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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 3266/2025 and CM Nos.15405/2025, 15406/2025, 15407/2025</u>**

SHREE VARINDER GHAI EDUCATIONAL SOCIETY .....Petitioner

Through: Mr Anand Chaudhuri and Mr Deepanshu Mehta, Advocates.

versus

INCOME TAX OFFICER WARD EXEMPT 2(1) DELHI & ANR. .....Respondents

Through: Mr Abhishek Maratha, Senior Standing Counsel with Mr Apoorv Agarwal and Mr Parth Samwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

<u>O R D E R</u>

% **17.03.2025**

1. The petitioner has filed the present petition, *inter alia*, praying as under:

> "(i) Allow the present Writ Petition and pass a Writ of Certiorari, Mandamus and/or any other appropriate Writ, direction or order quashing/setting aside the impugned notice issued u/s. 226(3) of the *Income-tax Act, 1961* dated 04.03.2025, the impugned rectification order dated 31.03.2024 purportedly passed u/s. 154 of the Act and any adverse/coercive action(s) by the Respondent in pursuance thereof or consequence thereto qua impugned demand notice dated 23.03.2021 issued u/s. 154 of the said Act in consequence of impugned assessment order dated 23.03.2021 passed u/s. 143(3) of the Act for subject Assessment Year (AY) 2018-19;

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> (ii) Issue direction(s), order(s) et al. to Respondent No. 2 for adjudicating the Petitioner's appeal *qua* AY 2018-19 in a fixed time period deemed appropriate by this Hon'ble Court."

2. The petitioner claims that it is a society registered under the Societies Registration Act, 1860 and is also registered under Section 80G of the Income Tax Act, 1961 (hereafter **the Act**). During the financial year, 2017-18, the petitioner incurred a capital expenditure of ₹3,76,59,186/- for setting up an educational institution in the name of "Central Academy International School" situated at Dwarka.

3. The petitioner claims that the said amount was paid from the donations received by it and the same was duly disclosed in the schedule forming part of the return for the assessment year 2018-19. Notice under Section 143(2) of the Act was issued for scrutiny of the said return particularly in respect of expenditure for (i) charitable and religious purpose and (ii) purchase of motor vehicle.

4. The assessment proceedings culminated in an assessment order dated 23.03.2021 passed under Section 143(3) of the Act. The Assessing Officer made an addition of ₹3,76,59,186/- under Section 69C of the Act as unexplained investment and raised a demand for a sum of ₹3,98,44,390/-.

5. The petitioner has appealed the said decision before the Commissioner of Income Tax (Appeals), which is pending. In the meantime, the petitioner also filed an application for stay of the impugned demand. The said application was partly accepted and the demand was stayed subject to the petitioner depositing 20% of the impugned demand, that is, a sum of ₹79,68,878/-.

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6. The petitioner did not take any further steps in respect of the said order dated 23.11.2021 at the material time. On 27.12.2021, the petitioner partially complied with the said order and deposited a sum of ₹5 lacs. This was followed by further deposit of ₹41,850/- made on 08.07.2022 and a deposit of a further sum of ₹60,030/- on 27.02.2023.

7. On 18.08.2023, the petitioner filed an application before the Director General (Exemption) requesting issue of directions for early hearing of its appeal.

8. Thereafter, on 13.09.2023, that is, more than two and a half years after the assessment order had been passed, the petitioner filed a rectification application under Section 154 of the Act in effect seeking to challenge the addition made under Section 69C of the Act.

9. The petitioner's application for rectification was rejected by an order dated 31.03.2024.

10. The petitioner is, essentially, aggrieved by the Revenue now taking steps for recovery of the demand that has been outstanding for the past three years.

11. Mr Maratha, learned counsel appears for the Revenue on advance notice submitted that the petitioner has failed to mention that it had submitted an undertaking to the concerned authorities and the present petition is liable to be dismissed on the ground of suppression of material facts.

12. He states that in response to the recovery notice dated 10.09.2024, the petitioner had filed a letter showing its inability to deposit tax. However, it

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also stated as under:

> "We assure on oath that within a period of eight weeks from today, we will get our appeal listed or we will pay the balance demand as committed by us."

13. We have heard the learned counsel for the parties.

14. As noted above, the petitioner has already availed of its remedy of filing an appeal against the assessment order dated 23.03.2021. The petitioner's application seeking rectification of the said assessment order is an additional proceeding instituted on the same subject.

15. Given that (a) the petitioner had furnished an undertaking to the Department to pay the remaining demand within a period of eight weeks and has not mentioned this in the petition; and (b) that the petitioner has availed of the appellate remedy, which is pending, we do not consider it apposite to entertain the present petition.

16. However, it would be open for the petitioner to approach the appellate authority for an expeditious disposal of its appeal. Needless to state that if an application is so made, the same would be considered sympathetically.

17. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 17, 2025
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Click here to check corrigendum, if any

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