IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.08.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.17779 of 2016
&
W.M.P.No.1546 of 2016

Vellore District Consumer Co-operative
Wholesale Stores Ltd.,
rep. By its Joint Registrar/Managing Director
.. Petitioner

Vs

The Income Tax Officer,
Ward-1,
No.2, Barrack Cross
Officer's Line, Vellore 632 001.
.. Respondent

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified Mandamus to call for the records of the respondent in PAN:AAAAT0024C/AIMSP1/WARD-1/VLR, dated 29.02.2016, quash the same and forbear the respondent from initiating and coercive action under section 271F and 276 cc of the Income Tax Act, 1961.

For petitioner .. Mr.M.S.Palaniswamy

For Respondent .. Mrs.V.Pushpa
Standing Counsel

O R D E R

Heard Mr.M.S.Palaniswamy, learned counsel appearing for the petitioner and Mrs.V.Pushpa, learned Standing Counsel accepting notice for the respondent and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The petitioner is the Vellore District Consumer Co-operative Wholesale Stores, Ltd., and they have filed this Writ Petition, challenging the notice issued by the respondent, calling upon the petitioner-Society to furnish their return of income immediately and produce the copy of the acknowledgement by 13.04.2016, failing which threatened to initiate penalty proceedings under section 271F and prosecution under section 276cc of the Income Tax Act, 1961.

3.Under normal circumstances, this Court would not have entertain a Writ Petition at the instance of the assessee, challenging the notice issued by the Department, calling upon them file their Return of income for the relevant assessment year. However, the peculiar facts and circumstances of this case warrants interference of this Court to the extent which will be indicted in this order:

(i)The petitioner-Society owned an extent of 8.75 acres of land in the heard of Vellore Town. The Government of Tamil Nadu for the purpose of expanding the existing Bus Stand at Vellore, acquired the said land by private negotiation and the lands were taken over during 1998-99. However, for several decades the Government did not pay the petitioner-Society, the amount payable as compensation for having acquired the land. Therefore, the Society had to approach this Court and after a long legal battle, the Government by G.O.Ms.No.49,Municipal Adminstration and Water Supply Department, dated 31.5.2012, sanctioned a sum of Rs.10,33,05,340/-. The quantum of compensation was fixed pursuant to the recommendation made by Price Fixation Committee, which appears to have recommended different rates which ultimately was accepted by the Government and payment was ordered to be made.

(ii)Though the Government Order came to be issued on 31.5.2012, there was delay in effecting payment to the petitioner-Society and somewhere during 2013, the petitioner received the payment. By then, the entire administration of the Society had come to a stand still, employees were not paid and virtually the Society had become defunct. It appears that the petitioner-Society from and out of the compensation paid by the Government, though belatedly, have settled the retirement benefits to its employees, which remain unsettled from 01.04.2008 to 31.12.2011. In the meantime, the respondent has issued the present Notice.

4.It cannot be disputed that every person who is receiving income, within the taxable limit or otherwise, is statutorily bound to file their returns. Therefore, the petitioner-Society will not be fully justified in taking a stand that they will not file their return of Income. However, this should not automatically lead to a threat being meted out to the Society, at the instance of the respondent by initiating prosecution proceedings and penalty proceedings.

5.In the light of the recent statement made by the Hon'ble Union Finance Minister, that the attitude of the Assessing Officer towards the assessee should have a change, more particularly in the instance case, since the petitioner is a Co-operative Society and it is being controlled by the Managing Director, which is a Government Official in the cadre of Joint Registrar of Co-operative Societies. However, for that reason, the petitioner cannot be permitted to keep quiet in the matter and not subject themselves to the proceedings under the Income Tax Act.

6.In the light of the above, this Court is of the view that the following order would meet the ends of justice:

> "The petitioner is directed to appear before the respondent, within a period of four weeks from the date of receipt of a copy of this order and file a detailed representation along with their return of income and on receipt of the representation and the return of income, the respondent is directed to proceed further in accordance with law, after affording an effective opportunity to the petitioner. However, the prosecution which is threatened to be launched in the impugned notice shall remain stayed."

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Income Tax Officer,
Ward-1,
No.2, Barrack Cross
Officer's Line, Vellore 632 001.

+1 cc to Mr.M.S.Palaniswamy, advocate,sr.43742.

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