IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.No.7453 of 2017
and
W.M.P.Nos.8134 to 8137 of 2017

M/s.The Villupuram District Central Co-operative Bank Ltd.,
repreented by its General Manager Mr.R.Saravanan,
No.2, Hospital Road,
Villupuram - 605 602. ...Petitioner

Versus

1.The Assistant Commissioner of Income Tax,
O/o the Assistant Commissioner of Income Tax,
Villupuram Circle,
Villupuram.

2.The Assistant General Manager,
State Bank of India
Pondichery Branch,
Pondichery - 605 001.

3.The Manager,
The Tamil Nadu State Apex Co-operative Bank Ltd.,
No.233, N.S.C. Bose Road,
Chennai - 600 001 ..Respondents.

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the impugned Notices u/s. 226(3) of the Income Tax Act dated 21.03.2017 in PAN:AAAJV0332Q issued by the 1st respondent and quash the same as arbitrary and illegal and direct the 1st respondent to refund the amount of Rs.1,51,07,000/- withdrawn from the petitioner's bank account maintained with the 2nd respondent.

For Petitioner : Mr.K.Ravi

For Respondents : Mr.S.Rajesh
Standing Counsel for R1

ORDER

Mr.S.Rajesh, learned Standing Counsel takes notice for the 1st respondent. The 2nd and 3rd respondents are only garnishees and that the impugned attachment orders were issued attaching the amount available with those garnishees and payable to the petitioner, by issuing notice under Section 226(3) of the Income Tax Act.

2. Heard both sides. Since the writ petition is being disposed of after hearing the petitioner as well as the contesting respondent namely the 1st respondent, notice to the 2nd and 3rd respondents is dispensed with.

3. The petitioner is the Central Co-operative Bank registered with the Registrar of Co-operative Societies, Tindivanam, and carrying on business of Banking under the license granted by the Reserve Bank of India. The petitioner's Co-operative Society was assessed to Income Tax for the assessment years 2008-09 to 2012-13. The petitioner challenged such order of assessment before the Commissioner of Income tax (Appeals) Pondicherry. The Appellate Authority dismissed the appeals on 23.03.2017. However, in the meantime, the impugned attachment notices are issued on the respondents 2 and 3. The main grievance of the petitioner is that when the First Appellate Authority has passed the order dismissing the Appeal only on 20.03.2017 and served on the petitioner only on 23.03.2017 and when the petitioner is having sufficient time under the statute to file further appeal before the Income Tax Appellate Tribunal, the 1st respondent is not justified in issuing the order of attachment impugned in this writ petition thereby indirectly affecting the right of the petitioner in moving the stay petition before the Tribunal while preferring the Appeal challenging the order of the Appellate Authority. He further pointed out that in pursuant to the impugned order of attachment, a sum of Rs.1,51,07,000/- was already debited to the account of the 1st respondent by the State Bank of India, Pondicherry, who is the 2nd respondent herein, as evident from the communication of the 2nd respondent dated 22.03.2017. Learned counsel for the petitioner further submitted that as the petitioner is a Co-operative Society and has to discharge their day today affairs only by operating the bank accounts, the attachment causes great inconvenience and hardship to all the members of the Society.

4. Per contra, learned counsel for the 1st respondent submitted that the petitioner, having suffered an order of

dismissal of the appeals by the First Appellate Authority, ought to have challenged the same before the Tribunal in the manner known to law and without doing so, the petitioner cannot approach this Court and challenge the impugned order.

5. It is not in dispute that the petitioner Co-operative Bank, after suffering an order of assessment, has preferred an Appeal before the First Appellate Authority namely, the Commissioner of Income Tax (Appeals) Pondicherry, who in turn dismissed such Appeal only on 20.03.2017, by serving a copy of the same on the petitioner only on 23.03.2017. It is also evident that the 1st respondent, in the meantime, has issued the impugned attachment order as on 21.03.2017, i.e., just immediately a day after the disposal of the appeal by the Appellate Authority, without even waiting for the petitioner to approach the Tribunal and seek for appropriate interim relief while filing the Appeal challenging the order of the First Appellate Authority. It is also seen from the proceedings of the 2nd respondent dated 22.03.2017 that in pursuant to the impugned order of attachment, a sum of Rs.1,51,07,000/- was also debited from the account of the petitioner to the credit of the 1st respondent.

6. Needless to say that this Court, at this stage, cannot go into the correctness or otherwise of the order of attachment as confirmed by the Appellate Authority, as the petitioner is still having further remedy of Appeal before the Income Tax Appellate Tribunal as provided under the statute itself. It is also not in dispute that the petitioner is entitled to seek for interim relief of stay of the proceedings while preferring the appeal and it is for the Tribunal to consider such request and pass orders on the same on its own merits and in accordance with law. But in the meantime, in pursuant to the order of attachment, already a sum of Rs.1,51,07,000/- was debited from the account of the petitioner. Therefore, in all fairness, the 1st respondent has to wait till the Income Tax Appellate Tribunal passes an order on the stay petition to be filed by the petitioner while preferring the appeal.

7. Considering the above stated facts and circumstances and considering the fact that already a sum of Rs.1,51,07,000/- has been debited from the account of the petitioner, the Writ Petition is allowed and the impugned order of attachment is set aside, subject to the following conditions.

(a) The petitioner shall prefer an Appeal before the Income Tax Appellate Tribunal within a period of 30 days from the date of receipt of a copy of this order along with a stay petition.

(b) Such Stay Petition filed by the petitioner shall be taken up by the Income Tax Appellate Tribunal and decided on its own merits and in accordance with law within a period of 7 days from the date of such filing.

(c) As this Court has allowed the writ petition and raised the order of attachment, the 1st respondent has to wait for the order to be passed in the Stay petition for further action.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner of Income Tax,
O/o the Assistant Commissioner of Income Tax,
Villupuram Circle, Villupuram.

2.The Assistant General Manager,
State Bank of India, Pondichery Branch,
Pondichery - 605 001.

3.The Manager,
The Tamil Nadu State Apex Co-operative
Bank Ltd., No.233, N.S.C. Bose Road,
Chennai - 600 001

+1cc to Mr.S. Rajesh, Advocate Sr. 18955
+1cc to Mr.K. Ravi, Standing Counsel for Tax. Sr. 18782

W.P.No.7453 of 2017

VR(27/03/2017)