IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.10643 of 2024
and
W.M.P.Nos.11712 and 11717 of 2024

Services Association of Seventh Day Adventists,
AA 148 3rd Avenue, Anna Nagar,
Chennai- 600 040.
Represented by its Director. ...Petitioner

Vs.

1. Assessment Unit,
   Income Tax Department.

2. The Assistant Commissioner of Income Tax,
   (Exemptions)-I, Chennai,
   121, Mahatma Gandhi Road,
   Chennai-600 034. ...Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the petitioner on the file of 1st Respondent and quash the Impugned Assessment Order in DIN:ITBA/AST/S/143(3)/2023-24/1063425411 (1) dated 26.03.2024 for the assessment year 2022-23 in PAN:AAACCS9035J and direct the 1st Respondent to accept the application filed in Form 10 on 29.09.2022 for accumulation of income u/s.11(2) of the Act in terms of Clarificatory

Resolution passed by the Board on 08.03.2024.

For Petitioner : Mr.R.Vijayaraghavan

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel
Assisted by Ms.S.Premalatha
Junior Standing Counsel

ORDER

This Writ Petition has been filed, challenging the order of the 1st Respondent in DIN:ITBA/AST/S/143(3)/2023-24/1063425411 (1) dated 26.03.2024 for the assessment year 2022-23 in PAN:AAACCS9035J and direct the 1st Respondent to accept the application filed in Form 10 on 29.09.2022 for accumulation of income u/s.11(2) of the Act in terms of Clarificatory Resolution passed by the Board on 08.03.2024.

2. The learned counsel for the petitioner would submit that petitioner is a Religious and Charitable Institution and since the petitioner was not able to utilise 85% of the income in the Assessment Year 2017-2018 which comes to Rs.64,00,00,000/-, they filed Form 10 under Section 11 (2) of the Income Tax Act, 1961 (in short 'the Act') on 26.10.2017, seeking to carry forward the surplus unutilised amount for the purpose of construction of college building.

He further submitted that as per Section 11 (2) of the Act, even if the petitioner was not able to utilise 85% of the any amount, the said amount can be carried forward for future application.

3. Further, he would submit that as the petitioner was not able to utilise the said amount within five years, they filed an application under 11 (3A) of the Act, on 22.03.2022 seeking permission for the utilisation of 64 crores on the regular activities and to set apart this amount against the expenditure incurred by it on its religious and charitable activities during the Assessment Year 2022-23, by referring to the resolution of the Board of Directors dated 02.08.2022, wherein the manner of utilisation of the said accumulation of Rs.64 crores was mentioned. Thereafter, approval was granted by the Assessing Officer on 22.03.2022. The Petitioner filed income computation and Application in Form 10 for accumulation of income of Rs.63,26,57,000/- under Section 11 (2) for the Assessment Year 2022-2023 along with Board resolution on 29.09.2022. While so, for the Assessment Year 2022-2023, the petitioner filed return of income on 07.11.2022 declaring total income of Rs.77,130/- after claiming exemption u/s. 12A of the Act. The return of the income was processed under Section 143 (1) of the Act on 05.04.2023 accepting the returned income. The case was selected for scrutiny and a notice

under Section 143(2) of the Act was issued to the petitioner on 01.06.2023. Thereafter, a show cause notice came to be issued to the petitioner on 06.03.2024 to show cause as to why the sum of Rs.63,26,57,000/- shall not be treated as non application of funds for charitable or religious purposes and brought to tax. The petitioner filed a reply on 10.03.2024 along with the clarificatory resolution passed by the trust on 08.03.2024,wherein the manner of utilisation of Rs.64 crores was mentioned. The objectives of the said resolution is extracted hereunder:

> **1) Salaries, Stipend, Contribution to Funds payable to/for employees/trainees.**
> **2) Repairs and maintenance including church maintenance and towards various religious activities of the church around the country.**
> **3) Capital expenses including purchase of fixed assets for use towards objectives of SERVSDA.**

4. But the 1st Respondent, without considering the explanation submitted by the petitioner passed the impugned order on 26.03.2024 under Section 143 (3) r/w Section 144B of the Act, accepting the explanation offered by the petitioner in respect of the income accumulated in Assessment Year 2017-18 for a sum Rs.64 crores and utilised during the current Assessment Year 2022-2023 and rejecting the plea with regard to accumulation of income of Rs.63,26,57,000/- under Section 11 (2) of the Act for the assessment year 2022-

23 stating that the purpose of accumulation under Section 11(2) claimed by the petitioner based on Form 10 clarified by subsequent resolution dated 8.3.2024 was general not specific. The said order is impugned in this writ petition.

