



2024:KER:12732

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 19TH DAY OF FEBRUARY 2024 / 30TH MAGHA, 1945

WP(C) NO. 11891 OF 2023

PETITIONER/S:

M/S SREE NARAYANA GURU MEMORIAL EDUCATIONAL AND
CULTURAL TRUST
REPRESENTED BY MANAGING TRUSTEE MR. AMBALATHIL MEETHAL
GOPALAN, THIRUMALABHAGOM P.O, THURAVOOR, CHERTHALA,
ALAPPUZHA, KERALA -, PIN - 688540

BY ADVS.
BIJOY CHANDRAN
A.S.SRIRAMAN
RAJESH NAIR
NIKHIL VISWAM

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER OF INCOME TAX
EXEMPTION CIRCLE, THIRUVANANTHAPURAM, AYAKAR BHAWAN, 1
ST FLOOR THIRUVANANTHAPURAM, KERALA, PIN - 695003
- 2 THE PRINCIPAL COMMISSIONER OF INCOME TAX (EXEMPTIONS)
KOCHI, CENTRAL REVENUE BUILDING, IS PRESS ROAD, KOCHI,
KERALA -, PIN - 682018

BY ADV CHRISTOPHER ABRAHAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

The present writ petition under Article 226 of the Constitution of India has been filed impugning order dated 07.02.2023 passed under Clause (d) of Section 148A of the Income Tax Act 1961 (for short, 'the Act'), whereby on the basis of the revenue audit objection the Assessing Officer has decided to re-open the assessment in the case of the petitioner for the Assessment Year 2016-17, as in the estimation of the Assessing Officer the income chargeable to tax to the tune of Rs.1,60,39,464/- has escaped assessment for the Assessment Year 2016-17 and therefore it has been decided to issue notice to the petitioner under Section 148 of the Act directing the petitioner to furnish a fresh return within a period of 30 days from the date of the notice.

2. The petitioner is a Trust registered under Section 12A of the Act and filed returns for the Assessment Year 2016-



17 on 15.10.2016 declaring 'Nil' income. The assessment was completed under Section 143(3) of the Act on 21.12.2018 at 'Nil' income.

2.1 The revenue audit party, however, objected to the finalization of the return of the petitioner at 'Nil' for the reason: *'During the Assessment Year, the assessee received corpus donation of Rs.10,30,00,000/-. Corpus donations were not included in the income for application under Section 11. So the corpus donation received to the extent of Rs.9,05,00,000/- (Rs.10,30,00,000 - 1,25,00,000) should have been reduced from the current year application. Expenditure of earlier years Rs.8,29,89,369/- considered in the current year should also have been disallowed from the claim of application.'* The revenue audit worked out the income of Rs.1,60,39,464/- to have escaped assessment.

2.2 After receipt of the said revenue audit objection, notice was issued to the petitioner on 05.12.2022 with the prior approval of the Principal Commissioner of Income Tax



(Exemption), Kochi. The petitioner was asked to show cause why notice under Section 148 of the Act should not be issued. The petitioner, *vide* reply dated 20.12.2022, submitted a detailed explanation. The petitioner, in his reply, submitted that the returns filed by the petitioner were subjected to complete scrutiny before the assessment was finalized at 'nil' income. It was further said that there could not be any scope for fresh information that has come to the notice of the Assessing Authority, and, on that basis, notice under Section 148A(b) has been issued to the petitioner. It was also said on behalf of the petitioner that the petitioner had already furnished all the information required for completion of the assessment under Section 143(3) of the Act. Therefore, the notice issued under Section 148A(b) of the Act was merely a change of opinion which would not warrant re-opening of the assessment completed.

2.3 The Assessing Officer, *vide* impugned order,



disposed of the objection filed by the petitioner. The Assessing Officer placed reliance on clause (ii) of Explanation 1 to Section 148 of the Act which provides that any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of the Act, could be the basis for issuing the notice under Section 148A(b) of the Act. It was also said that the audit objection was based on the information submitted by the assessee during the assessment proceedings under Section 143(3) of the Act. It is from the documents submitted by the petitioner himself, that the revenue audit concluded that there was a deficiency in the application of income of Rs.1,60,39,464/- which had escaped assessment. Therefore, the Assessing Officer recorded the reason that the income to the tune of Rs.1,60,39,464/- had escaped assessment for the relevant assessment year and it was a fit case for issuing notice under Section 148 of the Act.



3. Learned Counsel for the petitioner has vehemently submitted that the corpus fund received by the petitioner could not be part of the income of the petitioner under Section 11 of the Act. The audit objections are against the statutory prescription in Section 11 of the Act. The petitioner replied to the notice issued under Section 148A(b), bringing to the notice of the Assessing Officer the applicability of Section 11 to the corpus fund, and, therefore, the reasons recorded for re-opening of the assessment are incorrect. The petitioner's reply has not been considered and no proper consideration has been given to Section 11 of the Income Tax Act. Therefore, the Order passed under Section 148A(d) is bad in law and liable to the set-aside.

