IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.8345 of 2021
and WMP No.8904 of 2021

The Koradacheri Primary Agricultural Co-operative Credit Society Limited,
represented by its Secretary,
Mrs.S.Parameswari,
Pillai Street, Koradacheri P.O.
Needamangalam Taluk,
Tiruvarur District.

.. Petitioner

Vs.

1. National Faceless Appeals Centre,
   New Delhi.

2. The Principal Commissioner of Income Tax,
   Aayakar Bhavan, No.44, Williams Road,
   Cantonment, Tiruchirappalli, - 620 001.

3. The Income Tax Officer, Ward - I,
   Tiruvarur, Income Tax Office,
   No.1A/24, Bypass Road, Bharat Towers,
   Tiruvarur - 610 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for the records in DIN & Letter No.ITBA/COM/F/17/2019-20/1026076015 (1) dated 04.03.2020 on the file of the 3rd respondent issued under Section 226(3) of the Income Tax Act, 1961 and quash the same and further direct the 3rd respondent to refund the sum of Rs.2,86,85,000/- which has been forcibly collected from the account of the petitioner Society with the Kumbakonam Central Co-operative Bank Limited, Koradacheri, Tamil Nadu.

For Petitioners : Mr.N.Ramakrishnan

For Respondents : Mr.ANR.Jayaprathap
Junior Standing Counsel

ORDER

Mr.ANR.Jayaprathap, learned Junior Standing Counsel accepts notice for the respondents and is armed with instructions to proceed finally in this matter. Hence with the consent of both learned counsel, this Writ Petition is taken up for final disposal even at the stage of admission.

2. The petitioner is the Koradacherri Primary Agricultural Cooperative Credit Society Limited based in Tamil Nadu. The challenge is a notice issued under Section 226 (3) of the Income Tax Act, 1961 (in short 'Act'). According to the petitioner, the notice is patently illegal insofar as a copy of the same has not been served upon the petitioner as required in terms of Section 226 itself. Moreover, the entire balance in the account as on that date, which is an amount of Rs.2,86,86,000/- has been appropriated and the Manager of the Kumbakonam Central Cooperative Bank Limited has been prevailed upon to foreclose fixed deposits prior to the date of maturity and hand over those receipts as well. The petitioner would thus pray that there be a direction for refund of the entire amount to its bank account.

3. The brief facts are that the petitioner suffered an order of assessment under Section 144 of the Act on 28.12.2019. The order of assessment, passed to the best of the Assessing Officer's judgment, would indicate that no return of income was filed by the petitioner for Assessment Year (AY) 2017-18 leading to notice under Section 142(1) being issued calling for a return of income. Despite being served with the notice, the petitioner did not file a return of income.

4. On the basis of the information received from the Kumbakonam Central Co-operative Bank, the details of the bank accounts and deposits made during demonetization were obtained and reply was sought for from the assessee in regard to certain deposits made during the relevant financial year. Admittedly, the petitioner did not respond to notice issued under Section 142(1). A pre-assessment show cause notice was also issued on 27.08.2019, to which also there was no response. It is thus that an order of assessment has come to be passed under Section 144 of the Act bringing to tax the entirety of the bank balance as unexplained investment and income along with applicable penalty. The order of assessment, records total non-co-operation on the part of the petitioner during the assessment proceedings.

5. The petitioner has admittedly challenged the same by way of first appeal, which is pending disposal. No application for stay has been placed before this Court though the affidavit filed in support of the Writ Petition mentions the stay application filed before the Income Tax Officer. In such circumstances, I see no illegality in the coercive recovery proceedings that have been initiated, save, of course, that the Section 226 notice ought to have been issued on the petitioner simultaneous with service upon the bank manager. This has admittedly not been done. However, this is not fatal to the proceedings, seeing as the petitioner is aware of the coercive recovery proceedings initiated as early as in March, 2020, but has chosen to do nothing till date.

6. The prayer sought for by the petitioner, for a certiorarified mandamus quashing 226(3) notice, is thus not liable to be granted. Had an application for stay been filed, one could have considered the disposal of that application pending appeal. However, that has also not been done. Thus, the petitioner, at this juncture, can only be permitted to seek appropriate interim protection from the appellate/administrative authorities, pending appeal.

7. At request of learned counsel for the petitioner, there is a direction issued to the National Faceless Appeals Centre/R1 to dispose the petitioner's appeal within a period of twelve (12) weeks from today after hearing the petitioner and in accordance with law. No further coercive recovery proceedings shall be initiated/continued till the disposal of the appeal insofar as, against a total demand of a sum of Rs.4,63,26,248/-, a sum of Rs.2,86,86,000/- has been recovered.

8. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registra

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To

1. National Faceless Appeals Centre,
   New Delhi.

2. The Principal Commissioner of Income Tax,
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+2 CC to Mr. Waraon & Sairams, Advocate sr 20881

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AD(CO)
SP(23/04/2021)