IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION LOD.NO.1233 OF 2019

Shree Satkar Coop. Credit Society Ltd. .. Petitioners
Versus
Income Tax Officer Ward 20(3)(3)
and Ors. .. Respondents

Mr. Devendra H. Jain for petitioners
Mr. N.C.Mohanty for respondents.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : 25th April 2019.

P.C.

Heard learned Counsel for the parties for final disposal of the petition. The petitioner has challenged an order dated 29th March 2019 passed by the Principal Commissioner of Income Tax, Mumbai. In such order, the Principal Commissioner insists that the petitioner must deposit 20% of the disputed tax demand pending appeal.

2] Brief facts are as under:-

The petitioner is a cooperative society. The assessee had filed a return of income for assessment year 2011-12. While assessing such return, the Assessing Officer noticed that the petitioner had engaged itself in accepting the cheques of the members of the credit society and paid cash of equivalent value of the cheques on the same date to such members.

3] The A.O. was of the opinion that the assessee was thus in the business of cheque discounting. He recorded that such business is a high risk business and the commission for such cheque discounting activity is usually very high. He applied the alleged rate of 8% of the cheque amount which would be the assessee's income from such activities.

4] The assessee filed an appeal against the said order of assessment. The contention of the assessee is that the credit society has several small investors like labourers, who require their own money urgently. When these members, therefore, deposit cheques in their accounts, the credit society pays them the cheque amount immediately, without waiting for realisation of the said cheques. In any case, according to the assessee, the commission rate in such cheque discounting business does not exceed 0.15% of the cheque amount. The assessing officer, therefore, applied an unusually high rate of commission. The assessee would point out that this is a sole head of addition in the assessment order. According to the assessee, therefore, there is a strong prima facie case in appeal. The assessment can be described as a high pitched assessment. The Principal Commissioner (appeals) therefore, ought to have granted stay pending the appeal, without insisting on depositing of part of the disputed tax amount.

5] For such purpose the assessee had filed an application before the Commissioner on 25th March 2019. On such application, the Commissioner passed his impugned order on 29th March 2019, which reads thus:-

> " I have been directed to inform you that your above application for stay of demand has been considered and rejected. Therefore, you are directed to deposit 20% of the demand raised and balance demand is stayed till disposal of appeal by CIT (A). It may be noted that coercive measures will be initiated to recover

the demand in case of failure to pay the same."

6] Learned Counsel for the petitioner submitted that the department has attached the petitioner's five bank accounts, thereby bringing the activity of the petitioner to a halt. He pointed out that the department has already recovered Rs.46.75 lakhs.

7] Having heard the learned Counsel for the parties and having perused the documents on record, we find that the impugned order passed by the Commissioner is rather cryptic and devoid of reasons. In the present case, when the petitioner pointed out that in a high pitched assessment order, the A.O. has adopted the commission rate of 8% in the cheque discounting activity, which simply does not prevail, the Principal Commissioner, in our opinion, ought to have examined such grievances of the assessee before deciding whether the present case is a fit one where the requirement of deposit of 20% of the disputed tax pending appeal can be reduced.

8] Under the circumstances, the petition is disposed of with following directions:-

(a) The impugned order of Commissioner dated 29th March 2019 is quashed and set aside;

(b) The Commissioner is requested to pass a fresh order bearing in mind the observations made herein and taking into consideration the case of the petitioner. This must be done preferably before 31st May 2019.

(c) Attachment on bank account of the petitioner shall be lifted forthwith;

(d) The amount of tax already recovered from the petitioner will not be refunded as of now and shall be adjusted against the final order that the Principal Commissioner may pass, subject to further challenge by the petitioner;

(e) There shall be no recovery against the petitioner for a period of two weeks, pursuant to the order passed by the Commissioner after the same is communicated to the assessee/

petitioner.

(f) Petition disposed of accordingly.

(SARANG V. KOTWAL, J) (AKIL KURESHI, J)