BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.01.2023

PRONOUNCED ON : 31.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.1040 of 2023
and
W.M.P.(MD) Nos.978 and 979 of 2023

Q.837, Muhavoor Primary Agricultural
Cooperation Society Ltd.,
represented by its Secretary,
Muhavoor 626 111,
Rajapalayam Taluk,
Virudhunagar District. ... Petitioner

Vs.

1.The Assessment Unit,
Income Tax Department,
National Faceless Assessment Centre,
Delhi.

2.The Income Tax Officer,
Ward No.3,
130, Railway Feeder Road,
Virudhunagar 626 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned assessment order vide DIN No.ITBA/AST/143(3)/2022-23/1048120638 (1) dated 20.12.2022 and consequential demand notice vide DIN and Notice No.ITBA/AST/S/156/2022-23/1048120866(1) dated 20.12.2022 issued by the 1st respondent and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.N.Dilipkumar
Standing Counsel

ORDER

The writ petition is seeking for a Certiorari to call for the records relating to the impugned assessment order made in DIN No.ITBA/AST/S/143(3)/2022-23/1048120638(1) dated 20.12.2022 and consequential demand notice issued in Notice No.ITBA/AST/S/156/2022-23/1048120866(1) dated 20.12.2022 by the first respondent and to quash the same.

2.Heard Mr.D.Shanmugaraja Sethupathi, learned counsel for the petitioner and Mr.N.Dilipkumar, learned Standing Counsel for the respondents.

3.Mr.D.Shanmugaraja Sethupathi, learned counsel for the petitioner would submit that the petitioner is a Primary Agricultural Cooperative Credit Society with a primary object to provide assistance to the members/farmers for development of agricultural activities and all other incidental and ancillary activities. In the course of its business, the petitioner has also engaged itself in banking business, besides cooperative activities. The members of the society are also maintaining savings bank account in the petitioner society and they are entitled for interest at the rate of 3.5% per annum. The society is also running a fair price shop to implement the public distribution system of the State of Tamil Nadu. The deposits made by its members into various accounts have been invested and deposited in the Virudhunagar District Central Cooperative Bank as contemplated under the provisions of the Tamil Nadu Cooperative Societies Act and the Rules made thereunder.

4.He would claim that under Section 80P of the Income Tax Act *(herein after referred to as Act)*, the profit earned out of the credit facilities provided to the members and the profit in pursuance of the banking activities are fully exempted. It had filed the Income Tax Returns for the assessment year 2021-2022 and had claimed deduction under Section 80P(2) of the Act for the income derived as interest in the fixed deposits made in Virudhunagar District Central Cooperative Bank. He would submit that the first respondent had initiated e-proceedings by invoking Section 142B of the Act by issuing a notice dated 30.09.2022. The petitioner society had submitted its explanation on 10.11.2022 along with supporting documents. Further notice was also issued on 30.11.2022, calling upon the petitioner society to show cause as to why the proposed variations should not be made. The first respondent has also issued further notice on 08.12.2022, for which the petitioner had submitted a detailed explanation on 11.12.2022.

5.While so, the assessment order dated 20.12.2022 was issued, disallowing the exemptions claimed for the interest received from the Virudhunagar District Central Cooperative Bank and had issued a demand notice under Section 156 of the Act calling upon the petitioner society to pay a sum of Rs.37,69,417/-.

6.The learned counsel for the petitioner would contend that no personal hearing was issued to the petitioner and therefore, the assessment order impugned in this writ petition is in violation of principles of natural justice and therefore prayed to set aside the same and also the consequential demand pursuant to such order. He would further submit that the petitioner society is the Primary Agricultural Cooperative Credit Society and does not have the technological knowhow to fully participate in the e-proceedings initiated under Section 142B of the Act. He would further submit that the provisions of Section 142B of the Act takes away the opportunity of hearing and had relied upon the judgment of this Court in W.P.(MD) No.16695 of 2021 dated 16.09.2021 to contend that this Court had directed the first respondent to give a personal hearing to the very same petitioner.

