IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.3249 of 2022
and
W.M.P.Nos.4398, 4402 & 4414 of 2022

The Madras High Court Cooperative Society Limited,
Represented by its Secretary,
Mr.N.Balakrishnan,
214, Madras High Court Building,
Paris Corner,Chennai - 600 104. ...Petitioner

Vs

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax Income-tax Officer,
National e-Assessment Centre, Delhi.

2. Assistant Commissioner of Income Tax,
Non-Corporate Circle 11(1) Chennai
BSNL Building, 2nd Floor
Income Tax Office-BSNL Tower,
No.16, Greams Road,Chennai - 600 034.

3. The Bank Manager,
Indian Bank, Madras High Court Branch,
High Court, Chennai - 600 108. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records and quash the notice issued under Section 156 of the Income Tax Act ('Act') in PAN AAAAT9768R in DIN and Letter No.ITBA/AST/S/156/2020-21/1030894072 (1) dated 23.02.2021 ['impugned notice'].

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel
[For R1 and R2]
Mr.V.Kalyanaraman
Standing Counsel
For M/s.Aiyar & Dolia[For R3]

ORDER

The prayer sought for herein is for a Writ of Certiorari, to call for the records and quash the notice issued under Section 156 of the Income Tax Act ('Act') in PAN AAAAT9768R in DIN and Letter No.ITBA/AST/S/156/2020-21/1030894072 (1) dated 23.02.2021 ['impugned notice']

2.For the Assessment Year 2018-19, there was an assessment under Section 143 (3) of the Income Tax Act, 1961 [in short, the Act], and an assessment order was passed on 23.02.2021, where, according to the learned counsel for the petitioner that, there was no tax liability against the petitioner.

3.However, subsequently, since there has been a demand, which has come by way of demand notice under Section 156 of the Act by order dated 23.02.2021, the petitioner decided to prefer an appeal before the Commissioner of Income Tax (Appeals,) [in short CIT(A)] against the original assessment order dated 23.02.2021 and the said appeal having been filed is pending before the Appellate Authority.

4.In the meanwhile, as against the said notice of demand under Section 156 of the Act dated 23.02.2021, the present writ petition has been filed.

5.When this writ petition came up for admission on 17.02.2022, after hearing the learned counsel for the petitioner as well as Mrs.Hema Muralikrishnan, learned Standing counsel for the respondents 1 and 2, I have passed the following orders:

> "As per the assessment order under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 23.02.2021, there was no tax liability against the petitioner. However, subsequently since the demand has come by way of demand notice under Section 156, by order dated 23.02.2021, the petitioner decided to prefer appeal against the assessment order and the said appeal having been filed is pending before the Appellate Authority. At this juncture, pursuant to the Section 156 demand for Assessment Year 2018-2019, they have freezed the Bank account of the petitioner and therefore, at this juncture, the petitioner has moved the present writ petition challenging the demand made under Section 156 of the Act.
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> 2. However, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel, who takes notice for respondents, would submit that, the assessment order dated 23.02.2021 is under Section 143(3). However, prior to which, when notice was issued under Section 143(1), the deduction sought for under Section 80P was disallowed and that was intimated in the proposal under Order 143(1), therefore, that amount now is demanded through the present notice

under Section 156 of the Act.

3. She will also submit that, anyhow since the petitioner chosen to file an appeal as against the assessment order, the petitioner cannot maintain both the appeal before the Appellate Authority as well as this writ petition and if it is the definite stand of the petitioner that, the petitioner has no tax liability as per the assessment order dated 23.02.2021, he ought not to have filed any appeal.

4. In response to the same, the learned counsel appearing for the petitioner wants a week's time to take decision to withdraw the appeal filed already against the assessment order dated 23.02.2021 in order to pursue this writ petition.

5. In view of the aforestated, post the matter on 22.02.2022. In the meanwhile, status quo as on today shall be maintained."

6.Pursuant to which, the case has come up for further hearing today and Mr.V.Kalyanaraman, learned Standing Counsel For M/s.Aiyar & Dolia, accepts notice on behalf of the third respondent.

7.On instructions, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents 1 and 2 would submit that, if at all there is no tax liability on the part of the assessee for the said Assessment Year as per the assessment order dated 23.02.2021, there was no necessity for the petitioner/assessee to prefer an appeal before the CIT(A). Therefore, the petitioner cannot maintain the said appeal by filing the present writ petition. Therefore, in order to pursue the present writ petition on the pretext that, there was no tax liability payable by the petitioner for the relevant Assessment Year to challenge the demand notice issued under Section 156 of the Act, the same cannot be done by maintaining the appeal statutorily filed before the Appellate Authority.

