BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.10.2020
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)Nos.6604 and 6610 of 2020
and
W.M.P(MD)Nos.5953, 5954, 5958 & 5959 of 2020

W.P.(MD)No.6604 of 2020

Sivagangai District Central Cooperative Bank,
represented by its General Manager,
K.R.Balaraja,
Sarugani Branch,
2/354, East Street,
Thondi Main Road,
Sarugani - 630 302
Devakottai Taluk,
Sivagangai District. ... Petitioner

Vs

The Income Tax Officer,
TDS Ward,
Kulamangalam Road,
Meenambalpuram,
Madurai - 625 002. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned order, dated 12.03.2020 in ITBA/COM/F/17/2019-20/ 1026521959(1) and subsequent corrigendum order dated 19.03.2020 in DIN and Letter No. ITBA/COM/F/17/2019-20/1026784975(1) issued by the respondent and quash the same as illegal, arbitrary, baseless and without jurisdiction.

W.P.(MD)No.6610 of 2020

Sivagangai District Central Cooperative Bank,
represented by its General Manager,
K.R.Balaraja,
Nehru Bazaar Branch,
No.2, Nehru Bazaar Street,
Sivagangai Taluk,
Sivagangai District - 630 561. ... Petitioner

Vs

The Income Tax Officer,
TDS Ward,
Kulamangalam Road,
Meenambalpuram,
Madurai - 625 002. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned order, dated 11.03.2020 in TAN MRIS 07002C, Assessment year 2020-21, DIN and Letter No.ITBA/COM/F/17/2019-20/ 1026435003(1) and TAN MRIS 07002C, Assessment year 2020-21, DIN and Letter No.ITBA/COM/F/17/2019-20/1026434562(1) issued by the respondent and quash the same as illegal, arbitrary, baseless and without jurisdiction.

In both writ petitions

For Petitioner	:	Mr.K.Vinayagan
For Respondent	:	Mrs.S.Srimathy Senior Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the impugned orders passed by the respondent under Section 194N of the Income Tax Act.

2. The contention of the petitioners is that transaction in question is outside the purview of Section 194N of the Income Tax Act.

3. Heard Mr.K.Vinayagan, learned counsel appearing for the writ petitioners and Mrs.S.Srimathy, learned Senior Standing Counsel appearing for the respondent.

4. According to the petitioners, they are Co-operative Banks and the respondent ought not have retrospectively enforced the said provision by taking into account the transactions that had taken place even prior to the said date. It is also contended by the respective petitioners that the sums withdrawn by the member society would not constitute ''income'' at the hands of the society. Therefore, the question of liability to pay or deduct the Income Tax would not raise. It is also the contention of the respective petitioners that primary co-operative societies had acted as correspondents for Bankers and therefore, they would stand exempted from the provision of Section 194N of the Income Tax Act. It is also contended by the writ petitioners that the impugned orders have been passed without giving sufficient opportunity to the writ petitioners to put forward their contentions. Hence, according to them, principles of natural justice have been violated.

5. The very same issue raised by these petitioners was considered by a co-ordinate Bench of this Court in a batch of writ petitions in W.P. (MD) No.6102 of 2020 batch. In the batch of writ petitions involving an identical issue after considering Section 194N of Income Tax Act and Section 201 of Income Tax Act, the co-ordinate Bench has held as follows:

> *"22. Since the Assessing Officers have not taken into account the entire scheme of the Act and had proceeded at breakneck speed, I am constrained to interfere with the impugned proceedings and they are accordingly quashed. The matters are remitted to the file of the respective jurisdictional Assessing Officers. The Assessing Officers will issue fresh hearing notices to the writ petitioners. The writ petitioners are at liberty to bring on record the returns filed by the member-Societies who had withdrawn cash beyond the ceiling limit of Rupees One Crore. The Assessing Officers will exclude Pongal cash gift distributed by the petitioner-Banks at the instance of the Government of Tamil Nadu from the entire computation. This is because as already held the member-Societies have merely acted as business correspondents of the writ petitioners herein. As regards the remaining amounts, it is open to the writ petitioners to establish before the Assessing Officers that the sums withdrawn by the member-Societies do not represent income at their hands. As evidence the annual income tax returns filed by the member-Societies can be produced. If the second respondent is satisfied that the amounts withdrawn by the member-Societies did not in fact represent income at their hands, the jurisdictional Assessing Officers will drop further action. If they are not so satisfied, of course, it is open to the Assessing Officers to pass further orders in accordance with law".*

6. The Court is in agreement with the view taken by the co-ordinate Bench of this Court in the aforesaid order.

7. Accordingly, the same order is passed by this Court and the matter is remanded back to the respondent for fresh consideration as directed by a Co-ordinate Bench of this Court in the aforesaid order.

8. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ksa

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Income Tax Officer,
TDS Ward,
Kulamangalam Road,
Meenambalpuram,
Madurai - 625 002.

+2 CC to M/s.S. SRIMATHY, Advocate (SR-20092[F]& 20093 dated 15/10/2020)

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14.10.2020

KMV(CO)
AP(05/11/2020) 4P 4C