IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23163 of 2016

M/s.Kalapet Primary Agricultural Co-Op.
Credit Society Ltd.
Rep. by its Administrator Sri.A.Irysappan
[PETITIONER]

Vs

1 The Income Tax Officer
Ward-4, Kannaiah Business Centre
Door No.378-386 IIIrd Floor
Mahatma Gandhi Road
Puducherry-605 001.

2 The Commissioner of Income-Tax (Appeals)-Puducherry
121 Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.
[RESPONDENTS]

Prayer : The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus to call for the records in No.ito-w4/stay-petition/2016-17 dated 16.06.2016 on the file of the 1st respondent and quash the same and further forbearing the 1st respondent from initiating or continuing with any proceeding for recovery of the disputed demand pursuant to the orders of assessment in PAN:AAAAK1570G dated 31.03.2016 relating to Assessment years 2008-09, 2010-11, 2013-14, passed by the 1st respondent.

For Petitioner : Dr.Anita Sumanth

For Respondents : Mr.J.Narayanaswamy
Standing Counsel

O R D E R

Heard Dr.Anita Sumanth, learned Counsel appearing for the petitioner and Mr.J.Narayanaswamy, learned Standing Counsel appearing on behalf of the respondents and with the consent of learned counsel appearing on either side, the writ petition itself is taken up for final disposal.

2.The petitioner is a Primary Agricultural Co-operative Credit Society Ltd., registered under the provisions of the

Pondicherry Co-operative Societies Act. In this Writ Petition, the petitioner challenges the order passed by the first respondent dated 16.06.2016, by which the first respondent, while considering the Application filed by the petitioner for grant of stay of the collection of demands for the assessment years 2008-09, 2010-11, 2013-14, imposed a condition by directing the petitioner to pay 15% of the disputed tax. In fact the said order has been passed by recording that the petitioner during the course of personal hearing on 31.05.2016, in which the petitioner was represented by their authorised representative, had agreed to effect such payment.

3.At the outset, this Court would point out that the petitioner being a Society registered under the Co-Operative Societies Act, administered by a Board of Directors cannot be held liable based on the statement of the authorised representative, during the course of personal hearing. It is not clear as to whether the said authorised representative is empowered to make such a concession. A concession given by an authorised representative beyond the scope of his authorisation would not bind the petitioner Society. Therefore, this can hardly be treated as an estoppal against the petitioner Society, while considering the Application for stay. Therefore, this Court proposes to examine as to whether the authority could have directed payment of 15%, as a condition precedent for stay of collection of the disputed tax demanded for the the assessment years 2008-09, 2010-11 & 2013-14.

4.The answer to the said question should be in the negative, for the reason that in respect of the assessee's own case, for the assessment year 2009-10, identical issue was raised viz. as to whether the petitioner satisfies the definition of the Agricultural Credit Society, as set out in Explanation to Section 80 P (4) of the Income Tax Act, the Assessing Officer held against the petitioner, against which the petitioner had preferred Appeal before the Commissioner (Appeals) for the said assessment year (2009-10). The Commissioner of Income Tax (Appeals), Puducherry, by an order dated 31.12.2015, accepted the case of the petitioner/assessee and allowed the Appeal accepting the stand that the petitioner is entitled to the benefit under Explanation to Section 80 P(4) of the Act. It appears that as against the said order, the revenue has preferred an Appeal.

5.Be that as it may, as on date, the petitioner has an order in their favour for the earlier assessment year and for the subject assessment years, the petitioner has filed Appeals before the Commissioner of Income Tax (Appeals), on 13.04.2016. In such circumstances, as pointed out by the Central Board of Direct Taxes (CBDT) dated 01.12.2009 and instructions dated 02.12.1993, when a superior authority has accepted the case of the petitioner and passed orders reversing the earlier assessment orders, it mandates that the stay of recovery should be granted, subject to the Appeals filed by the petitioner before the Commissioner of Income Tax Appeals (Pondicherry) dated 13.04.2016, are heard and disposed off.

6.The learned Senior Standing Counsel appearing for the Revenue pointed out that the petitioner is placing reliance on the

Circular dated 01.12.2009 and instructions dated 02.12.1993, but the CBTD has issued instructions on 29.02.2016, in partial modification of the instructions given in 1996 in instruction No.1914. In the said instruction, certain discretionary power has been given to the Assessing Officer while considering the Application for grant of an interim order of stay on a Petition filed under section 220 (6) of th Act. This discretionary power should be exercised judiciously and for good and sufficient reasons.

7.The cardinal principles which have to be taken note of while granting interim order are three fold viz. (i) prima facie case (ii) balance of convenience and (iii) irreparable hardship. The facts of the present case have been set out in the preceding paragraphs, which clearly show that all the aforesaid three parameters have been fulfilled by the petitioner as they have established a prima facie case, as the Commissioner of Income Tax (Appeals), for the assessment year 2009-10, has passed an order in their favour on 31.12.2015. The balance of convenience is also in favour of the petitioner, since they have got a prima facie case before the Appellate Commissioner. The third aspect viz. irreparable hardship is also in their favour, as the petitioner is a Co-operative Society and in the earlier proceedings the petitioner have succeeded in their Appeal before the Commissioner (Appeals) for the assessment year 2009-10.

8.For all the above reasons, the Writ Petition is allowed, the impugned order is set aside and there will be a stay of demand pursuant to the orders of assessment dated 31.03.2016 for the assessment years 2008-09, 2010-11, 2013-14, till the Appeals filed by the petitioner for those three years are heard and disposed of by the second respondent in accordance with law. No costs. Consequently, connected Miscellaneous Petition is close.

-sd/-
Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

Rpa

To

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+1 cc Mrs.Anita sumanth Advocate SR.NO. 37563
+2 cc MR.J.Narayanaswamy Advocate SR.NO. 38247,37733
scd[co]
RD : 01/08/2016