IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.10.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.4241 of 2009
and
M.P.No.1 of 2009

M/s.Coimbatore Muslim Relief Fund,
Vadamaraicar Street,
Chennai 600 001,
Rep. by its Trustee,
Thiru Nalla Mohammed Kalanjiam. ...Petitioner

Vs.

1.The Director of Income Tax (Exemptions),
III Floor, Annexe Building,
121, Mahatma Gandhi Salai,
Chennai 600 034.

2.The Assistant Director of Income Tax (Exemptions)-II,
III Floor, Annexe Building,
121, Mahatma Gandhi Salai,
Chennai 600 034.

3.The Tax Recovery Officer XVI, (IT Dept),
Range III,
Annexe IV Floor,
121, Mahatma Gandhi Salai,
Chennai 600 034. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorarifed mandamus to call for the records of the petitioner in DIT(E) No.26(2)/05-06 on the file of the first respondent and quash the order under Section 119(2) (b) read with Section 11(2) dated 17.07.2007 for the Assessment Year 1998-99 and direct the first respondent to permit the petitioner to accumulate the income after condoning the delay in filing Form No.10.

For Petitioner : Mr.M.P.Senthilkumar

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner is aggrieved against the proceedings of the first respondent dated 17.07.2007 relevant to the Assessment Year 1998-1999, passed under Section 119(2b) read with Section 11(2) of the Income Tax Act, 1961. Through the impugned order, the first respondent rejected the petition filed by the petitioner for condonation of delay in filing Form-10 on the reason that the delay was not satisfactorily explained.

2. Following are the brief facts and circumstances, as projected by the petitioner, which warranted the petitioner to file the present writ petition:-

The petitioner Trust was formed on 10.12.1997 with an aim to provide rehabilitation to the people, who are victims of communal violence in the City of Coimbatore during November/December 1997. The petitioner claims to have received contribution from the public for providing relief to the riot victims. The petitioner filed return of income on 18.09.2001 for the assessment year 1998-99 declaring 'Nil' income and the return of income was lodged. A notice under Section 148 was issued on 27.03.2002 and the assessment was completed under Section 143(3) read with Section 147 on 27.03.2003, determining the total income at Rs.1,50,12,470/- in the absence of registration under Section 12AA. Subsequently, the petitioner was granted registration under Section 12AA by the order of the first respondent dated 02.02.2005 with effect from 10.12.1997, pursuant to the order of the Income Tax Appellate Tribunal in ITA No.4/MDS/2003 dated 27.09.2004. There was a short fall to the extent of Rs.36,38,830/- in application of income of the petitioner for the assessment year 1998-99. The said shortfall was brought to tax on granting registration under Section 12AA, while giving effect to the order of the Income Tax Appellate Tribunal, thereby raising a demand of Rs.27,34,507/- with interest at Rs.6,34,271/-. The due date for filing Form No.10 as per Section 11(2) for accumulation of income is the due date for for filing the return of income for the assessment year 1998-99 i.e.,31.10.1998. However, the petitioner had filed the Form No.10 on 27.04.2005 for accumulation of funds in order to enable the petitioner to identify the other victims of the riot in a systematic manner. The entire collection of the petitioner for the period from 10.12.1997 to 31.12.1999 was properly disbursed to the deserving victims of the riot. The petitioner filed Form No.10 along with the petition to condone the delay in filing the same. However, the first respondent through the impugned order rejected the petition for condonation of delay by stating that the reasons for delay have not been properly explained.

3. A counter affidavit is filed by the respondents, wherein it is stated as follows:

The assessee filed its return of income for the assessment year 1998-99 on 18.09.2001, declaring 'Nil' income and the return of income was lodged. The assessee filed application in Form 10A only on 23.05.2002 though the Trust was created on 10.12.1997. The registration under Section 12AA of the Income Tax Act, 1961 was granted with effect from 01.04.2002. However, in pursuant to the order passed by the Income Tax Appellate Tribunal, the Registration under Section 12AA was granted with effect from 10.12.1997 by order dated 02.02.2005. Form No.10 has to be filed along with return of income before the due date as per Section 11(2) of the Act. The assessee had filed Form 10 for the assessment year 1998-99 belatedly on 27.04.2005. The assessee filed Form 10 for accumulation of Rs.36,38,825/- along with the petition for condonation of delay in filing the same. The first respondent considered the petition and rejected the same, as the petitioner has not satisfactorily explained the delay.