4. On the other hand, Mr Christopher Abraham, learned Standing Counsel for the Income Tax Department has submitted that with effect from 01.04.2022, Section 148 has been amended and clause (ii) of Explanation 1 has been



inserted which provides that any audit objection to the effect that the assessment in the case of an assessee for the relevant assessment year has not been made in accordance with the provisions of the Act would be a ground for re-opening of the assessment. He, therefore, submits that the impugned order, recording the satisfaction for re-opening of the assessment in the case of the petitioner, is perfectly in accordance with the statutory prescription as provided under Clause (ii) of Explanation 1 of Section 148. Therefore, there is no error of law or jurisdiction for this Court to interfere with the impugned order passed under Section 148A(d) of the Act.

4.1 It is further submitted that the petitioner will have an opportunity to convince the Assessing Officer about the treatment to be given for the corpus fund and whether this income of the corpus fund received by the petitioner in the relevant assessment year is exempt under Section 11 or not. At the stage of recording the satisfaction/reason for re-



opening, if there is a revenue audit objection, the Assessing Officer cannot ignore the same, and the Assessing Officer has to consider the revenue audit objection for recording the reasons for re-opening of the assessment.

5. I have considered the submissions on both sides.

6. Learned Counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the case of *Indian and Eastern Newspaper Society v. Commissioner of Income Tax*¹. However, the said judgment was rendered when there was no such clause as has been inserted with effect from 01.04.2022 in Explanation 1 of Section 148 of the Act. Therefore, in my view, the said judgment is of no relevance to the facts of the present case. In the present case, the provisions have been drastically changed with effect from 01.04.2022, and the audit objection is one of the reasons for re-opening the assessment. If the revenue audit raises an

¹ 119 ITR 996



objection that the assessment was not completed in accordance with the provisions of the Act, it cannot be treated as a change of opinion because this is the statutory prescription and statutory ground/reason for re-opening the assessment. The Assessing Authority has proceeded strictly in accordance with the provisions of Clause (ii) of Explanation 1 to Section 148 of the Act. Therefore, I find no error of law or jurisdiction in the impugned order. Therefore, the writ petition is dismissed.

6.1 If the petitioner has not filed the return of his income in pursuance of the notice dated 07.02.2023 in Ext.P8, the petitioner may file his return within a period of four weeks. The petitioner's return shall be examined in accordance with the law, and the assessment order will be finalized as provided under the Income Tax Act and Rules made thereunder; of course, an opportunity for a hearing shall be granted to the petitioner before passing the assessment



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order on re-opening.

The writ petition stands dismissed. No order as to costs.

Sd/-

DINESH KUMAR SINGH

JUDGE

jjj

APPENDIX OF WP(C) 11891/2023

PETITIONER EXHIBITS

- Exhibit P1 COPY OF RETURN OF INCOME FILLED FOR THE ASSESSMENT YEAR 2016-17 DATED 15.10.2016
- Exhibit P2 -COPY OF THE ASSESSMENT ORDER PASSED BY THE 1 ST RESPONDENT UNDER SECTION 143(3) OF THE INCOME TAX ACT DATED 21.12.2018
- Exhibit P3 - COPY OF THE NOTICE PASSED BY THE 1 ST RESPONDENT UNDER SECTION 148A(B) OF THE INCOME TAX ACT DATED 5.12.2022
- Exhibit P4 COPY OF THE OBJECTIONS/RESPONSE FILED BY THE WRIT PETITIONER DATED 20.12.2022
- Exhibit P5 COPY OF THE COMMUNICATION EXPANDING/EXPLAINING THE INFORMATION BY THE 1ST RESPONDENT DATED 28.12.2022
- Exhibit P6 COPY OF THE OBJECTIONS/RESPONSE FILED BY THE WRIT PETITIONER DATED 3.01.2023
- Exhibit P7 IMPUGNED ORDER PASSED BY THE 1 ST RESPONDENT UNDERSECTION148A(D)OF THE ACT DATED 7.2.2023
- Exhibit P8 COPY OF NOTICE PASSED BY THE 1 ST RESPONDENT UNDER SECTION 148 OF THE ACT DATED 7.2.2023

RESPONDENT EXHIBITS

- Exhibit R1(a) Copy of the judgment of the Supreme Court dated September,2,2022 in the case of Anshul Jain v. Principal Commissioner of Income Tax and Another ,[2022] 449 ITR 256(SC)
- Exhibit R1 (b) Copy of the judgment of the Punjab and Haryana High Court dated June,2,2022 in the case of Anshul Jain v. Principal Commissioner of Income Tax and



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Another,[2022] 449 ITR 251(P and H)

Exhibit R1(c)

Copy of the judgment of the Kerala High Court in WP(C)
No.37527 of 2022 dated 07.12.2022 in the case of M/S
Viswabharathi Medicals v.Income Tax Officer