BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.8868 of 2024
and
W.M.P.(MD) No.8077 and 8078 of 2024

Haji.I.Asarab Ali ... Petitioner

/vs./

1.The Assistant Commissioner of Income Tax,
Office of Assistant Commissioner,
Income Tax Department, Madurai.

2.The Income Tax Officer,
Ward 1 Ramnad,
Income Tax Department,
Ramanathapuram.

3.The Income Tax Officer,
Exemptions Ward Madurai,
Income Tax Department,
Madurai.

4.Tamil Nadu Wakf Board,
rep.by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records of the 2nd respondent dated 22.03.2022 in ITBA/AST/F/148A(SCN)2021-22/104125696(1) issued under section 148A and of the 3rd respondent in Notice No.ITBA/AST/F/147(SCN)/2023-2024/1061508804(1) dated 26.02.2024 issued under section 144 of the Income Tax Act, 1961 and proceedings dated 08.03.2024 in ITBA/AST/S147/2023-24/1062247736(1) and quash the same and consequently direct the respondents to treat the income of the petitioner as exempted by virtue of Section 10 (22BBA) of Income Tax Act 1961.

For Petitioner	: Mr.N.A.Nisssar Ahmed Senior Counsel for Mr.I.Kowser Nissar
For R1 to R3	: Mr.N.Dilip Kumar Standing Counsel
For R4	: Mr.S.A.Ajmal Khan Standing Counsel

ORDER

Heard Mr.N.A.Nisssar Ahmed, learned Senior Counsel for Mr.I.Kowser Nissar, learned counsel for the petitioner, Mr.N.Dilip Kumar, learned Standing Counsel for the respondents 1 to 3 and Mr.S.A.Ajmal Khan, learned Standing Counsel for the fourth respondent.

2.The writ petition has been filed against the impugned assessment order of the third respondent bearing Ref.No.ITBA/AST/S147/2023-24/1062247736(1) dated 08.03.2024 for the assessment year 2018-19. The petitioner had earlier approached this Court in W.P.(MD) No.30164 of 2023, wherein the petitioner had challenged the proceedings of the third respondent therein dated 27.10.2023 in ITBA/AST/F/142(1)/2023-24/1057460328(1) and the proceedings of the second respondent dated 29.09.2023 in ITBA/AST/F/17/2023-24/1056646470(1). The writ petition was disposed of by an order dated 19.12.2023. It is pursuant to the aforesaid order, the petitioner has now suffered the impugned assessment order. The petitioner challenges the impugned order stating that the respondent has denied the benefit of exemption under Section 10(23BBA) of the Income Tax Act, 1961. The learned Senior Counsel for the petitioner would draw attention to the order passed by this Court in W.P.Nos.29312 and 29315 of 2019 (***Sri Amirthakadeswaraswamy Devasthanam Vs. The Assistant Commissioner of Income Tax***) rendered on 18.02.2021.

3.I have heard the learned Senior Counsel for the petitioner and the learned Standing Counsel for the respondents.

4.The petitioner has not been able to establish any of the grounds, which would warrant interference under Article 226 of the Constitution of India. The petitioner has an alternate remedy before the Appellate Commissioner under Section 246(A) of the Income Tax Act, 1961. Merely because the petitioner has been denied the benefit of exemption under Section 10(23BBA) of the Income Tax Act, 1961, *ipso facto* would not mean that the order is a nullity warranting an interference under Article 226 of the Constitution of India.

5.Accordingly, this Writ Petition stands dismissed with liberty to the petitioner to challenge the impugned order before the Appellate Commissioner under Section 246(A) of the Income Tax Act, 1961, within a period of 30 days from the date of receipt of a copy of this order. There shall be a temporary reprieve for the petitioner for a period of 30 days. It is open for the petitioner to move appropriate application for staying the operation of the impugned order of the respondent. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No

10.04.2024

C.SARAVANAN, J.

mm

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