IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.6167 of 2018
and W.M.P.No.7604 of 2018

Orders reserved on	Orders pronounced on
22.06.2018	28.06.2018

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

vs.

1.The Principal Commissioner of Income Tax,
O/o The Principal Commissioner of Income Tax,
Deivanayagam Pillai Thottam,
Mahathma Gandhi Road,
Puducherry - 605 003.

2.The Assistant Commissioner of Income Tax,
O/o The Assistant Commissioner of Income Tax,
Circle 1, Villupuram,
Income Tax Office, I Floor,
No.1, Chairman Subbarayar Street,
West Shanmugapuram, Villupuram - 605 602.

3.The Commissioner of Income Tax (Appeals)
Pondichery, Deivanayagam Pillai Thottam,
Mahathma Gandhi Road,
Puducherry - 605 003. .. Respondents

Petitions filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned letter C.No.9107/PCIT/PDY/2017-18, dated 12.03.2018, issued by the first respondent and quash the same and direct the first and second respondents not to initiate any further proceedings for recovery of the disputed demand till the disposal of the appeal pending before the third respondent herein.

For Petitioner : Mr.K.Ravi
For Respondents: Mr.A.P.Srinivas

ORDER

The petitioner is a co-operative society, namely the Villupuram District Central Co-operative Bank. The challenge in this Writ Petition is to a communication from the office of the first respondent, the Principal Commissioner of Income Tax (PCIT), dated 12.03.2018, stating that the petitioner during the personal hearing on 01.03.2018, offered to pay a sum of Rs.1,00,00,000/-, for consideration of the stay petition, but on examination of the unaccounted financial statement as on 31.12.2017, it is seen that the petitioner has comfortable surplus and directed the petitioner to deposit a sum of Rs.3,00,00,000/-, so that the stay application can be considered and if the deposit is not made by 16.03.2018, the stay application is liable for rejection.

2. When the Writ Petition was entertained, a conditional order was passed on 19.03.2018, directing that a sum of Rs.1,00,00,000/- be paid by the petitioner. This condition has been complied with and the payment was effected.

3. Heard Mr.K.Ravi, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Standing counsel appearing for the Revenue and perused the materials placed on record.

4. The petitioner filed the stay petition before the first respondent on 22.02.2018, stating that the Assessing Officer in the assessments framed for the years 2008-09 to 2014-15, the major issue is in respect of the interpretation of Section 36(1)(viia) read with Rule 6ABA. The petitioner stated the details of demand raised in the assessments for the seven years, the amount paid/adjusted towards the disputed demand and stated that they have paid more than 50% of the disputed cumulative demand and the appeals are pending before the CIT (A) and therefore, it is a fit case to grant the stay of the remaining disputed demand. It was pointed out that the appeals, which were filed for the assessment year 2008-09 to 2012-13, were disposed of by order dated 20.03.2017, which was challenged before the ITAT, which had set aside the order of the Commissioner of Income Tax and directed de nova adjudication in respect of the issue under Section 36(1)(viia) of the Act. On further appeal to this Court, by judgment dated 15.12.2017, this Court observed that the order of the Tribunal was a consent order and directed that the legal issue should be de nova re-adjudicated by the CIT(A) without being influenced by his earlier order. It was further pointed out that for the assessment year 2013-14 & 2014-15, written submissions have already been filed before CIT(A) and the appeals are pending. Further, it was pointed out that the petitioner is a co-operative institution working under the control of the State Government and the issue involves a legal interpretation and taking into account the over all demand for the assessment year 2008-09 to 2014-15, the petitioner having

paid more than 50% of the overall demand, namely Rs.18,59,15,680/- requested for stay of the payment of the balance outstanding demand till the disposal of the appeals. The first respondent has not passed an order, but an intimation has been sent by the Income Tax Officer attached to the office of the first respondent stating that unaccounted financial statement of the petitioner shows that they have a comfortable surplus. Therefore, the petitioner was directed to pay Rs.3,00,00,000/- for the stay petition to be taken up for consideration. At this juncture, this Court wishes to point out that whenever such prayer for stay is made by an assessee, the Revenue will fall back on the instruction given by the CBDT in Official Memorandum, dated 29.02.2016, and submit that the assessee has to pay 15%/20% of the disputed demand. This Court is at a loss to understand as to why the first respondent did not take such a stand in the petitioner's case. The petitioner has specifically pleaded that they have paid 50% of the overall demand. Though there may be a slight short fall for two assessment years, yet the first respondent has informed the petitioner through his Income Tax Officer that the petitioner should pay a sum of Rs.3,00,00,000/- for the stay petition to be considered.

5. In my considered view, the respondents having not disputed the fact that the petitioner has paid more than 50% of the overall demand and paid Rs.1,00,00,000/- in terms of the directions issued by this Court in the interim order dated 19.03.2018, the payments made would sufficiently safeguard the interest of the revenue and no further payment need be insisted from the petitioner, which is a co-operative society under direct Governmental control.

6. In the result, the Writ Petition is allowed, the impugned communication is set aside and taking note of the fact that the petitioner has paid 50% of the overall demand and also paid Rs.1,00,00,000/-, pursuant to the interim order granted by this Court on 19.03.2018 and cumulatively taking into consideration the payments effected, it is held that the interest of the Revenue is sufficiently protected. Accordingly, the demand for the balance payment shall remain stayed till the disposal of the appeals by the CIT(A). Accordingly, the Writ petition is allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

pbn

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Commissioner of Income Tax,
O/o The Principal Commissioner of Income Tax,
Deivanayagam Pillai Thottam,
Mahathma Gandhi Road,
Puducherry - 605 003.

2.The Assistant Commissioner of Income Tax,
O/o The Assistant Commissioner of Income Tax,
Circle 1, Villupuram,
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3.The Commissioner of Income Tax (Appeals)
Pondichery, Deivanayagam Pillai Thottam,
Mahathma Gandhi Road,
Puducherry - 605 003.

NMI(CO)
sm:12.7.2018

order made in
Writ Petition No.6167 of 2018
and W.M.P.No.7604 of 2018