IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 24486 of 2007 (M)

PETITIONER(S):
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1. THE BRANCH MANAGER,
   KSFE LTD., VITHURA,
   THIRUVANANTHAPURAM.

2. THE MANAGING DIRECTOR, KSFE LTD.,
   BADRATHA BUILDING, THRISSUR.

BY SRI.BABU VARGHESE,SENIOR ADVOCATE
SRI.C.V.ALEXANDER,SC
SRI.M.SASINDRAN
SRI.TOJAN J. VATHIKULAM
SRI.JOHNSON T.JOHN, SC, KSFE LTD.

RESPONDENT(S):
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1. E.M.NAZEER, N.N.VILLA, MARUTHUMOODU,
   VITHURA, THIRUVANANTHAPURAM.

2. THE KERALA LOK AYUKTA,
   THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

R1 BY ADVS. SRI.L.MOHANAN
SMT.LIGEY ANTONY
SRI.M.V.KIRAN MOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.24486/2007

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT

P2 COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONERS.

P3 COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 24486 of 2007

Dated this the 14th day of October, 2015

J U D G M E N T

The petitioners are aggrieved by Ext.P3 order issued by the Upa Lok Ayukta, directing to refund the amount deducted by the petitioners payable to the 1st respondent towards income tax and surcharge.

2. The petitioners have taken a building owned by the 1st respondent on rent for housing its Vithura Branch at Thiruvananthapuram District. The rent agreed upon was ₹3 per sq. feet and the extent of the building was 2350 sq. feet. The petitioners allege that though they needed only 2200 sq.feet, the entire 2350 sq.feet owned by the 1st respondent was taken on rent as per the request of the 1st respondent. However, the agreement could not be executed as the 1st respondent has been claiming higher rate of rent. Ultimately, the agreement was executed only on 02.12.2004. Since the 1st respondent was out of India in connection with job, a power of

attorney was appointed, who was not willing to accept the rent offered by the petitioners. Therefore, the petitioners issued cheque in respect of the rent amount after deducting income tax and surcharge. The income tax and surcharge deducted has been remitted to the Income Tax Department. The 1st respondent filed Ext.P1 complaint before the Upa Lok Ayukta seeking a direction to the petitioners to pay an amount of ₹1,18,500/-, being the amount deducted as income tax with interest. The petitioners filed Ext.P2 statement refuting the allegations. The Upa Lok Ayukta has issued Ext.P3 order, directing the petitioners to pay the amount deducted from monthly rent payable to the 1st respondent towards income tax and surcharge for the period from 05.05.2003 to 05.05.2006 with interest. A direction also was issued to pay the amount within two months and to file an action-taken-report and the case was posted to 05.09.2007. According to the petitioners, Ext.P3 order issued by the Upa Lok Ayukta is absolutely illegal and without jurisdiction and, therefore, unsustainable in the eye of law. According to them, refund of the amount collected towards income tax and surcharge could be claimed only by the person, in respect of whom it is collected; and therefore, the direction in Ext.P3 to pay the amount to the 1st respondent and to claim refund from the Department is absolutely unsustainable in the eye of law. If the 1st respondent is not liable for income tax, he can claim refund from the Income Tax Department as provided under the Income Tax Act. Therefore, according to them, the direction issued by the Lok Ayukta is beyond the scope of power vested under the Lok Ayukta Act and still further, it is in violation of the provisions of the Act. Hence, this writ petition.

3. Arguments have been heard.

4. The main argument advanced by the learned counsel for the petitioners is that it is beyond the competence of the Upa Lok Ayukta to pass the impugned order. Relying on a decision of this Court in **State of Kerala** v. **Bernard** [2002 (3) KLT 254], the learned counsel for the petitioners would submit that barring the

area of investigation of a complaint involving “allegation”, i.e., a complaint made with regard to corruption, improper motives etc. and covered by Section 14, Lok Ayukta has neither any adjudicatory power nor the power to enforce his recommendation or finding.

5. It was argued that the tax deducted from the rent payable to the 1st respondent has been duly remitted to the Government; and therefore, if the 1st respondent is not liable to pay tax, it is for him to claim refund from the Government. In the case in hand, the 1st respondent has moved the Upa Lok Ayukta for a direction to pay the amount, which was deducted at source towards income tax and surcharge, which was absolutely unsustainable. The Upa Lok Ayukta has passed an order as evidenced by Ext.P3, directing the petitioners to pay the amount, which has been deducted by the petitioners towards income tax and surcharge, which, according to the petitioners, is absolutely perverse and illegal. According to the petitioners, it is a basic tenet of income tax law that the tax deducted at source could be claimed to be refunded

only by a person, from whose payment, it has been deducted and the person, who has caused the deduction, cannot claim refund under any circumstance.

6. Here, the 1st respondent is an NRI. There was an agreement between him and the petitioners that the rent towards the building occupied by the petitioners could be remitted to the loan account of the 1st respondent, he being the owner. The case projected by the 1st respondent before the Upa Lok Ayukta is that the petitioners, treating the 1st respondent as an NRI liable to pay income tax on the rent of ₹2,64,649/- due from 05.05.2003 to 05.11.2005 for 31 months with interest, paid only ₹1,46,149/- by cheque in the name of the 1st respondent; and the petitioners deducted the income tax illegally against the terms of the rent bond. The grievance of the 1st respondent before the Upa Lok Ayukta was that the petitioners deducted income tax and surcharge on income tax from the monthly rent payable to him illegally alleging that he is an NRI in spite of the fact that he informed the petitioners that he is not an NRI

and he is not having income tax liability.

7. It is an admitted fact that towards rent due from 05.05.2003 to 05.11.2005, the petitioners paid ₹1,45,149/- after deducting income tax and surcharge at source; and the 1st respondent accepted that amount with protest on 19.11.2005. There cannot be any quarrel against the proposition that in the case of NRIs, income tax at source should be deducted without any limit of income from the rent payable; and in respect of persons other than company up to ₹1,20,000/- per annum, no income tax and surcharge could be deducted at source for the financial year 2005-06. In this case, the Upa Lok Ayukta has found that the Senior Manager, Head Office, Thrissur of the 2nd petitioner directed the 1st petitioner to release the rent without deducting tax on receipt of an affidavit duly attested by a notary public, stating that he is a permanent resident of India by his letter dated 30.08.2006. Therefore, the Upa Lok Ayukta found that the deduction of income tax and surcharge from the monthly rent payable by the petitioners was illegal and

unsustainable. Even assuming that the deduction on source was legal, it is crucial to note that the petitioners are failed to issue certificate to the 1st respondent, which would have expedited the conclusion of refund by the Income Tax Department. That itself would indicate that the action of the petitioners was with improper motive; and therefore, this Court is of the definite view that the Upa Lok Ayukta is competent to pass the impugned order.

On a consideration of the entire materials now placed on board, this Court is of the view that the petitioners are not entitled to succeed in this writ petition. Therefore, the writ petition fails; and accordingly, it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-