7.He would further submit that when Section 80P of the Act provides for an exemption, the reason assigned by the respondents to claim that the petitioner would not be entitled to an exemption for the interest earned by the petitioner society out of the fixed deposits made in Virudhunagar District Central Cooperative Bank is wholly illegal and arbitrary. He would submit that the deposits made by the petitioner in the aforesaid bank was in furtherance of carrying on its business of banking and hence, any interest earned from and out of such investments will have to be exempted. He would also submit that even though an appeal is provided under the provisions of the Act against the impugned order, the petitioner had approached this Court, as the order impugned has been passed in violation of principles of natural justice.

8.He would rely upon the judgment of this Court in a batch of writ petitions in W.P.Nos.17 of 2020 and batch dated 31.01.2020, wherein in a similar situation, the learned single Judge of this Court had directed the petitioners therein to appear before their respective Assessing Officers on a fixed date and till such time, an interim stay of the recovery of demand relating to the issue was made. He would further submit that the deposits made by the petitioner in the aforesaid Bank are all statutory, which has to be complied with by the petitioner and hence, the interest on such statutory reserve deposits will have to be exempted. He would further submit that the reliance placed upon by the Assigning Officer in the case of ***Totgars, Co-operative Sale Society Limited Vs. Income-tax Officer, Karnataka*** reported in ***(2010) 188 Taxman 282 (SC)*** would not be applicable to the facts of the case.

9.He would submit that the society therein had claimed an exemption under Section 80P of the Act towards interests that were paid to it on investments made in a scheduled bank. He would differentiate the judgment by stating that the petitioner had made those investments in the Virudhunagar District Central Cooperative Bank in compliance with the statutory duty of the petitioner to make such deposits. Hence, he would request this Court to interfere with the assessment order impugned in this writ petition and the consequential demand notice issued pursuant to the impugned assessment.

10.Countering his arguments, Mr.N.Dilipkumar, learned Standing Counsel for the respondents at the outset would submit that the writ petition itself is not maintainable, as an effective appellate remedy is available to the petitioner. He would submit that the petitioner has been canvassing its case on its merits, which can be dealt with by the appellate forum. In support of his contention, he had relied upon the following judgments:-

> "*i) In* ***Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal*** *reported in* ***(2014) 1 Supreme Court Cases 603.***
>
> *ii) In* ***State of Maharashtra and others Vs. Greatship (India)***

Limited *reported in* ***2022 SCC Online SC 1262.***

iii) In ***Assistant Commissioner of State Tax and others Vs. Commercial Steel Limited*** *reported in* ***2021 SCC Online SC 884."***

11.He would submit that the arguments advanced by the learned counsel for the petitioner could well be raised before the appellate authority. He would further submit that Section 142B of the Act has been inserted by way of an amendment in the year 2020 with effect from 01.11.2020. When such an amendment has been made and the scheme under such provision has been implemented, it is not for the petitioner to claim that the petitioner is not having been technical knowhow. He would submit that in the present case on hand, a notice was issued to the petitioner invoking the scheme under 142B of the Act, for which the petitioner had also given a detailed explanation along with all documents and also for the further notice, it had submitted its reply and now, it cannot take a stand that it is not technically feasible for the petitioner to comply with the faceless interface provided by Section 142B of the Act.

12.He would further submit that Section 80P of the Act provides for various exemptions. The petitioner had made a claim for exemption of interest that has been received from the Virudhunagar District Central Cooperative Bank, which falls under Section 80P(2)(d) of the Act. He would further submit that the petitioner had been granted exemption under Section 80P(2)(a)(i) of the Act, which is the income that it had derived from the business of banking or providing credit facilities to its members. But however, the income that it had claimed by way of interest with the Virudhunagar District Central Cooperative Bank had been denied for the reason that the said Bank is not a Co-operative society and it is exclusively carrying on the banking activities. That apart, he would submit that the investments made by the petitioner in the Virudhunagar District Central Cooperative Bank are surplus funds in the hands of the petitioner, which are not required for its day-to-day activities. He would further submit that the impugned order does not suffer from any infirmity much less. He would submit that the writ petition itself is not maintainable, as the petitioner will have to file an appeal under part A of Chapter XX of the Act to the National Faceless Appeal Centre (NFAC) as prescribed in Form-35.

