

\$~132

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

%

Date of Decision: 08.05.2023

+

W.P.(C) 5889/2023

THE NORTHERN INDIA ZONAL ASSEMBLY OF THE MAR
THOMA CHURCH Petitioner

Through: Mr Abhishek Jebraj, Advocate.

versus

INCOME TAX OFFICER (EXEMPTIONS) & ANR..... Respondents

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. Issue notice.
- 1.1 Mr Abhishek Maratha, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.
2. Given the directions that we propose to pass, Mr Maratha says that he does not wish to file a counter-affidavit in the matter and that he will argue the matter based on the record presently available with the court. Therefore, with the consent of the counsels for the parties, the writ petition is taken up for final hearing and disposal at this stage itself.
3. The core issue, which the petitioner has raised before us is that the impugned assessment order dated 28.03.2022 concerning Assessment Year (AY) 2013-14 is based on an earlier assessment order passed *vis-à-vis* an entity going by the name 'Caruna Bal Vikas' [hereafter referred to as "CBV"]. The contention being that the Assessing Officer (AO) in passing

the impugned assessment order has extracted only a part of the reassessment order dated 31.12.2016 passed in the case of CBV.

4. Mr Abhishek Jebraj, who appears on behalf of the petitioner, says that the reassessment order dated 31.12.2016, as it stands today, is intact, although CBV has preferred an appeal *qua* the same.

5. We may also note that it is not disputed by Mr Abhishek Jebraj, who appears on behalf of the petitioner, that *qua* the impugned assessment order dated 28.03.2022, a statutory appeal has been preferred, which is pending adjudication.

5.1 We are told that this appeal was lodged in and about February 2019.

6. Mr Jebraj also submits that the main ground on which exemption under Sections 11 and 12 of the Income Tax Act, 1961 [in short, “Act”] was denied was that the petitioner fell within the purview of Section 13(1)(b) of the Act.

8. Mr Jebraj says that it has been noticed in the reassessment order dated 31.12.2016 (according to him, correctly) that CBV had made a restricted sub-grant in favour of the petitioner and therefore, was exempt from levy of income tax. Mr Jebraj says that this aspect was noticed in paragraph 12 of the reassessment order dated 31.12.2016.

8.1 According to Mr Jebraj, [an aspect which is alluded to hereinabove], paragraph 12 of the of reassessment order dated 31.12.2016 concerning CBV, was not extracted by the AO in the impugned assessment order dated 28.03.2022.

8.2 Furthermore, Mr Jebraj says that the appeal has been pending since February 2019 and, for some reason or the other, has not been taken up for adjudication, causing detriment to the interests of the petitioner.

9. Mr Maratha says that since, concededly, CBV is an entity which has extended a sub-grant to the petitioner, in the ordinary course of things, the petitioner should have known about the reassessment order that was passed in the case of CBV.

9.1 The argument is that the petitioner has approached this court after a long lapse of time. In sum, Mr Maratha says that the petitioner is guilty of delay and laches.

10. We have heard the counsel for the parties.

11. According to us, the grievance of the petitioner is twofold.

11.1 First, the AO in the passing the impugned assessment order dated 28.03.2022 has taken recourse to a part of the reassessment order dated 31.12.2016 passed in the case of CBV.

11.2 Second, respondent no.2, with whom the statutory appeal lies, has not disposed of the appeal, although nearly four and a half years have elapsed.

12. The second grievance answers, to our minds, the objection raised by Mr Maratha with regard to delay and laches. In our opinion, the petitioner in this case was entitled to move the court to nudge respondent no.2 in the right direction.

13. Insofar as the first aspect is concerned, in our opinion, the petitioner is entitled to seek a direction that while disposing of the appeal, respondent no.2 should consider the entirety of the reassessment order dated 31.12.2016 passed in the matter concerning CBV, and the judgments that the petitioner has relied upon.

14. We may note that one of the judgments which Mr Jebraj has adverted to, in this context, has been passed by a coordinate bench of this court in the matter of *Director of Income Tax vs. Society for Development Alternatives*

(2012) SCC OnLine Del 225.

15. Therefore, having regard to the aforesaid, we are inclined to dispose of the writ petition with the following directions:

(i) Respondent no.2 will dispose of all pending appeal at the earliest, though not later than three (3) months from the date of receipt of a copy of the judgment.

(ii) While adjudicating the appeal, respondent no.2 will take into account the entirety of the reassessment order dated 31.12.2016 passed in the case of CBV and the judgments on the issue concerning restricted grant.

(ii)(a) We may note that the source of the grant is an organization going by the name Compassion International (CI). Mr Jebraj says that CI channeled the grant to CBV, which, in turn, gave a restricted grant to the petitioner. These are the aspects that respondent no.2 will deal with while adjudicating the pending appeal.

(iii) Before respondent no.2 renders a final decision on the appeal, he/she will grant the petitioner's authorized representative a personal hearing in the matter.

16. The writ petition is disposed, accordingly, of in the aforesaid terms.

17. Parties will act based on the digitally signed copies of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 8, 2023/pmc