IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.08.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.25543 of 2019
and W.M.P.No.25072 of 2019

K293 Ponneri Primary Agricultural
Cooperative Credit Society
Rep. By its Secretary
A.Krishnasamy, M/51
S/o.R.Angamuthu
Ponneri, Kottaiyangalam Post
Udumalpet Taluk
Tiruppur District .. Petitioner

Vs.

The Income Tax Officer
Ward-2 (4) TPR
Income Tax Officer
No.121, 60 Feet Road
Tiruppur - 641 602 .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the entire records relating to the impugned order passed by the respondent in Order No.ITBA/AST/S/143(3)/2018-19/1014538806 (1) dated 24.12.2018 and quash the same.

For Petitioner : Ms.R.Hemalatha
for Mr.C.Prakasam

For Respondents : Mr.A.N.R.Jayaprathap
Special Government Pleader (Taxes)

ORDER

Ms.R.Hemalatha, leaned counsel representing the counsel on record for writ petitioner and Mr.A.N.R.Jayaprathap, learned Standing Counsel for Income Tax, who accepts notice on behalf of sole respondent are before this Court.

2.With consent of learned counsel on both sides, main writ petition is taken up.

3. It is submitted without any disputation or disagreement by both the learned counsel that the instant writ petition is covered by an earlier order made by this Court being order dated 18.07.2019 in WP No.3385 of 2019 and WMP No.3666 of 2019. The said order dated 18.07.2019 reads as follows:

> 'Mr.B.Raveendran, learned counsel on record for writ petitioner and Mr.A.N.R.Jayaprathap, learned Junior Standing counsel (Income Tax) on behalf of lone official respondent are before this Court.
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> 2. With consent of learned counsel on both sides, main writ petition is taken up and is being disposed of.
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> 3. Owing to the nature of the trajectory which the hearing has taken today, the entire writ petition now turns on a very narrow compass. Therefore, it may not be necessary to set out facts in great detail.
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> 4. Suffice to say that the writ petitioner is a Primary Agricultural Cooperative Credit Society, registered under 'Tamil Nadu Cooperative Societies Act, 1983' ['TNCS Act' for brevity]
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> 5. The instant writ petition has been filed, assailing an order dated 24.12.2018 made by the lone official respondent and this order bears reference Order No:ITBA/ AST/S/143(3)/2018-19/1014536712(1). This order dated 24.12.2018 bearing reference 'Order No:ITBA/AST/S/143(3)/2018-19/ 1014536712(1)', shall hereinafter be referred to as 'impugned order'. To be noted, impugned order is an assessment order, pertaining to Assessment Year 2016-17 qua writ petitioner and the impugned order has been made by the lone official respondent under Section 143(3) of 'Income Tax Act, 1961' ['IT Act' for brevity]
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> 6. The pivotal submission is that the writ petitioner being a Cooperative Society, is entitled to various deductions enlisted / adumbrated under Section 80P of IT Act. That Cooperative Societies akin to the writ petitioner, which are registered under TNCS Act are entitled to claim deductions under various heads adumbrated under Section 80P of IT Act has been laid down by this Court in Commissioner of Income Tax, Salem Vs. Tiruchengode Agricultural Producers Cooperative Marketing Society Ltd., [hereinafter 'Tiruchengode Agricultural Producers Cooperative Marketing Society case' for brevity] vide order dated 02.08.2016 made in Tax Case Appeal Numbers.484 to 487 and 490 of 2016. 'Tax

Case Appeals' shall be referred to as 'TCAs' for the sake of brevity.

7. The aforesaid Tiruchengode Agricultural Producers Cooperative Marketing Society case was rendered by Hon'ble Division Bench based on M/s. Veerakeralam Primary Agricultural Co-operative Credit Society principle being principle laid down by another Hon'ble Division Bench vide judgment in Commissioner of Income Tax Vs. M/s. Veerakeralam Primary Agricultural Co-operative Credit Society dated 05.07.2016 made in Tax Case Appeal Nos.735, 755 of 2014 and 460 of 2015 [hereinafter 'Veerakeralam Primary Agricultural Co-operative Credit Society principle' for brevity].

