IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 31ST DAY OF AUGUST 2016/9TH BHADRA, 1938

WP(C).No. 21241 of 2016 (E)

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PETITIONER(S):

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M/S. YOGAKSHEMAM LOANS LTD.,
EMPLYOYEES' GROUP GRATUITY FUND TRUST,
28/449, YOGAKSHEMAM TOWERS, THIRUVAMBADY,
THRISSUR-680 022, REPRESENTED BY ITS TRUSTEE,
N.D. VIJAYAN.

BY ADVS.SRI.HARISANKAR V. MENON,
SMT.MEERA V.MENON.

RESPONDENT(S):

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1. INCOME TAX OFFICER,
WARD NO.1(2), CIRCLE-1,
THRISSUR- 680 001.

2. PRINCIPAL COMMISSIONER OF INCOME TAX.,
AYAKAR BHAVAN, SAKTHAN NAGAR,
THRISSUR-680 001.

BY SRI.P.K.R.MENON, SENIOR COUNSEL.
ADV. SRI.JOSE JOSEPH, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-08-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 21241 of 2016 (E)

<u>APPENDIX</u>

<u>PETITIONER'S EXHIBITS:</u>

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|---|---|
| P1 | COPY OF THE TRUST DEED EXECUTED BY THE PETITIONER DATED 30/01/2015. |
| P2 | COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 30/01/2015. |
| P3 | COPY OF LETTER ISSUED BY THE 2ND RESPONDENT DATED 18/02/2016. |
| P4 | COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 26/02/2016. |
| P5 | COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 21/03/2016. |

<u>RESPONDENT'S EXHIBITS</u>:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

**A.M. SHAFFIQUE, J.**

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W.P.(C) No.21241 of 2016

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Dated this the 31st day of August, 2016

**JUDGMENT**

Petitioner has approached this Court seeking to challenge Ext.P5 issued by the Principal Commissioner of Income Tax, by which the petitioner is called upon to correct the mistakes in Trust Deed by preparing a fresh Deed.

2. The facts as disclosed in the writ petition would show that the petitioner filed an application before the first respondent for availing the benefits under the Income Tax Act for registration under Part 'C' of the Fourth Schedule. Ext.P2 is the said application. Petitioner was heard in the matter on 10.9.2015 by the second respondent and the documents were scrutinized. The second respondent by letter dated 18.2.2016 sought for seeking clarification and intimated that there had been certain defects in the Trust Deed produced by the petitioner. Petitioner sought for approval for correcting the mistakes on the ground that those are typing errors. It is after

considering the said request, Ext.P5 came to be issued, wherein the petitioner was asked to correct the mistake by preparing a fresh deed. According to the petitioner, the second respondent is not justified in issuing Ext.P5 by directing a fresh deed to be prepared. Learned counsel points out that there is appropriate provision in the Trust Deed itself by way of Clause 5 to amend the Trust Deed, which alone is sufficient and there is no necessity to prepare a fresh deed in the matter.

3. It is pointed out that if a fresh deed is prepared and a fresh application is submitted, the petitioner may not get the benefit of the application which was submitted by Ext.P2 as early as on 3.2.2015 and the benefits accruing from the said date.

4. Heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondents.

5. Statement has been filed by the learned Standing Counsel stating that insofar as no approval had been granted

to the application submitted on 3.2.2015 and certain defects were noticed, the errors can be cured only by amendments to the original deed and it was in the said circumstances that Ext.P5 has been issued to amend the mistake by a fresh deed. The application was rejected as the deed was not in order. It is further stated that the original deed is not valid and therefore the petitioner was directed to amend the deed and the effect will only be from the amended date.

6. I do not think that I should be concerned with the date on which the approval is to be granted. The question is in what manner a Trust Deed can be amended. As indicated in Ext.P5, there is no necessity to prepare a fresh deed. A Trust Deed can be amended taking into consideration the provisions of the Trust Deed itself. Clause 5 of the Trust Deed gives power to the trustees to alter, vary or amend any of the trust or provision of the deed and the rules, subject to approval in writing of the employer. Clause 5 reads as under:

> "**5. POWER TO AMEND THE TRUST DEED AND THE RULES**.

> The Trustees may at any time with the previous concurrence and/or approval in writing of the employer alter, vary or amend any of the Trusts or provisions of this Deed and the Rules.
>
> PROVIDED THAT no such alteration or variation shall be inconsistent with the main objects of the trusts hereby created.
>
> PROVIDED FURTHER THAT no such alteration or variation shall be made without the prior approval of the Commissioner of Income-tax having jurisdiction over the Fund."

Therefore, apparently the only restriction is that the variation shall not be inconsistent with the main objects of the trusts and no such alteration or variation shall be made without the prior approval of the Commissioner of Income-tax having jurisdiction over the Fund. Therefore, when provisions had been made to enable the trustees with the previous concurrence and approval in writing of the employer to alter, vary or amend any of the Trusts or provisions of this Deed and the Rules, petitioner can as well make such amendments and thereafter, the same can be produced before the Commissioner of Income Tax for approval. In fact, such a method has not been adopted by the petitioner as evident from the records. Petitioner had only sent Ext.P4 which does not contain the required amendments as specified under the Trust Deed. Therefore, it is necessary that the petitioner will have to submit an amendment made in accordance with the provisions and seek approval of the Commissioner of Income Tax. However, it is clarified that a fresh deed is not required in the matter as contemplated in Ext.P5.

Accordingly, this writ petition is disposed of as under:

(i) Petitioner is free to alter or correct the mistakes that had crept in the Trust Deed and thereafter comply with the procedure prescribed in Clause 5 as stated above.

(ii) If such an application is filed, it shall be open for the Commissioner of Income Tax to take appropriate decision in the matter in accordance with law.

**Sd/-**
**A.M. SHAFFIQUE**
**JUDGE**

Scl/31.08.2016