5. The main contention of the learned counsel for the petitioner is that Form 10 clearly mentions that amount set apart is meant for charitable and religious activities. Since the 1st respondent was of the opinion that the purpose of the accumulation stated in Form 10 is a general one and not specific, the petitioner clarified the same vide Board Resolution dated 08.03.2024, which is identical to the purpose submitted for approval under Section 11 (3A) of the Act dated 22.03.2022 which was granted by the Department for Assessment Year 2022-23 for the use of the amount accumulated during Assessment Year 2017-18 and therefore, the Department ought to have accepted that the purposes of accumulation was specific and exactly similar to the ones which were submitted and approved earlier. He further submitted that the purpose of accumulation submitted by the petitioner in the course of assessment falls within the religious and charitable objectives as outlined in Clause III - A of Memorandum of Association, the 1st respondent should have considered the same and permitted the accumulation of income u/s.11(2) of the Act for the

Assessment Year 2022-2023.

6. By relying upon the clarificatory resolution, he contended that though there are many objectives, the petitioner has specifically mentioned the purpose for which the funds are going to be utilised. He relied upon a Judgment of a Division Bench of this Court in the case of "***Commissioner of Income-Tax Vs. M.CT.Muthiah Chettiar Family Trust"*** reported in ***[2001] 114 Taxman 69 (Madras.)***

7. Per contra Mr.Mahalingam, learned counsel appearing for the respondents would contend that the petitioner has to mention the specific purpose or the purpose for which the income is being accumulated or set apart. In the present case, the purpose mentioned by the petitioner is not specific and therefore, they have rejected the Form 10 filed by the petitioner. In support of his contention, he relied upon a Judgment of the Calcutta High Court in the case of "D***irector of Income-Tax (Exemption) Versus Trustees of Singhania Charitable Trust"*** reported in ***[1993] 199 ITR 819 (Calcutta)*** and contended that unless and otherwise the purpose is not specific in nature, Form 10 will not be considered and the same will be rejected. Further, he would submit that

these are all the questions of fact and the same have to be adjudicated before the Tribunal and not before this Court under Article 226 and the petitioner cannot knock the doors of this Court, challenging the assessment order as the remedy available to them, is to file an appeal before the appropriate authority. He would further submit that at the time of filing of Form 10 on 26.10.2017, no resolution was passed and thereafter, the resolution that was passed on 08.03.2024 is an after-thought. Therefore, on this ground also, the writ petition is liable to be dismissed.

8. I have given my anxious consideration to the submissions made by the learned counsel appearing on either side and perused the entire materials placed on record.

9. The issues to be decided in the present case, viz.,

(a) Whether the present writ petition is maintainable when an alternative remedy is available to the petitioner to contest the present matter before the appellate authority? and

(b) Whether the purpose mentioned in Form 10 by virtue of the resolution dated 08.03.2024 is within the scope of Section 11 (2) (a) of the Act?

10. As far as the issue of maintainability of the writ petition is concerned, the Courts have held that while considering the Form 10, they have to look into the aspect whether the funds have been utilised or set apart for the specific purpose, in terms of provisions of Section 11 (2)(a) of the Act. The specific purpose mentioned in Form 10 is charitable and religious purpose. That being the case, the petitioner has specifically mentioned the main purpose in line with the main objectives of the trust for which the funds are going to be utilized by way of clarificatory resolution dated 08.03.2024. This makes the job of the officers easier to find out as to whether the purpose mentioned in Form 10 falls within scope of Section 11(2)(a) of the Act.

