IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WA.No. 1275 of 2014 IN WP(C).12790/2014
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AGAINST THE ORDER/JUDGMENT IN WP(C) 12790/2014 DATED 07-08-2014

APPELLANTS/PETITIONER:
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THE TRAVANCORE CEMENTS EMPLOYEES CO-OP.BANK LTD
NO.K-234, NATTAKOM, KOTTAYAM DISTRICT
REPRESENTED BY SECRETARY MR.M.P.RAMESH.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENT/RESPONDENT:
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COMMISSIONER OF INCOME TAX
KOTTAYAM-686002.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI (TAXES)
BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN &**
**ANU SIVARAMAN, JJ.**

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**W.A.No.1275 of 2014**

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Dated this the 30th day of October, 2015

**JUDGMENT**

**Thottathil B.Radhakrishnan, J.**

1. We have heard the learned counsel for the appellant and the learned counsel for the Department.

2. The appellant is a co-operative society of employees of Travancore Cements. For the two years in relation to which this writ appeal is filed, the appellant's Income Tax returns were delayed. The reason attributed by the appellant for the delay was the delay in the statutory audit of its accounts by the auditor under the provisions of the Co-operative Societies Act and Rules. The I.T.Department took the view that the delay in institution cannot be condoned. The learned single Judge held that the matter was within the realm of discretion of the officer concerned and that discretion has been appropriately exercised. The precedent referred to by the appellant was held to be of no avail.

3. In this appeal, additional evidence is produced in the forms of Annexures A1 and A2 along with I.A.No.1199/2015. We take on record those documents. Annexure A1 is the Audit Certificate and Audit Memorandum issued for the year 2005-2006 and Annexure A2 is the Audit Certificate and Audit Memorandum issued for the year 2007-2008. Those documents are issued by the Auditor under the Kerala Co-operative Societies Act and Rules stating that the audit was not completed in time because the records were not submitted by the Society. We see that there is a blanket statement to that effect in the audit certificates. But on a deeper consideration, we see that the fee for the audit was remitted by the Society with the Co-operative Department within the time limit and it is then open to the auditor to come in a very point of time and also ask for further documents. If there is such inordinate delay which stood against the audit being completed by the statutory auditor under the KCS Act within the requisite time frame, that authority had powers even to summon and take over the documents. On the whole, we are satisfied that balancing the different situations, it would be only just and

reasonable to hold that the appellant had demonstrated fairly acceptable reasons to have the discretion exercised by the statutory authority in its favour to permit it to file the I.T.returns for the years 2006-2007 and 2008-2009 respectively. We direct that such returns shall be filed within three weeks from the date of receipt of a copy of this judgment and the same shall be received, if they are otherwise in order.

In the result, this writ appeal is allowed vacating the impugned judgment, quashing Exts.P2 and P2(a) orders and directing that the statutory authority will accept the Income Tax returns treating that the delay stands condoned by the effect of this judgment.

sd/-
**Thottathil B.Radhakrishnan, Judge**

sd/-
**Anu Sivaraman, Judge**

sj

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P.A.TO JUDGE