

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 01ST DAY OF JUNE 2020 / 11TH JYAISHTA, 1942

WP(C).No.8890 OF 2020(I)

PETITIONER/S:

SREE NARAYANA EDUCATIONAL AND CHARITABLE SOCIETY
NENMENI POST, KOLLENGODE, PALAKKAD DISTRICT-678506,

BY ADVS.
SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENT/S:

- 1 THE COMMISSIONER OF INCOME TAX (EXEMPTIONS)
SAN JAUN TOWERS,
COCHIN-682018,
- 2 THE INCOME TAX OFFICER,
EXEMPTION WARD, AAYAKAR BHAVAN, INCOME TAX OFFICE,
SAKTHAN THAMPURAN NAGAR, THRISSUR-682001.

OTHER PRESENT:

SRI CHRISTOPHER ABRAHAM SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 1st day of June 2020

The petitioner is an Educational and charitable Society, who in the instant Writ Petition, sought the indulgence of this Court to issue a writ in the nature of mandamus, directing the 1st respondent to dispose of Ext.P3, at the earliest and until such time, the demand in terms of Ext.P4 may be ordered to be kept in abeyance. As per the facts which emanate from the pleadings, petitioner Society has been issued a certificate under Section 12AA of the Income Tax Act, 1961 for the assessment year 2017-18, to be filed the Return of income. The Income Tax Return was to be filed on before 07/11/2017 in view of the extension granted by the Central Board of Direct Taxes. However, the Return could not be filed.

2. On account of non-filing of the Return by the petitioner, the petitioner was received notice under section 142(1) of the Act to file the Return on or before 07/04/2018, but the same could not be filed within the time granted and in fact, it was filed on 04/05/2018. It is in this backdrop of the matter, exemption under Section 11 was denied by the 2nd respondent and assessed the Tax by invoking the provisions of Section 143(3) of the Income Tax Act, 1961, resulting into an assessment order dated 27/02/2019, Ext.P1 and the Demand Notice of even date Ext.P2 whereby the income was assessed as

Rs.1,11,20,325/- by denying the benefit of exemption under Section 11. Mr.Sajan Varghese K, the learned counsel appearing on behalf of the petitioner submits that there were certain disputes among the members and on account of that, the Return could not be filed and there was a delay. Under the provisions of Section 119 2(B) of the Income Tax and the Circular F.No. 197/55/2018 - ITA-1 dated 22/05/2019 the guidelines of the Board, the delay in filing of Form 10B Audit Report for assessment years 2016-17 and 2017-18 could be condoned. It is in this background of the matter, an application, Ext.P3 dated 30.01.2020 was filed. But it is still pending and in the meantime, the Demand, Ext.P4 dated 09.03.2020 calling upon the petitioner to pay a sum of Rs.50,101,576/- has been issued. The petitioner is thus left in lurch in the absence of any adjudication on Ext.P3.

3. Mr.Christopher Abraham accepts notice on behalf of the respondents and submits that on account of non-filing of Return within the usual period and extended period, the exemption under Section 11 had to be withdrawn/cancelled. The benefit of exemption had not been granted resulting into issuance of demand and urges this Court for dismissal of this Writ Petition.

4. Heard the learned counsel for parties and perused the paper book. The facts narrated above are not in dispute. Once the circular provides the

opportunity to assesseees having issued a Registration under Section 12AA of the Income Tax Act, to seek to recall of the denied exemption in Form 10B and to seek condonation of delay which as noticed above has already been filed in January 2020 vide Ext.P1, but there is no adjudication so far and during its pendency, the impugned Demand Notice of March 2020, Ext.P4 has been issued.

5. Without expressing anything on the merit of the matter, particularly contents of Ext.P3, I dispose of this Writ petition by issuing directions to the 1st respondent and take a call on the application, Ext.P3 filed under Form 10B of the Circular ibid in accordance with law, after affording an opportunity of hearing to the petitioner as expeditiously as possible within a period of 2 months. Until such time, the demand raised in Exts.P1, P2 and P4 is also to be kept in abeyance. It is made clear that the interim order is only till the disposal of the application, Ext.P3 and not thereafter.

This writ petition stands disposed of in the aforementioned directions.

sd/-

AMIT RAWAL

JUDGE

Nsd

APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | TRUE COPY OF THE ASSESSMENT ORDER DATED
27.12.2019 PASSED BY THE 2ND RESPONDENT. |
| EXHIBIT P2 | TRUE COPY OF THE NOTICE OF DEMAND DATED
27.12.2019 ISSUED BY THE 2ND RESPONDENT. |
| EXHIBIT P3 | TRUE COPY OF THE PETITION DATED 30.01.2020
SUBMITTED BEFORE THE FIRST RESPONDENT
SEEKING CONDONATION OF DELAY. |
| EXHIBIT P4 | TRUE COPY OF THE DEMAND NOTICE DATED
09.03.2020 ISSUED BY THE 2ND RESPONDENT. |