BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.21708 of 2024
and
W.M.P.(MD).Nos.18336 and 18337 of 2024

M/s.Valli Foundation,
Represented by its Managing Trustee,
A.Alagammal. ... Petitioner

Vs.

1.The Commissioner of Income Tax (Appeal),
Additional / JCIT (A),
Aurangabad.

2.The Income Tax Officer,
Exemptions Ward,
Tiruchirappalli. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 28.08.2024 in Din and Order No. ITBA/APL/S/250/2024-25/1068067074(1) for the Assessment year 2020-21 in PAN No.AABTV5923E of the first respondent and the impugned demand dated 28.08.2024 of the first respondent in Din and Letter No. ITBA/COM/F/17/2024-25/1068079445(1) of the second respondent and quash the same and consequentially direct the respondents to permit the petitioner to file rectified returns for the AY 2020 - 21 in PAN No. AABTV5923E.

For Petitioner : M/s.AL.Gandhimathi
Senior Advocate

For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

The present Writ Petition is filed challenging the impugned order of the first respondent dated 28.08.2024, which has been passed in the appeal filed challenging the order under Section 143(1) of the Income Tax Act dated 30.12.2023.

2. It is submitted by the learned Senior Advocate appearing for the petitioner that the petitioner Foundation is a charitable Trust registered under Section 12AA of the Income Tax Act and filing its returns regularly. The Trust is formed for various educational and charitable purposes and running a School, viz., Blossom Bluebells Academy in Thanjavur. The learned Senior Advocate would submit that the petitioner, while filing its returns for the assessment year 2020-2021, by mistake, disclosed the capital expenditure of Rs.1,30,38,566/- in Sl.No.3 under the head “Cost of new asset for claim of Exemption under Section 11(1A)”, instead of Sl.No.4 under the head “Other capital expenses”. It was thus submitted that it is only an error which has crept in while filing

returns. On receiving the intimation under Section 143(1) of the Act, the petitioner filed a rectification petition under Section 154 seeking to rectify the above error and an updated return. However, the same was rejected on the premise that the correction of entries in the return made by the assessee will be recasting of entries in the return of income filed by the assessee, which would not come under the purview of rectification under Section 154 of the Act. Thereafter, an appeal was preferred challenging the above order of rejection of rectification, wherein, it was submitted that the petitioner had wrongly filed capital expenditure under the column "Cost of new asset for claim of Exemption under Section 11(1A)". It was further submitted that during the relevant assessment year, there was no acquisition of any new asset by the petitioner company. The above error was apparent on the face of record and the same ought to have been rectified. However, the above submissions were not considered and the appeal was dismissed vide order dated 28.08.2024, which is the subject matter of challenge in the present Writ Petition on the premise that the CPC has processed the return as per the information provided by the appellant in its return.

3. The learned Senior Standing Counsel for the respondents would submit that the petitioner ought to have furnished a revised return in terms of

Section 139(5) of the Act and thus, the respondents/authorities are justified in rejecting the rectification petition.

4. It is brought to the notice of this Court that earlier a grievance application dated 28.11.2023 was submitted by the petitioner seeking leave to file a rectified return and the same was resolved by stating as follows:

> *"On perusal of your grievance petition with our records, it is seen that demand of Rs.51,94,353/- was raised by CPC-ITR, Bengaluru u/s 143(1) of the Act on 24.12.2021. The same is still outstanding payable as on date. As requested in your grievance petition, it is informed that the entries made wrongly in the return of income cannot be corrected by the Assessing Officer to reduce the demand. As such, you are requested to make the tax payment of Rs.51,94,353/- for the AY 2020-21.*
>
> *Moreover, our records is showing that there is a demand payable by you for the AY 2014-15 also of Rs.50,730/- raised by CPC while processing your return under Section 143(1) of the Act on 28.08.2015. Both these tax demands may please be paid under intimation to this office email id. Your grievance petition is disposed of accordingly."*

5. Heard the submissions made on both sides and perused the materials available on record.

6. While it is trite law that this Court under Article 226 of the Constitution of India would not normally entertain a Writ Petition when there is an effective alternate remedy available to the petitioner by way of appeal, however, in the present case, the Appellate Authority has rejected the appeal only on the premise that the CPC has processed the return as per the information provided by the appellant in the returns in terms of Section 143(1) of the Act. It appears that the Appellate Authority has not even examined the submission of the petitioner that the liability has been fastened only on the basis of inadvertent error which has crept in while filing return. It is trite law that unlike civil proceedings, tax proceedings are not adversarial in nature, instead, a duty is cast on the assessing authority to arrive at the correct tax liability[1]. In view thereof, this Court finds that the impugned order passed by the Appellate Authority, without examining the submission of the petitioner that the error has crept in resulting in a liability, which is otherwise not due, warrants interference.

7. Accordingly, the impugned order passed by the Appellate Authority and the consequential demand notice dated 28.08.2024 are set aside. The

1 ***National Thermal Power Co. Ltd Vs, Commissioner of Income-Tax [1998] 229 ITR 383 (SC) ,***

State of Tamil Nadu vs Arulmurugan And Company (1982) 51 STC 381.

Appellate Authority shall re-examine the issues afresh and pass orders in accordance with law after providing a reasonable opportunity of hearing to the petitioner.

8. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.09.2024

Index : Yes / No
Internet : Yes/ No
Lm

To
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MOHAMMED SHAFFIQ, J.

Lm

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