IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.Nos.2315 to 2318 of 2022 and
C.M.P.Nos.17718, 17715, 17717 and 17719 of 2022

Tamil Nadu State Apex Fisheries
Co Operative Federation Limited
Represented by its Managing Director
Mrs.Noorjahan Beevi,
126, Ramakrishna Mutt Road,
Raja Annamalaipuram
Chennai - 600 028 . ... Appellant in all W.A.'s

-vs-

1. Income Tax Officer
   Non Corp Ward 19 (6) Chennai,
   Wanaparthy Block, No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600034.

2. National Faceless Assessment Centre,
   Represented by Joint/Deputy/Additional/
   Assistant Commissioner of Income Tax,
   New Delhi-110003. ... Respondents in all W.A.'s

Prayer in W.A.No.2315 of 2022: Writ Appeal filed under Clause 15 of

Letters Patent Act, to set aside the order dated 05.09.2022 passed by this Court in W.P.No.23388 of 2022 and allow the present Writ Appeal.

Prayer in W.A.No.2316 of 2022: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 05.09.2022 passed by this Court in W.P.No.23385 of 2022 and allow the present Writ Appeal.

Prayer in W.A.No.2317 of 2022: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 05.09.2022 passed by this Court in W.P.No.23376 of 2022 and allow the present Writ Appeal.

Prayer in W.A.No.2318 of 2022: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 05.09.2022 passed by this Court in W.P.No.23380 of 2022 and allow the present Writ Appeal.

For Appellant (in both W.A.'s)	:	Mr. Ravi Kannan
For Respondent (in all W.A.'s)	:	Mrs.Hema Muralikrishnan Senior Standing Counsel

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COMMON JUDGMENT

S.VAIDYANATHAN.,J
and
C.SARAVANAN.,J

These Writ Appeals have been filed challenging the order of the learned Single Judge dated 05.09.2022 passed in W.P.Nos.23388, 23385, 23376 and 23380 of 2022, in dismissing the Writ Petitions filed by the Appellant.

2. The learned Single Judge has dismissed the aforesaid Writ Petitions on 05.09.2022 with the following observation:

> "*6. I am however not inclined to accept the request as, assessments, made validly, cannot be set aside for mere asking. Admittedly, the petitioners are non-filers and there been also been no compliance to the various notices and questionnaires issued by the respondents. I thus find no infirmity in the orders passed, and in this view of the matter, dismiss these Writ Petitions. No costs. Connected Miscellaneous Petitions are also dismissed*."

3. Challenging the same, the present Appeals came to be filed.

4. Since the issue involved in all the Writ Appeals are one and the same they are taken up together and disposed of by a common Judgment.

5. The Appellant a Co-operative Society is registered under the provisions of Tamil Nadu Co-operative Societies Act, 1983. The Appellant had filed Writ Petitions in W.P.Nos.23388, 23385, 23376 and 23380 of 2022 before this Court and had challenged notices issued under Section 148 of the Income Tax Act, 1961 and the Assessment Orders

passed thereon.

6. The case of the Appellant is that the reply was given to the aforesaid notices on 08.02.2022 wherein it was stated that the appellant had inadvertently applied for PAN as a "Firm " instead of "'Association of Person'. It is submitted that the appellant was in the process of surrendering the PAN and file afresh return with the revised PAN as an " Association of Person" would be filed and therefore could not earlier file returns of income in response to the notices. It is submitted that the Appellant is otherwise entitled to the benefit of under Section 80P(2)(a)(vii) of the Income Tax Act, 1961. It is further stated that without considering the above reply, the Assessment Orders came to be passed.

7. The learned counsel for Appellant submitted that the Appellant had taken steps to surrender the PAN obtained as a Firm. It is submitted that the Appellant has filed a mercy petition as there is a mere procedural irregularity committed by it. The appellant is entitled for substantiative for benefit under Section 80P(2)(a)(vii) of the Income Tax Act, 1961. It is further submitted that if the matter is remitted back to the original

authority, the Petitioner will file required documents to prove its case.

8. The learned standing counsel for the Respondents contested the above Appeals by stating that Show Cause Notices dated 25.03.2022, 19.03.2022 and 23.03.2022 were issued to the Appellant pursuant to the letter dated 08.02.2022. Since the Appellant did not respond to the same orders were passed. That apart, the Appellant had also not filed returns in time under Section 139 of the Income Tax Act, 1961and therefore the Writ Petitions were rightly dismissed by the learned Single Judge and the same does not warrant interference. He therefore prays for the dismissal of these Writ Appeals.

9. We have considered the arguments advanced by the learned counsel appearing for the Petitioner and also learned counsel appearing for the Respondents.

10. Taking note of submissions made on either side, we do not find any reasons to differ from the findings of the learned Single Judge. We

however give liberty to the appellant to file statutory appeals. As the time limit for filing of the Statutory Appeals would have already expired, we direct the appellant to file statutory Appeal before the Appellate Commissioner under Section 246 A of the Income Tax Act, 1961 within a period of ***four weeks*** from the date of receipt of a copy of this order, along with required documents to putforth its submissions. If such appeals are filed within such time, the Appellate Commissioner shall pass necessary orders on merits and in accordance with law. All the issues are left open for being canvassed before the Appellate Commissioner.

11. This Writ Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.V.N., J.,] **[C.S.N., J]**

17.10.2022

Index: Yes / No
Internet: Yes / No
arr/kkd

To

1. The Income Tax Officer
   Non Corp Ward 19 (6) Chennai,
   Wanaparthy Block, No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600034.

2. The Joint Deputy /Additional
   Assistant Commissioner of Income Tax,
   National Faceless Assessment Centre,
   New Delhi-110003.

S.VAIDYANATHAN, J.
and
C.SARAVANAN,J.

arr/kkd

W.A.Nos.2315 to 2318 of 2022

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