IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.7600 of 2021
and
W.M.P.Nos.8118 & 8119 of 2021

(Through Video Conferencing)

Syndicate Bank Jewel Appraisers' Union,
(Reg. No.3662/CNI),
Rep. by its General Secretary,
Mr.F.Babu Arockia Nathan,
S/o. Felix Antony,
Old No.17, New No.8,
Rajammal Street, Chetpat,
Chennai - 600 031. ... Petitioner

Vs.

1. The Chairman,
   Canara Bank,
   Head Office, 112, J.C.Road,
   Bengaluru - 560 002.

2. The Chief General Manager,
   Canara Bank,
   Executor Trustee & Taxation Section,
   Financial Management Wing,
   Head Office, Bengaluru - 560 002. ... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned circular of the second respondent in Circular No.965/2020, dated 28.12.2020 and quash the same.

For Petitioner : Ms.S.Bharathy Kannan

For Respondents : M/s.Tanmayee Rajkumar

O R D E R

The petitioner has challenged the impugned Circular No.965/2020, dated 28.12.2020 of the second respondent. By the impugned general Circular, following guidelines were issued for strict adherence by the branches / offices:-

a) Income Tax TDS to be deducted as per HO Circular 353/2020 ; read with HO Circular 280/2020 under section 194J (Technical Services) of Income Tax Act, 1961 on the amount paid to Jewel appraisers for his services. The rate of TDS will be 20% in all cases, if PAN is not furnished by the Jewel Appraiser.

b) Payment of Jewel appraisal fees shall be done through CBS Vendor Module, so that TDS deduction and remittance will be done systematically.

Apart from the above, GST TDS needs to be deducted in case of registered jewel appraisers, if applicable.

2. It is the case of the petitioner that earlier a circular was issued in 2009, whereby, it was clarified that the respondents Bank was not required to deduct tax at source with effect from 01.04.2009. The said circular was issued purportedly pursuant to the HO Circular No.123/2009 dated 02.04.2009, copy of which is not available in the typed set of papers filed by the petitioner.

3. Thereafter, a fresh circular No.112/2015 dated 07.03.2015 was issued, wherein, the branches of respondents Bank were advised to deduct tax at source on the payment being made to valuers and appraisers who provided ancillary services to the Banks in connection with the jewel loans. Meanwhile, one Mr.R.Rathinasamy had filed W.P.No.8772 of 2015 and had obtained an interim stay of Circular No.112/2015 pending disposal of the said Writ Petition. The said W.P.No.8772 of 2015 was eventually dismissed vide order dated 22.02.2021 considering the fact that the respondents were from Bangalore, Karnataka.

4. In this Writ Petition, the petitioner has challenged the impugned subsequent Circular No.965/2020 dated 28.12.2020 issued by the second respondent on the ground that there is no basis on which the tax can be deducted at the source.

5. The learned counsel for the petitioner submits that the respondents Bank entered into a formal Memorandum of Understanding with each member of the petitioner Association for engaging their services as Appraisers / Valuers for the bank and for the purpose of obtaining valuation report and valuation certificate of the gold articles entrusted by the customers in connection with jewel loan from the Bank. It is submitted that

the Bank is paying the commission / charges to the members of the petitioner Association by collecting the same from these customers under a separate voucher as "Gold Valuation Charges" and therefore, there is no justification in deducting the tax at the source.

6. Opposing the prayer of the petitioner in this Writ Petition, the learned counsel for the respondents submits that this Writ Petition is not maintainable as the respondents are only impleading the clarification issued by the Income Tax Department and therefore, there is no question for not deducting the tax at source on commission / charges payable to the members of the petitioner Association. It is further submitted that the tax is a deductible tax as per the Income Tax Act and the petitioner is bound by Income Tax Act and the Rules made therein as otherwise may end in getting into problem for not deducting tax at source.

7. The learned counsel for the respondents further submits that the Bank is only concerned with public money and therefore, it cannot be unnecessarily exposed to dispute with the Income Tax Department and therefore prays for dismissal of this Writ Petition.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the Circular issued by the respondent including the impugned Circular.

9. The petitioner has challenged the impugned Circular. However, this Circular has been issued only in conformity with the law under the Income Tax Act, 1961 which mandates deduction of tax at source on any payment exceeding a particular value in a year. The respondents Bank have no say as far as the deduction of tax at source under the provisions of the Income Tax Act, 1961 is concerned. It is for the member of the petitioner Association to approach the Income Tax Department under Section 197 of the Income Tax Act, 1961 for getting appropriate order for deduction of lesser tax or no tax. The method prescribed in Section 197 of the Income Tax Act, 1961 has not been followed. It is open for the member of the petitioner Association to approach the concerned Authority of the Income Tax Department under Section 197 of the Income Tax Act, 1961 for getting appropriate relief. Only if such orders are passed under Section 197 of the Income Tax Act, 1961, the respondents can be asked to not either deduct tax at source or deduct at lower rate.

10. Considering the same, I do not find any merits in this Writ Petition and is liable to be dismissed. Accordingly, this Writ Petition therefore stands dismissed with the above

observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jen

To

1. The Chairman,
   Canara Bank,
   Head Office, 112, J.C.Road,
   Bengaluru - 560 002.

2. The Chief General Manager,
   Canara Bank,
   Executor Trustee & Taxation Section,
   Financial Management Wing,
   Head Office, Bengaluru - 560 002.

+1cc to Mr.S.Bharathy Kannan, Advocate, S.R.No.61744

W.P.No.7600 of 2021 and
W.M.P.Nos.8118 &
8119 of 2021

SVI(CO)
CT/16/12/2021