auditor has not responded to the notice issued by the respondent and therefore, there was no proper reply during the enquiry. Now, the petitioner claims that he has changed his Auditor and he is also willing to produce all the relevant documents before the respondent Authority.

4. Mr.N.Dilip Kumar, learned Standing Counsel, who takes notice for the respondents, submits that the order impugned in this writ petition is the final assessment order, based on the amount which was deposited by using the petitioner's PAN No.APPPK0902F. Though the petitioner was provided sufficient opportunity of hearing before the passing of final order and notices were issued on 08.03.2023, 14.03.2023 and 18.03.2023, the petitioner has not availed all those opportunities. Now, the petitioner is putting a blame on the previous Auditor and it cannot be accepted at this point of time when the final assessment order has been passed.

5. The learned Standing Counsel further submits that the escaped assessment amount of Rs.70,24,000/- is not the amount deposited in the petitioner's account as claimed by him, then, he has to establish that this amount has been accounted for the income of the Trust which runs the Kamarajar Matriculation Higher Secondary School and that amount should have been accounted for. But, the petitioner is not having any material documents for that amount. He further submits that the assessment proceedings of the Trust for the assessment years 2016-2017 and 2018-2019 are already re-opened and enquiry is pending.

6. In response to this writ petition, the learned counsel for the petitioner submits that a Public Trust, running a school, is eligible for exemption upto Rs.1 Crore for the Assessment Year 2015-2016. Therefore, the School has not submitted their returns. He further submits that the petitioner is also inclined to produce the documents of the Bank Account before the concerned authority, if an opportunity is

provided to him.

7. The learned counsel appearing for the petitioner also undertakes that if the Trust, which is running the School, is liable to pay any tax and if it has not been paid, for re-opening the assessment proceedings in respect of the Trust for the assessment year 2015-2016 would not be challenged by the petitioner.

8. This Court considered the rival submissions and perused the materials available on record.

9. The petitioner claims that this escaped amount, as claimed by the respondent in the impugned assessment order, is an amount which was deposited in the account of the Kamarajar Matriculation Higher Secondary School in the Account No.052801000011918. However, it was inadvertently deposited using the petitioner's Pan No.APPPK0902F. According to the petitioner, this mistake has been

crept in by the Bank and while updating the KYC details, instead of the School's PAN, his PAN was recorded by the Bank and therefore, there is no mistake on his part. The petitioner has also put a blame on the previous Auditor for not giving any response to the show cause notices which were already issued by the respondents.

10. Since the petitioner claims that the escaped amount of Rs.70,24,000/- was deposited in the account of Kamarajar Matriculation Higher Secondary School and the Trust, namely, Thirupuvanam Nadar Uravinmurai Educational Hospital Welfare Trust, is running the Kamarajar Matriculation Higher Secondary School, this Court *suo motu* impleads the Thiruppuvanam Nadar Uravinmurai Educational Hospital Welfare Trust, Thiruppuvanam as the 2nd petitioner in this writ petition. This Court also directs the learned counsel Mr.G.Baskar, to take notice for the newly impleaded petitioner.

11. Since the petitioner is having a *prima facie* case, based on the certificate issued by the Indian Overseas Bank, this Court is inclined to allow this writ petition in order to provide one more opportunity to establish his case.

12. Accordingly, this Writ Petition is allowed, setting aside the impugned order dated 16.05.2023 passed by the second respondent and the matter is remitted back to the second respondent for a fresh consideration. The petitioner shall appear before the second respondent and produce all relevant documents to establish his case. The second respondent shall consider the case of the petitioner and pass suitable orders afresh. No costs. Consequently, connected miscellaneous petitions are closed.

06.02.2024

ogy

NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

To

1. The Income Tax Officer,
   Ward 1,
   1st Floor, Sekkalai Street,
   Karaikudi – 630 002.

2. The Assessment Unit,
   Income Tax Department,
   National Faceless Assessment Centre,
   4th Floor, Mayur Bhawan,
   Connaught Lane, Connaught Place,
   New Delhi – 110 001.

B.PUGALENDHI, J.

ogy

W.P.(MD)No.2396 of 2024

06.02.2024