WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.5084 & 5086 OF 2022
AND
W.M.P.NOS.5201, 5203, 5205 & 5206 OF 2022

K.2049, Periyanaickenpalayam Primary
Agricultural Cooperative Credit Society Ltd.,
Represented by its Secretary,
N.Mohankumar, M/46,
S/o.Natarajan,
7/9, Railway Feeder Road,
S R K V Post, Coimbatore - 641 020. ...Petitioner in W.P.No.5084 of 2022

K.2065, Kalikkanaickenpalayam Primary
Agricultural Co-operative Bank,
Represented by its Secretary,
Sivaswamy S, M/58,
S/o.Subramaniam,
Maruthamalai Main Road,
Vadavalli Post,
Coimbatore - 641 041. ...Petitioner in W.P.No.5086 of 2022

Vs.

The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer,
Income Tax Department,
National e-Assessment Circle,
Delhi. ...Respondent in W.P.No.5084 of 2022

The Income Tax Officer,
Non Corporate Ward - 4(1),
No.63-A, Race Course Road,
Coimbatore - 641 018. ...Respondent in W.P.No.5086 of 2022

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order

WEB COPY

passed by the respondent in its order No.ITBA/AST/S/143(3)/2021-22/1032361663(1), dated 12.04.2021 and order No.ITBA/AST/S/143(3)/2021-22/1036016996(1), dated 29.09.2021 quash the same.

For Petitioner (in both WPs)	:	Mr.C.Prakasam
For Respondents (in both WPs)	:	Mr.A.N.R.Jayapratap Junior Standing Counsel

COMMON ORDER

Since the issue raised in both the writ petitions is one and the same, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are being disposed of by this common order.

2. The respective petitioner Cooperative Societies have moved these writ petitions challenging the order of assessment made under Section 143(3) of the Income Tax Act, 1961 (in short, 'the Act') by assessment orders dated 12.04.2021 and 29.09.2021 for the Assessment Year 2018-19 and 2017-18.

3. Though these writ petitions have been filed challenging the assessment orders as stated supra, the learned Junior Standing Counsel appearing for the respondent/Revenue has raised a preliminary objection that these writ petitions cannot be entertained because, there is an appeal provision available under the Act, hence invoking the same, appeal could be filed against the assessment orders.

4. When this was questioned, Mr.C.Prakasam, learned counsel for the petitioner would submit that, whenever such kind of appeals are filed before the Appellate Authority, in most of the cases invariably the Appellate Authority insisted upon to make such payment of the demand even though such a pre-deposit condition to entertain the appeal is not available in the appeal provision under Section 246A of the Act.

5. After hearing these arguments advanced by the learned counsel appearing the petitioners, this Court feels that, merely because in the appeal before the Appellate Authority if they insist upon to make the payment of particular percentage of the demand, which is the subject matter to be before the Appellate Authority, that cannot be a ground to file a writ petition before this Court assailing the order of assessment passed under Section 143(3) of the Act.

6. It is a settled position of law that, when there is a statutory appeal remedy available especially in tax legislation,

WEB COPY

without exhausting the appeal remedy, writ petition would not be entertained by the High Courts except the circumstances, where if there is a glaring violation of principles of natural justice or for want of jurisdiction and if also various violation of statutory provisions.

7. In the absence of these three situations, no writ petition can be entertained by this Court as there has been a proper alternative effective appeal remedy available in the statute.

8. Moreover, under Section 246A of the Act, there is no pre-condition to be imposed that, the assessee when filed appeal before the Appellate Authority to make the payment of a particular percentage of the demand. Therefore, all appeals if it is filed in time or if it is belatedly filed with condone delay petition with plausible reason it would normally be entertained by the Appellate Authority without insisting any payment as a pre-condition.

9. However, if the assessee goes before either the Assessing Authority or the Appellate Authority to seek for a stay of the demand, then, certainly some pre-condition would be imposed especially in the context of Section 220(6) of the Act. Therefore, that need not be confused here by citing the reason that while filing the appeal under Section 246A, such pre-condition would be imposed by the Appellate Authority.

10. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders :

- That the challenge made in these writ petitions cannot be entertained for the aforestated reasons, therefore, the writ petitions are liable to be rejected, accordingly are dismissed. However, it is made clear that, it is open to the petitioner to file appropriate appeal before the CIT (Appeals) with proper condone delay petition if there is a delay in filing the appeal and if such appeal with condone delay petition is filed, the same shall be considered and decided on merits by the Appellate Authority.
- It is further made clear that, if at all the petitioner wants to get a stay of the demand either by filing a petition under Section 220(6) of the Act before the Assessing Authority or before the Principal Commissioner or Appellate Authority, such authorities can decide the same on merits and in accordance with law, where, if any pre-condition is imposed depending upon the circumstances of the case, that has to be faced in the manner known to law by the petitioner/assessee.

WEB COPY

11. With these observations and directions, both the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

sp/sgl

To

1.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer,
Income Tax Department,
National e-Assessment Circle,
Delhi.

2.The Income Tax Officer,
Non Corporate Ward – 4(1),
No.63-A, Race Course Road,
Coimbatore – 641 018.

+1cc to Mr.C.Prakasam, Advocate Sr.No.15969

+2ccs to Mr.A.P.Srinivas, Advocate Sr.No.16332

W.P.Nos.5084 & 5086 of 2022

GPL(CO)
RVM(13/06/2022)

https://hcservices.ecourts.gov.in/hcservices/