IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3922 of 2022
and
W.M.P.Nos.4073 & 4074 of 2022

K 553 V.Thutharipalayam Primary
Agricultural Cooperative Credit Society Ltd.,
Rep.by its Secretary G.Dhanabakkiam
V.Thutharipalayam, V.Kallipalayam Post
Palladam Taluk, Tiruppur District. ...Petitioner

-Vs-

1. The Commissioner of Income Tax (Appeals)
   Coimbatore.

2. The Additional / Joint / Deputy / Assistant
   Commercial of Income Tax / Income Tax
   Officer, Income Tax Department
   National Faceless Assessment Centre
   Delhi.

3. The Income Tax Officer
   Income Tax Department
   Ward 2(1), TPR No.121, 60 Feet Road
   Tiruppur – 641 602. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records relating to the impugned order passed by the 2nd respondent in DIN No.ITBA/AST/S/144/2021-22/1034520461(1) dated 29.07.2021 and quash the same.

For Petitioner : Mr. C.Prakasam

For Respondents : Mr.A.N.R.Jayapratap
Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the entire records relating to the impugned order passed by the 2nd respondent in DIN No.ITBA/AST/S/144/2021-

22/1034520461(1) dated 29.07.2021 and quash the same.

2.The petitioner is a Cooperative Society, against which there has been an assessment order dated 29.07.2021 under Section 144 read with Section 144-B of the Income Tax Act, 1961 (In short 'the Act'). Challenging the said assessment order, the present writ petition has been filed.

3.Mr.C.Prakasam, learned counsel for the petitioner would submit that, if at all the petitioner wants to file an appeal under the provisions of the Income Tax Act to the appellate authority against the order impugned ie., the assessment order, there should not be any pre-condition insisting the petitioner to make a pre-deposit of 20% of the demand, as that condition has not been imposed under Section 246-A of the Act. Therefore, without insisting payment of 20% of the demand the petitioner shall be permitted to file an appeal. Since that has not been done and the assessing officer, by an order dated 30.12.2021 directed the petitioner to pay 20% of the demand, the petitioner has been driven to this Court to file this writ petition against the assessment order.

4.Heard Mr.A.N.R.Jayapratap, learned Junior Standing Counsel appearing for the respondents, who would submit that, as against the impugned order ie., the assessment order dated 29.07.2021 if at all the petitioner wants to file an appeal, they can file an appeal before the Commissioner of Income Tax (Appeals) and for filing of the appeal and to entertain the appeal, there could be no pre-condition of deposit of 20% of the demand.

5.But at the same time, if the petitioner insists for any stay of the demand the petitioner has to necessarily approach the assessing authority under Section 220(6) of the Act and in this regard, already a communication has been sent by the assessing officer on 30.12.2021 directing the petitioner to pay 20% of the demand and on such payment, the remaining demand of 80% would be stayed. When that being so, the petitioner cannot challenge the assessment order directly before this Court and hence the prayer sought for in this writ petition cannot be entertained and on that ground itself, the writ petition is liable to be rejected, he contended.

6.I have considered the rival submissions made by the learned counsel on either side and have perused the materials placed on record.

7.As has been rightly pointed out by the learned Standing Counsel appearing for respondent Revenue, the petitioner in fact filed an appeal before the Commissioner of Income Tax (Appeals) against the impugned order. However, the said appeal though has been filed and it is pending, the petitioner has not paid 20% of the demand.Therefore, insisting the same, the said communication dated 30.12.2021 has been issued by the assessing authority, where the assessing authority directed the petitioner to pay 20% of the demand and also file an application seeking for stay of the remaining 80% of the demand.

8.In this context, though the learned counsel for the petitioner relied upon a decision of this Court dated 30.07.2021 in the matter of "No.K2051 Vijayapuram Urban Cooperative Credit Society Ltd., -Vs- The Commissioner of Income Tax (Appeals)" , where the learned Judge has stated that under Section 246A of the Act, no such pre-deposit for preferring the appeal is contemplated and the petitioners are not liable to pay the pre-deposit for the purpose of considering the appeal.

9.Heavily relying upon the aforesaid decision, the learned counsel for the petitioner would insist that, insofar as the appeal filed by the petitioner is concerned, it should be entertained and decided without insisting the petitioner to make any pre-deposit as has been indicated by the assessing authority vide his communication dated 30.12.2021.

10. In fact the petitioner has attempted to wrongly fit in the afore cited decision of the learned Judge dated 30.07.2021. What has been stated in the said order is that, for entertaining the appeal under Section 246A of the Act, there could be no condition of pre-deposit and therefore, without insisting the pre-deposit the appeal to be filed under Section 246A of the Act shall be entertained. Here also, absolutely there is no quarrel about the principle and in fact the appeal filed by the petitioner before the Commissioner of Income Tax (Appeals) has been entertained.

11.However, once the appeal is filed, during the pendency of the appeal, it is open to the assessing authority to make a demand. In order to avoid to make the payment of the demand, one provision is available under the Act ie., Section 220(6) of the Act, under which the assessee can approach the assessing authority where he can seek for stay of the demand. If any such application is filed, the same shall be decided by the assessing authority at his discretion, of course imposing certain conditions, depending upon the facts and circumstances of the case.

12.Here in the case in hand, though such an application is not filed by the petitioner, the assessing authority, suo-motu issued the communication dated 30.12.2021 directing the petitioner to pay 20% of the demand and further directed the petitioner to file application to seek stay of the remaining 80%

of the demand.

13.This proceedings issued by the assessing authority is in tune with Section 220(6) of the Act. Therefore, the petitioner need not construe that such insisting of 20% of the demand is a pre-deposit required for entertaining the appeal under Section 246A of the Act, but it is only a condition imposed by the assessing authority for grant of stay for the remaining amount of the demand under Section 220(6) of the Act. Therefore, for that reason the petitioner cannot once again challenge the impugned assessment order before this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India.

14.Therefore for all these reasons, this Court is not inclined to accept the prayer as sought for in this writ petition. Accordingly, the writ petition fails and it is dismissed.

15.However, this dismissal shall not preclude the petitioner to make an application under Section 220(6) of the Act to the assessing authority in tune with the communication dated 30.12.2021 and if any such application is filed, the assessing authority shall consider the same and decide it at his discretion by imposing any condition, by taking into account the financial condition and other aspects of the petitioner being a Cooperative Society and pass orders thereon.

16.With the above directions, this writ petition stands dismissed.No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Commissioner of Income Tax (Appeals)
   Coimbatore.

2. The Additional / Joint / Deputy / Assistant
   Commercial of Income Tax / Income Tax
   Officer, Income Tax Department
   National Faceless Assessment Centre
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Ward 2(1), TPR No.121, 60 Feet Road
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+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.13142

W.P.No. 3922 of 2022

MT(CO)
RGA(23/03/2022)