

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.182/2020

The Siolim Urban Co-op.
Credit Society. Ltd. represented
by its Manager & Secretary
Mrs. Suvidha S.N. Parvatkar
Opposite St. Anthony Church
Bazar Siolim Bardez Goa. Petitioner.

Versus

1. Commissioner of Income Tax (Appeal)
Panaji I-Goa "Aayakar Bhawan"
Patto Panaji – Goa,

2. Income Tax Officer Ward- I (4),
"Aayakar Bhawan", Patto Panaji - Goa Respondents.

Mr. Sahish Mahambrey, Advocate for the Petitioner.

Ms. Amira Abdul Razaq, Standing Counsel for the Respondents.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 15th December, 2020.

ORAL JUDGMENT : (Per M.S. Sonak, J.)

Heard Mr. Mahambrey for the Petitioner and Ms. Amira Razaq, the learned Standing Counsel for the Income Tax Department.

2. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties..

3. The Petitioner-Assessee had appealed to the Commissioner (Appeals) in respect of the assessment for the Assessment Year 2014-15. In order to secure interim reliefs, the Petitioner had deposited 20% of the assessed amount, corresponding to approximately Rs. 4.5 lakhs, before the Commissioner (Appeals).

4. The Appeal for the Assessment Year 2014-15 was disposed of by the Commissioner (Appeals) by an order dated 13/11/2019. By this order, the contentions of the Petitioner were in fact accepted and the assessment order, to the extent it was contrary to such contentions, was even interfered with.

5. It is the case of the Petitioner that for the Assessment Year 2017-18, once again the Assessing Officer (AO) made an assessment order, which was contrary to the order made by the Commissioner (Appeals) on the same issue, but for the Assessment Year 2017-18. Based upon this assessment order made on 14/12/2019, a demand was made on the Petitioner to pay tax of approximately 19,11,600/-.

6. The Petitioner, vide communication dated 20/12/2019, pointed out to the AO that the time limit for payment of the demanded tax amount is too short and, further, the Petitioner was in

process of appealing the assessment order for the Assessment Year 2017-18. In this communication, it was also pointed out that the Petitioner's similar matter pertaining to the Assessment Year 2014-15 had already been decided by the Commissioner (Appeals) in favour of the Petitioner and the AO was requested to withhold the proceedings till disposal of the Appeal.

7. Despite this, the Respondents issued the impugned communications to the Karnataka Bank and the Corporation Bank to seize the accounts of the Petitioner and to remit the demanded amounts forthwith to the coffers of the Income Tax Department.

8. On 22/1/2020, the Petitioners informed the Respondents that they have already appealed against the assessment order for the Assessment Year 2017-18. Further, by a communication dated 10/12/2019, the Petitioners had also requested the Respondents to refund 20% of the amount of approximately Rs.4.5 lakhs which the Petitioner had deposited whilst appealing against the assessment order for the Assessment Year 2014-15.

9. From the aforesaid, it is quite clear that the Petitioner had appealed the assessment order for the Assessment Year 2017-18 much before the Respondents could address the impugned communications to the Banks or, in any case, insist with the Banks for remission of the demanded tax amount. Further, it is clear that the Respondents had,

with themselves, an amount of approximately Rs.5.32 lakhs, which corresponds to a little more than 20% of the demanded tax amount of Rs. 19,11,600/- for the Assessment Year 2017-18.

10. In the aforesaid circumstances, it was expected of the Respondents not to pursue the notice addressed to the Banks, or seek to recover any amount in pursuance of the same. Rather, reasonably, it was expected of the Respondents to at least adjust this amount of Rs.5.32 lakhs as deposit in the appeal against the assessment order for the Assessment Year 2017-18 and stay further demand.

11. The Respondents, to its credit, has adopted this reasonable stand when it comes to the notice addressed to the Corporation Bank. However, the Respondents recovered an amount of Rs.13,77,638/- from the Karnataka Bank based upon the notice issued to the Karnataka Bank.

12. Ms. Razaq submits that directions could be issued to the Commissioner (Appeals) to disposed of the appeal itself, expeditiously. She submits that depending upon the outcome of the Appeal, refund can always be claimed or made in the matter.

13. According to us, in the facts of the present case, there was absolutely no justification for the Respondents to recover the amount of Rs.13,77,638/- from the Petitioner by issuance of the impugned

notice to the Karnataka Bank. The record indicates that the Respondents had, with themselves, an amount of Rs.5.32 lakhs which corresponds to more than 20% of the demanded amount for the Assessment Year 2017-18. At the highest, the Respondents could have inquired with the Petitioner as to whether this amount could be adjusted since the Petitioner had already informed the Department about the filing of the Appeal.

14. Today, Mr. Mahambrey, on the basis of the instructions, makes a statement that despite refund orders, the Petitioner will not insist upon refund of the amount of Rs. 5,32,380/- and the said amount can be treated as deposit in the appeal challenging the assessment order for the Assessment Year 2017-19.

15. Now that the Department is secured in terms of its own circulars and instructions, there is really no reason for the Department to hold on to the amount of Rs.13,77,638/- which ought not, in the facts of the present case, to have recovered from the Petitioner.

16. For all the aforesaid reasons, we dispose of this Petition by making the following order :

(A) The impugned notice addressed to the Karnataka Bank is, hereby, quashed and set aside and the Respondents are directed to refund to the Petitioner an amount of Rs.13,77,638/- as

expeditiously as possible and, in any case, within a period of 4 weeks from today

(B) The statement of Mr. Mahambrey that the Petitioner will not insist upon the refund of Rs.5,32,380/-, is accepted and this amount to be treated as deposit in the Appeal against the assessment order for the Assessment Year 2017-18. This amount should abide by the orders to be made in such appeal.

(C) The Respondents shall not enforce their demand for an amount of Rs.19,11,638/- for the Assessment Year 2017-18, until the disposal of the aforesaid appeal which is pending before the concerned Commissioner (Appeals).

(D) There shall be no order as to costs considering that the Respondents have themselves withdrawn the notice issued to the Corporation Bank.

(F) The pending appeal will have to be disposed of by the Commissioner (Appeals) only after refund of the aforesaid amount. But, such disposal will have to be on its own merits and in accordance with law. Nothing in this order is intended to influence the decision of the Commissioner (Appeals) on its own merits and in accordance with law.

17. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

18. All concerned to act on the basis of an authenticated copy of this order.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.