8. In the aforesaid cases, Hon'ble Division Bench addressed itself to the question as to whether Primary Agricultural Societies carrying on the business of providing credit facilities to its members are entitled to claim deductions under Section 80P of IT Act and the same was answered in the affirmative.

9. Reverting to the case on hand, a perusal of the impugned order reveals that it turns on three heads, the same as set out in the impugned order reads as follows:

'(i) Deduction under chapter VIA
(ii) Investments/advances/loans
(iii) High cash in hand shown in balance sheet as compared to preceding year'

10. With regard to (i) supra, as the Hon'ble Division Bench of this Hon'ble Court has already held that Cooperative Societies akin to the writ petitioner are entitled to claim deductions under various heads adumbrated under Section 80P of IT Act, the same does not survive. However, this Court is informed that Income Tax Department is carrying both Tiruchengode Agricultural Producers Cooperative Marketing Society case and Veerakeralam Primary Agricultural Co-operative Credit Society TCAs to Hon'ble Supreme Court. On this basis, this Court has passed an order dated 27.06.2019 in W.P.No.2552 of 2019 & etc., batch interalia to the effect that this question is subject to the outcome of the Special Leave Petitions said to have been filed by the department. To be noted, this aforesaid order dated 27.06.2019 in W.P.No.2552 of 2019 & etc., batch came to be passed by this Court as that was the lone issue therein, but in the instant case, that issue is dovetailed with two other issues namely (ii) and (iii) supra.

11. In the aforesaid backdrop, learned counsel for writ petitioner submitted that the writ petitioner will opt for the alternate remedy of a statutory appeal with regard to those aspects of the impugned

orders excluding the aforesaid issue, which is covered by Veerakeralam Primary Agricultural Co-operative Credit Society and Tiruchengode Agricultural Producers Cooperative Marketing Society principles.

12. This takes us to the alternate remedy aspect. Alternate remedy is available to the writ petitioner by way of an appeal under Section 246A of IT Act.

13. There is a time limit of 30 days prescribed for preferring an appeal under Section 246A of IT Act, which lies to Commissioner (Appeals).

14. At the request of writ petitioner, time that has been spent in the instant writ petition i.e., time from the date of filing of instant writ petition to the date on which this order is made available shall stand excluded for computing limitation for filing an appeal under Section 246A of IT Act. Even after such exclusion, if there is a delay, it is open to the writ petitioner to seek condonation of the same under Section 249(3) of IT Act and such a prayer for condonation of delay shall be dealt with by the Appellate Authority on its own merits.

15. Before parting with this case, it is necessary to mention that alternate remedy rule qua exercise of writ jurisdiction is a self imposed restraint. It is a rule of discretion and it is not a rule of compulsion. Though it is not an absolute rule, Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] held that it should be exercised with greater rigour in fiscal law statutes. More importantly, in Satyawati Tondon case, Hon'ble Supreme Court held that such a rule has to be applied with utmost rigour when it comes to cases involving taxes, cess, fees etc., In other words, when it comes to fiscal statutes, these rules have to be applied with greater rigour and it is to be applied very strictly with regard to recovery of taxes, CESS, fess etc., Satyawati Tondon principle was reiterated by Hon'ble Supreme Court in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85]. Relevant paragraph in K.C.Mathew case is paragraph 10 and the same reads as follows:

'10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

16. This writ petition is disposed of, leaving it open to the writ petitioner to avail alternate remedy of statutory appeal to Commissioner (Appeals) under Section 246A of IT Act, in the manner set out supra in this order.

17. This writ petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.'

Therefore, instant writ petitioner is also disposed of observing that this writ petition also will be governed by the aforesaid earlier order, which has been extracted and reproduced supra. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CSIII)

//True Copy//
Sub Assistant Registrar

gpa

To

The Income Tax Officer
Ward-2 (4) TPR
Income Tax Officer
No.121, 60 Feet Road
Tiruppur - 641 602.

W.P.No.25543 of 2019 and
W.M.P.Nos.25071 and 25072 of 2019

AD(CO)
CB(10/10/2019)