4. Mr.M.P.Senthilkumar, learned counsel for the petitioner reiterated the contentions raised in the affidavit filed in support of the writ petition and also invited this Court's attention to the list of dates and events as well as written submissions filed separately. After doing so, the learned counsel submitted that the delay in filing Form 10 was neither willful nor intentional and on the other hand, the petitioner has filed such Form No.10 immediately after the order of the Tribunal, which was subsequently given effect to by order dated 02.02.2005, thereby granting Registration under Section 12AA with retrospective effect from 10.12.1997. Therefore, he submitted that for the

assessment year 1998-99, though the last date for filing Form 10 fell on 31.10.1998, in view of the fact that as on the said date, there was no registration granted to the petitioner at that point of time, the question of filing Form No.10 within that date does not arise and therefore, the petitioner was justified in filing such Form 10 immediately after the order of the first respondent granting registration with retrospective effect from 10.12.1997. Therefore, the learned counsel contended that the first respondent is not justified in rejection the application for condonation of delay simply by saying that the petitioner has not explained the delay.

5. On the other hand, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the Revenue submitted that the condonation of delay is not automatic and on the other hand, the petitioner has to satisfy the Authorities for filing such belated Form 10. She also submitted that the petitioner seeks to accumulate the amount for utilisation to the next financial year and therefore, whether such utilisation was for the purpose of the Trust and to achieve its object or not, is purely a question of fact, which the petitioner has to prove independently. Therefore, she contended that assuming that the delay

can be condoned, that itself cannot entitle the petitioner to get sanction of the benefit derived from Form 10, unless the petitioner proves the utilisation of the funds in the next years for the object of the Trust.

6. Heard both sides. Perused the materials placed before this Court.

7. The petitioner is a Trust, seems to have been formed for rehabilitating the victims of communal violence in the city of Coimbatore during November-December 1997. It seems that the petitioner received contribution from the public for providing funds to the people. Though the petitioner did not get such registration under Section 12AA of the Income Tax Act during the relevant assessment year 1998-99, such registration was subsequently granted to the petitioner by an order dated 02.02.2005 with retrospective effect from 10.12.1997 onwards. There is no dispute to the above said fact. Therefore, for all practical purposes, it is to be construed that for the Assessment Year 1998-99 also, the petitioner was enjoying the benefit under Section 12AA on getting such registration with effect from

10.12.1997. No doubt, for filing Form No.10, the due date is the last date for filing the return of income for the relevant assessment year. In this case, the relevant assessment year 1998-99 and the last date for filing such return was 31.10.1998. Consequently, the Form 10 ought to have been filed on or before 31.10.1998. But in any event, filing of Form No.10 would arise only when the petitioner enjoys the benefit of registration under Section 12AA. Admittedly, on the last date viz., 31.10.1998, the petitioner was not enjoying such benefit, however such benefit was granted with retrospective effect by order dated 02.02.2005. Once such an order is passed, the petitioner made application for condonation of delay in filing such Form 10 before the first respondent.

8.Therefore, I find that the above stated facts and circumstances would show that the petitioner has explained the delay in filing the Form 10 satisfactorily. Therefore, the first respondent is not justified in rejecting the application for condonation of delay, simply by saying that the petitioner has not satisfactorily explained the delay. However, as rightly pointed out by the learned counsel for the Revenue, though the delay is condonable, it is for the petitioner to establish before the first respondent that accumulated income was utilised for the subsequent years only for the purpose for which the petitioner Trust was established. Therefore, such liability exists on the petitioner, which they have to discharge before the first respondent.

9. Accordingly, considering the above stated facts and circumstances, this writ petition is allowed and the impugned order of the first respondent is set aside. Consequently, the matter is remitted back to the first respondent with a direction to take Form 10 on file and thereafter, to conduct an enquiry as to whether the accumulated interest was utilised for the succeeding years by the petitioner for the purpose for which the petitioner Trust was established. Such exercise shall be made by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. The petitioner shall cooperate with the first respondent by placing the material facts in support of their contention that the accumulated interest was utilised, as stated supra. No costs. The connected miscellaneous petition is closed.

15.10.2019

Speaking/Non Speaking

Index :Yes/No
vri

K.RAVICHANDRABAABU,J.

vri

To

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