(2010) 06 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No''s. 10745 to 10747 of 2010

Marimallappa Charities — APPELLANT

Vs

CIT (Appeals) and Others — RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Income Tax Act, 1961 — Section 11, 12, 13, 143 (3), 251

Citation : (2010) 06 KAR CK 0030

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M. Veerabhadraiah Associates, for the Appellant; M.V. Seshachala, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—The petitions coming on for preliminary hearing are considered for final disposal given the facts and circumstances.

2. The Petitioner is a charitable trust engaged in imparting education. It is stated that the taxation of charitable trust has undergone several amendments, the most recent being the Taxation (Amendment) Act, 2006. It is the case of the Petitioner that one Girikar Marimallappa, the then employee of Mysore Palace, during his lifetime had large extent of properties. He died as on 22-1-1871. He had left behind a will appointing one Shri C. Rahgacharulu as an executor of the will. After his death, Smt. Mallamma, his widow and his brother, Muthanna filed a civil suit in O.S. No. 4 of 1879 on the file of the District Judge, Astagrama Division, Mysore. The suit came to be decreed by virtue of which, the Marimallappa Education Trust continued to function as a charitable public trust. The Petitioner contends, with passage of time the trust has established several educational institutions including colleges. It employs over 224 employees consisting of teaching and non-teaching employees. Some of the institutions of the Petitioner are receiving grant-in-aid from the Government for payment of salary to its employees. Out of 224 employees only 81 are receiving salary aid

from the Government of Karnataka and remaining are paid by the trust out of its own sources. The Petitioner does not have any other activities or business except promoting and imparting education. It is claimed that the Petitioner maintains regular books of accounts and they are audited by the chartered accountants from time-to-time and tax returns are filed regularly. It is contended that the Commissioner granted registration u/s 12A of the Income Tax Act in the year 1975 and the same continues to be in force. The trust is therefore enabled to claim tax exemption u/s s 11, 12 and 13 of the Income Tax Act on its income in the course of its activities. Accordingly, for the year 2007-08, the return of income was filed wherein the Petitioner had claimed exemptions u/s 11 of the Act in respect of voluntary contributions made to the tune of Rs. 1,18,10,845. The second respondent issued proposition notice of conducting assessment proceedings, thereby proceeding to reject the exemption claimed and further proposed levy of tax @ 30 per cent treating the above contributions as income from other sources. The Petitioner filed its objections. The second respondent passed an order u/s 143(3) holding that the entire voluntary contributions to the aforesaid extent was being treated as income from other sources and levied interest thereon to the tune of Rs. 5,09,509 for filing belated returns and further interest u/s 234B to the tune of Rs. 12,93,369 for default in payment of advance tax and issued demand notice dated 29-12-2009 and directed the Petitioner to pay Rs. 57,22,187 within thirty days from that date. Aggrieved by the same, the Petitioner had filed, an appeal before the first respondent-appellate authority and also filed applications u/s 251 read with Section 246A and Section 220(6) of the Act for grant of stay of the demand notice as well as to stay the demand notice. These applications were rejected by the assessing authority. Thereafter, the second respondent proposed to recover amounts from the Petitioners savings bank account. The Petitioner approached the second respondent and requested that the notice of such proposal be withdrawn since the application for stay was pending before the appellate authority. The appellate authority granted an order of stay with a condition to pay 50 per cent of the demand. Being aggrieved by the same, the Petitioner had preferred a writ petition before this Court in Writ Petn. No. 12412 of 2009. This Court was pleased to grant stay of the entire demand subject to the condition that the Petitioner furnishes bank guarantee of 25 per cent of the total demand. On compliance, the petition was disposed of with a direction to the respondent to dispose of the appeal on merits and that the order of stay would continue to operate till that date. But the Petitioners grievance is that no such order is passed till date. The Petitioner now seeks to challenge the notice issued by the second respondent u/s 226(3) of the Income Tax Act, 1961, which is not an appealable order. It is the Petitioners grievance that the first respondent-authority has not passed any order on the said application filed u/s 251 of the Act, though it was filed on 20-1-2010 and another application on 15-2-2010. This is for reasons best known to the said authority and in consequence, the liability sought to be created by the second respondent remains enforceable and therefore, the Petitioner having invoked the power of the authority to grant an order of stay as prayed for in the two applications is reduced to a mockery. Hence, the Petitioner is before this Court.

3. In the light of the fact that the Petitioner has been granted relief by this Court in the earlier circumstance and since the Petitioner remains in the same position even as on today insofar as his claim is concerned, it is appropriate that the Petitioners case be dealt with on merits. In the meanwhile, if the authorities were to enforce the demand, the Petitioners activities would come to a standstill. Therefore, Annexure K is stayed subject to the Petitioner furnishing bank guarantee to the extent of 25 per cent of the entire demand sought to be raised under Annex. K. In the background that the Petitioner has prayed for an order of stay of recovery, it is in the interest of both the parties that the proceedings before the first respondent are expedited and that the Petitioners liability attains finality. Therefore, while allowing this writ petition subject to the condition that Annexure K shall be stayed as above, the first respondent is directed to expedite the consideration of the pending proceedings and to pass final orders at the earliest, in any event, within a period of three months from the date of receipt of a certified copy of this order.

4. The petitions stand disposed of accordingly.