13.I have considered the rival submissions made by the learned counsels appearing on either side.

14.The issue involved in this writ petition is whether the petitioner is eligible to claim exemption under Section 80P(2)(d) of the Act. The claim of the petitioner is that the Virudhunagar District Central Cooperative Bank is a Co-operative society and not a scheduled bank and therefore, the judgment of the Hon'ble Apex Court in ***Totgars, Co-operative Sale Society Limited Vs. Income-tax Officer, Karnataka*** reported in ***(2010) 188 Taxman 282 (SC)*** will not be applicable to the facts of the case. I have analyzed the said judgment also.

15.The issue therein was that the Co-operative society claiming an exemption of interest that it had received from the scheduled bank would be exempted under Section 80P(2)(a)(i) of the Act. The judgment of the Hon'ble Apex Court could not be applied to this case, as the exemption now claimed by the petitioner is under Section 80P(2)(d) of the Act. Hence, the reliance placed upon by the Department on the said judgment to the facts of the case, in my view, is not correct. However, with regard to the claim of the petitioner that the Virudhunagar District Central Cooperative Bank is a cooperative society and not a scheduled bank are all factual disputes that will have to be raised before the appellate authority. The respondents herein have given a specific finding that the said Virudhunagar District Central Cooperative Bank is not a Co-operative society.

16.The further claim of the petitioner that Section 142B of the Act does not provide the petitioner with an opportunity of hearing cannot be made by the petitioner, as it had not challenged the statutory provisions of Section 142B of the Act, which provides for a faceless interface. The petitioner in this case pursuant to the notice issued under Section 142 of the Act invoking the scheme under Section 142B of the Act and having replied with necessary documents has participated in the enquiry under the faceless interface and hence, it cannot now turn back and say that it is prejudiced by such a procedure. The term technically not feasible in Section 142B(1)(a) of the Act would only mean that when it is not technologically feasible to invoke such provisions between the Department and the assessee. The technical advancement had reached new heights. Hence, the contentions of the learned counsel for the petitioner that it is not having the technological feasibility, in my view, deserves no consideration.

17.The reliance placed by the learned counsel for the petitioner upon the judgment of this Court in ***W.P.(MD) No.15046 of 2022 (Muhavoor Primary Agricultural Cooperative Society Limited, Virudhunagar District Vs. The Additional/Joint/Deputy Assistant Commissioner of Income Tax, Delhi and other) dated 18.07.2022***, in my view, would not be of any assistance to the petitioner. In that case, the Court had held that the order of final assessment had been passed within three days of the draft assessment and that the petitioner had been given little or no time.

18.In this case, the learned Standing Counsel for the respondents had invited my attention to the order of assessment, wherein in paragraph No.2, the details of opportunities given have been tabulated. From it, it could be seen that the petitioner had been given sufficient opportunity to explain its case. Further reliance placed upon by the learned counsel for the petitioner to the judgment of this Court in a batch of writ petitions also, in my view, would not be applicable and would not be any assistance to him.

19.The reason I arrive at is that there again the Court had given a finding that the authority has simply relied upon the *Totgars's case (stated supra)* and has not dealt with the merits of the case, namely whether the bank in which the society had invested was a Co-operative society or not. In the present case, there is a specific finding by the Department that the investments made by the petitioner in Virudhunagar District Central Cooperative Bank is not a Co-operative society and it is a banking institution. Hence, in my view the writ petitioner has got an alternative remedy of filing an appeal and the petitioner is directed to file an appeal before the appellate authority against the order impugned in this writ petition.

20.In fine, the Writ Petition is dismissed with liberty to the petitioner to file an appeal before the appropriate authority. From the order impugned, the limitation for filing an appeal is 30 days. The order impugned had been passed on 20.12.2022 and the petitioner had approached this Court on 12.01.2023. Hence, while considering the appeal, the appellate authority is directed to exclude the period, namely from the date of filing of this writ petition till the date of this order while calculating the period of limitation, if the petitioner prefers an appeal against the order impugned in this writ petition. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

31.01.2023

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No

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K.KUMARESH BABU, J.

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order in
W.P.(MD) No.1040 of 2023

31.01.2023