IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2023

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The Hon'ble Mr.Justice **KRISHNAN RAMASAMY**

W.P.No.35066 of 2022 and
W.M.P.Nos. 34511 & 34513 of 2022

The Salem Urban Co-operative Bank Limited,
represented by its General Manager Mrs.Mythili,
No.405, First Agraharam,
Salem-636 001. ... Petitioners

Versus

1. The Income Tax Officer (TDS Ward),
No.3, Gandhi Road, Salem-636 007.

2. The Commissioner of Income Tax (TDS),
No.1510, May Flower MLD City,
Tiruchy Road, Coimbatore-641 018. ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files of the 2nd respondent in C.No.83/CIT (TDS)/TAN: CHET16748E/2022-23/DIN

No.62/CHE/12102022/00062, dated 30.09.2022 for the assessment year 2019-20 and quash the same.

For Petitioner : Mr.T.Ramesh

For Respondents : Dr.B.Ramaswamy, Sr.S.C.

ORDER

This Writ Petition has been filed, challenging the impugned order, dated 30.09.2022 passed by the 2nd respondent.

2. The petitioner filed an appeal before the 2nd respondent against the assessment order, dated 26.03.2022 passed by the 1st respondent for the Assessment year 2019-20. While filing the appeal, the petitioner made a request not to insist upon the deposit of the disputed demand since the petitioner is unable to deposit the same due to financial hardships.

3. Considering the plea of financial hardship, the 2nd respondent permitted the petitioner to deposit 20% of the disputed demand in two instalments, in the following manner:

i. The assessee shall pay Rs.18,71,216/- being the shortfall of 20 percent of the disputed demand. Considering the plea of financial hardship, the assessee is granted 2 equal instalments (Rs.9,35,608/- each) to pay the above amount. Accordingly, the first instalment shall be paid on or before 31.12.2022 and the second instalment, on or before 15.03.2023.

ii. The assessee shall co-operate with the Department for early disposal of its appeal.

4. The learned counsel appearing for the petitioner would submit that the impugned assessment order, dated 26.03.2022 was passed by the 1st respondent since the petitioner was not able to upload Form Nos.15G and 15H along with Income Tax Returns. Aggrieved by the same, the petitioner challenged it before the 2nd respondent. However, even though the petitioner expressed the financial hardship, the 2nd respondent directed the petitioner to pay 20% of the disputed demand in two equal instalments. He would further submit that non-presentation of Form Nos.15G and 15H, the petitioner is not liable to pay the tax. Hence, the learned counsel sought for setting aside the impugned order.

5. On the other hand, the learned Senior Standing counsel

appearing for the respondents would strongly oppose to grant of any waiver to the petitioner by this Court since the petitioner has deliberately not uploaded the Form Nos.15G and 15H along with the returns and when the petitioner pleaded before the 2nd respondent to provide concession in making deposit of 20% of the disputed demand due to financial hardships, the 2nd respondent has considered the same and permitted the petitioner pay the same in two equal instalments. However, the petitioner is not inclined to make any deposit, but approached this Court by way of present Writ Petitions, seeking to quash the impugned orders, which cannot be entertained.

6. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondents and perused the materials available on record.

7. The issue to be decided in the present Writ Petition is as to whether the 2nd respondent considered the financial hardships expressed by the petitioner in making the pre-deposit of 20% of the disputed demand?

8. The petitioner has pleaded financial hardships before the 2nd respondent and without imposing any conditional payment towards the disputed demand, requested to grant stay of the assessment order passed by the 1st respondent. The 2nd respondent, while exercising his discretion, ordered that the petitioner may be treated as not being default till the disposal of the appeal, subject to the condition that the petitioner shall pay 20% of the disputed demand in two equal instalments, viz., the 1st instalment to be paid on or before 31.12.2022 and the second instalment to be paid on or before 15.03.2023. Therefore, this Court is of the view that the 2nd respondent has given due indulgence to the petitioner considering the financial hardships expressed by the petitioner. Therefore, this Court is not inclined to interfere and give further indulgence to the petitioner. However, considering the fervent request made by the learned counsel for the petitioner and also considering the financial hardships of the petitioner, this Court feels it appropriate to permit the petitioner pay 20% of the disputed demand in three instalments, starting the 1st instalment from 15.12.2023 onwards.

KRISHNAN RAMASAMY, J.

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9. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected WMPs are closed.

suk 01.12.2023

To

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No.3, Gandhi Road, Salem-636 007.

2. The Commissioner of Income Tax (TDS),
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Tiruchy Road, Coimbatore-641 018.

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