8.However, in response to the said arguments advanced by the learned Senior Standing Counsel appearing for the respondents, Mr.N.V.Balaji, learned counsel for the petitioner/assessee, on instructions, would submit that, though attempt has been made to withdraw the appeal before the CIT(A), due to technical reasons, he could not file the memo to withdraw the appeal, but soon or later, it will be done whenever it become possible for the assessee, it would be withdrawn and therefore, that kind of undertaking given on behalf of the petitioner / assessee can be recorded by this Court.

9.The learned counsel for the petitioner/assessee would also submit that, once the appeal is withdrawn, the petitioner can very well pursue the present writ petition against demand notice passed under Section 156 of the Act, where, since there has been no tax liability as per the assessment order dated 23.02.2021, absolutely, there is no reason or ground for issuing the present impugned notice. Hence, on that ground, he seeks indulgence of this Court.

10.However, the learned Senior Standing Counsel for the Revenue would contend that, if it is the stand of the petitioner/assessee that there is no tax liability as per the assessment order dated 23.02.2021 and he has also assured and made an undertaking before this Court to withdraw the appeal filed before the CIT(A), on that ground, the matter can be remitted back to the respondent, where, it is open to the petitioner/assessee to make an application for rectification under Section 154 of the Act. If such an application is made, the plea now raised by the petitioner before this Court can very well be raised before the concerned authority to consider and decide on the basis of the assessment order dated 23.02.2021 and if such a plea is made by filing a rectification petition under Section 154 of the Act, certainly, that would be considered and decided on merits and in accordance with law by the authority concerned within a period of time, that may be stipulated by this Court, she contended.

11.I have considered the said rival submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

12.Now, the petitioner/assessee has come forward to give an undertaking before this Court to withdraw the appeal filed against the assessment order dated 23.02.2021 pending before the CIT(A). The said undertaking given on behalf of the assessee by the learned counsel for the assessee is hereby taken on record.

13.Now, the question is whether the petitioner is liable to pay tax as per the assessment order dated 23.02.2021, where, if at all, there is no tax liability as claimed by the petitioner/assessee, the question of making demand as has been done under Section 156 of the Act, i.e., the present impugned order, may not arise.

14.However, that issue can be gone into by the Assessing Authority, who issued the demand notice, which is impugned herein, in which, if at all, any rectification is required to be made by the Assessing Authority, that can be done only if the petitioner come forward to make an application under Section 154 of the Act for rectification.

15.In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the petitioner/assessee shall withdraw the appeal filed against the assessment order dated 23.02.2021 for the Assessment Year 2018-19 at the earliest.

(ii)It is also open to the petitioner to file an application under Section 154 of the Act, seeking rectification and to pass an order either confirming or otherwise of the assessment order dated 23.02.2021 and in respect of such rectification petition, whatever the further input to be supplied, that can also be supplied by the petitioner, which shall be considered objectively by the Assessing Authority before deciding the application to be filed under Section 154 of the Act.

(iii)The needful as indicated above shall be undertaken by the Assessing Authority in disposing the rectification application within a period of two weeks from the date of receipt of such application from the petitioner/assessee. It is needless to mention that, once the rectification application is disposed of and if it is allowed in favour of the petitioner, the Bank attachment made against the petitioner/assessee shall be considered to be lifted forthwith.

16.With these observations and directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. Additional/Joint/Deputy/Assistant Commissioner
   of Income Tax Income-tax Officer,
   National e-Assessment Centre, Delhi.

2. Assistant Commissioner of Income Tax,
   Non-Corporate Circle 11(1) Chennai
   BSNL Building, 2nd Floor
   Income Tax Office-BSNL Tower,
   No.16, Greams Road,Chennai - 600 034.

3. The Bank Manager,
   Indian Bank, Madras High Court Branch,
   High Court, Chennai - 600 108.

+1cc to M/s.Hema Muralikrishnan, Senior Standing Counsel, S.R.No.14392
+1cc to Mr.N.V.Balaji, Advocate, S.R.No.14802

W.P.No.3249 of 2022

RGN(CO)
RGA(31/03/2022)