11. Apart from this, a reading of Section 11 (3)(c) would make it clear that in the event a trust was formed for the purpose of Charitable and Religious activities, then they have to give the reasons for spending the amount for the purpose in particular, thereafter, if they were not able to spend the amount, they can carry forward the same. In the case on hand, in Form 10, the petitioner have mentioned the purpose for utilization of the amount towards charitable and religious purpose, which contains number of objectives and further, the said specific objectives are clarified in clarificatory resolution dated

08.03.2024, as extracted supra. The officers concerned have to ascertain whether the purpose mentioned in Form 10 falls within the ambit of the objectives mentioned in the clarificatory resolution, but without doing so, the Officers have simply disallowed the exemption to the petitioner. Under these circumstances, the present writ petition has been filed challenging the impugned order, whereby the exemption was disallowed by the respondent in non-application of mind. Therefore, as far as the issue of maintainability is concerned, this Court decides the said aspect in favour of the petitioner.

12. As far as the next issue with regard to *the purpose mentioned in Form 10 by virtue of the resolution dated 08.03.2024 is within the scope of Section 11 (2) (a) of the Act* is concerned, a perusal of the records would go to show that approval was granted to the petitioner by the Assessing officer as early as on 22.03.2022 to utilize the accumulated income during Assessment Year 2017-2018 amounting to Rs.64 crores u/s. 11 (3A) towards the purposes specified in its application in conformity with the charitable objectives as outlined in Clause III-A of the Memorandum of Association instead of 'for construction of college building' as mentioned in Form 10 filed on 26.10.2017. But surprisingly, the respondents have issued the show cause notice dated

06.03.2024. Though it is purely discretionary power of the authorities to issue show cause notice, they are bound to consider the reply filed by the petitioner. In the case on hand, the petitioner submitted a reply dated 10.03.2024 to the aforesaid show cause notice along with clarificatory resolution mentioning the specific purpose for which the funds are going to be utilized. But the respondents failed to consider the same and rejected the claim of the petitioner. The respondents have to decide whether the specific purpose mentioned by the petitioner by way of clarificatory resolution comes within the ambit of the objectives of the trust. The respondent is expected to follow the provisions of Section 11 (3)(a) because as per this provision, if the funds could not be utilised for which it was accumulated or set apart, the Assessing Officer may on application made to him, allow such person to apply to inform for such other charitable or religious purpose as is specified in the application by such person and as in conformity with the objects of the trust. In paragraph 10 of the Division Bench Judgment of this Court in the case of "***Commissioner of Income-tax Vs. M.CT.Muthiah Chettiar Family Trust [2001 114 Taxman 69 (Madras)",*** it has been stated that only by mentioning the purposes specifically, it will be possible for the I.T.O. to monitor the situation whether the trust has applied its accumulated income for the purposes mentioned in Form 10 and therefore, it is also essential that the trust should specify its purposes and the requirement is that the purposes must have some individuality and mere repetition of the objects of the trust would not meet the requirements of Section 11 (2). As far as in the present case is concerned, this Court is of the view of that the purpose mentioned by the petitioner in Form 10 by virtue of the clarificatory resolution dated 08.03.2024 is well within the scope of Section 11 (2) (a) of the Act. In such view of the matter, it is clear that the impugned order dated 26.03.2022 was passed, in non-application of mind, without considering the above aspects and thus, the same is liable to be set aside.

13. Accordingly, the impugned order dated 26.03.2024 is set aside only with respect to the rejection with regard to the claim made by the petitioner based on Form No.10, which is clarified by the subsequent Board Resolution dated 08.03.2024 and the matter is remitted back to the respondents for consideration of the matter afresh and pass orders, by accepting the Form 10 dated 29.09.2022 for accumulation of income under Section 11 (2) of the Act in terms of clarificatory resolution passed by the Petitioner's Board on 08.03.2024.

14. This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.02.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
arr

To

1. Assessment Unit,
   Income Tax Department.

2. The Assistant Commissioner of Income Tax,
   (Exemptions)-I, Chennai,
   121, Mahatma Gandhi Road,
   Chennai-600 034.

KRISHNAN RAMASAMY,J.,

arr

W.P.No.10643 of 2024

06.02.2025