IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION NO: 24005 OF 2023

Between:

M/s. Myadam Kishan Rao Charitable Trust, Rep by. Trustee Smt.Sugandha Bai Myadam, 10-2-262/263, West Marredpally, Secunderabad, Nehrunagar, S.O.(Hyderabad), Telangana - 500026.

...PETITIONER

AND

Commissioner of Income Tax (Exemptions), Telangana, Andhra Pradesh and Odisha, 2nd floor, AayakarBhawan, Basheer Bagh, Hyderabad - 500004.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the impugned Order dt. 30.06.2023passed u/s 12AB(4) of the Act and intimation vide DIN No. ITBA/COM/S/91/2023-24/1054062651(1),as void, illegal, and contrary to the Provisions of Income-tax Act and contrary to the Principles of Natural Justice.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

pleased to stay all further proceedings pursuant to the Order dt.30.06.2023 passed u/s 12AB(4) of the Act and intimation vide DIN No. ITBA/COM/S/91/2023-24/1054062651(1), and may pass such other order(s) as the Hon'ble Court deems fit and proper in the interests of substantial justice, as otherwise the Petitioner would be put to irreparable loss and severe injury.

Counsel for the Petitioner : SRI MAN MOHAN DUNDU

Counsel for the Respondents: Mr.A.RADHA KRISHNA

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION No. 24005 of 2023

O R D E R:*(per Hon'ble Sri Justice* ***P.SAM KOSHY)***

Heard Mr.Man Mohan Dundu, learned counsel for the petitioner and Mr.A Radha Krishna appearing for the respondents. Perused the material on record.

2. The instant writ petition has been filed assailing the order dated 30.06.2023 passed under Section 12AB(4) of the Income Tax Act, by the Commissioner of Income Tax (Exemptions), Telangana, Andhra Pradesh & Odisha.

3. The ground for availing the writ remedy by the petitioner was primarily on the ground of the petitioner being denied of the principles of natural justice and a fair and reasonable opportunity of defence.

4. Upon perusal of record, more particularly, the contents of the impugned order itself would reflect that there is an admission of the fact that the petitioner had received show cause notice at the inception itself and the petitioner had entered appearance before the respondents and contested the case on merits all along, the petitioner do not dispute having received the final show cause notice as well and it is only after

the final order now has been passed, the petitioner approached the writ court invoking the powers of this Court conferred under Article 226 of the Constitution of India.

5. Having considered the factual aspects of the case, more particularly, the contents of the impugned order which would reflect that the petitioner had been contesting the case right from the inception till the final order has been passed and he has been representing before the authority at every stage, prima facie establishes that the petitioner had reasonable opportunity of hearing and defence before the authority concerned, whether the order is appropriate, justified or the veracity of the order is concerned. Since there is a provision of appeal available to the petitioner under statue itself, we are not inclined to entertain the writ petition only on the ground that there being an alternative statutory remedy of appeal available to the petitioner.

6. Learned counsel for the petitioner though relied upon the judgment of the **Harbansial Sahnia Vs. Indian Oil Corpn**[1], however, for the reasons mentioned in the preceding paragraphs, where the petitioner had been contesting the case on merits from the inception stage itself,

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[1] AIR 2003 SC 2120.

till the final order was passed, we are of the considered opinion that the said judgment would not be applicable in the facts of the present case.

7. Accordingly, the writ petition, at this juncture, stands rejected on the ground that there has been an alternative statutory remedy of appeal available to the petitioner. However, the right of the petitioner would be reserved to avail the alternative statutory remedy of appeal.

8. As a sequel, miscellaneous applications pending if any in this writ petition, shall stand closed. No order as to costs.

SD/- N. CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

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SECTION OFFICER

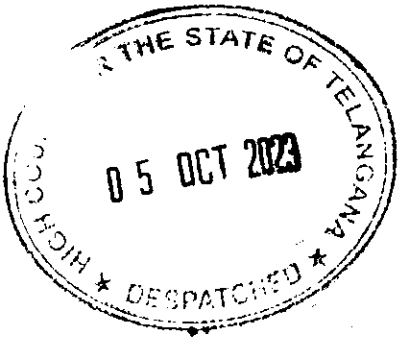
To,

1. The Commissioner of Income Tax (Exemptions), Telangana, Andhra Pradesh and Odisha, 2nd floor, Aayakar Bhawan, Basheer Bagh, Hyderabad - 500004.
2. One CC to SRI MANMOHAN DUNDU, Advocate. [OPUC]
3. One CC to SRI A.RADHA KRISHNA, Advocate. [OPUC]
4. Two CD Copies.

BSK
GJP

HIGH COURT

DATED:30/08/2023



ORDER

WP.No.24005 of 2023

REJECTING THE WRIT PETITION WITHOUT COSTS

6 VLV 25/9/23