BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) Nos. 4499, 4536 and 4592 of 2023
and
W.M.P.(MD)Nos. 4224, 4225, 4251, 4252, 4299, 4300 of 2023

W.P.(MD)No. 4499 of 2023:-

1.A.2979 Thirumohur Primary Agricultural
Cooperative Credit Society Ltd.,
Represented Through its Secretary,
Thirumohur Post, Thirumohur,
Madurai East Taluk, Madurai - 625 107.

2.A.2995 Arumbanoor Primary Agricultural
Cooperative Credit Society Ltd.,,
Represented Through its Secretary,
Arumbanoor, Arumbanoor Post,
Madurai East Taluk, Madurai - 625 104.

3.A.2968 Chittampatti Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Chittampatti, Chittampatti Post,
Madurai East Taluk, Madurai- 625 122.

4.DRL(S) 10 Thiruparankundram Co-operative,
Primary Agricultural Rural and Development Bank,
Rep. Through its Secretary,
Pandiyanadu Cooperative Training Campus,
G.S.T Road, Thirunagar,
Madurai – 625 006.

5.A.2933 Chatra Vellalapatti Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Chatra Vellalapatti Post,
Madurai District- 625 503.

6.A.438 Kallivelipatti Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Thanichiyam Via, Vadipatti Taluk,
Madurai District - 625 221. ... Petitioners

Vs.

1.The Income Tax Officer,
Office of Income Tax, TDS Ward,
Madurai ME, Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalpuram, Madurai - 625 002.

2.The Managing Director/ Joint Registrar of
Cooperative Societies,
Madurai District Central Cooperative Bank,
North Veli Street, Madurai - 625 001.

3.The Registrar of Cooperative Societies,
170, Periyar EVR High Road,
Kilpauk, Chennai-10.

4.The Principal Secretary to Government,
Cooperation, Food and Consumer Protection Department,
Secretariat, Chennai-9.

5.The Secretary,
Ministry of Finance (Department of Revenue),
Central Board of Direct Taxes, Income Tax,
New Delhi. ...Respondents

W.P.(MD)No. 4536 of 2023:-

1.R.413 Ogalur Primary Agricultural, Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Ogalur Post, Kunnam Taluk,
Perambalur District - 621 108

2.R.960 Nerkunam Primary Agricultural, Cooperative Credit Society Ltd.,
Represented Through its Secretary,
Nerkunam Post, Veppanthattai Taluk,
Perambalur District - 621 117

3.TY. SPL 62 Veppanthattai Primary,
Agricultural Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Veppanthattai Post, Veppanthattai Taluk,
Perambalur District - 621 116

4.R.1227 Kalpadi Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Kalpadi Post, Perambalur Taluk,
Perambalur District - 621 113

5.TY.SPL.111 Sathanur Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Sathanur Post, Alathur Taluk,
Perambalur District - 621109

6.R.560 Noothapur Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Noothapur Post,
Veppanthattai Taluk,
Perambalur District - 621116

7.R.257 Siruganpur Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Siruganpur Post, Alathur Taluk,
Perambalur District - 621113

8.PR.7 Neikuppai Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Neikuppai Post, Veppanthattai Taluk,
Perambalur District – 621116

9.TY.SPL.87 Chettikulam Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Chettikulam Post, Alathur Taluk,
Perambalur District - 621104

10.TY.SPL.91 Karai Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Karai Post, Alathur Taluk,
Perambalur District - 621 109

11.TY.SPL.120 T.Kalathur Primary, Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
T.Kalathur Post, Alathur Taluk,
Perambalur District - 621 114

12.TY.SPL.122 Puthuvettakudi Primary, Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Puthuvettakudi Post, Kunnam Taluk,
Perambalur District - 621716

13.R.754 Kolakkanatham Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Kolakkanatham Post, Alathur Taluk,
Perambalur District - 621106

14.R.1144 Perambalur Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Madhanagopalapuram, Trichy Main Road,
Perambalur Post and Taluk,
Perambalu District – 621212

15.R.1228 Ammapalayam Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. Through its Secretary,
Ammapalayam Post, Perambalur Taluk,
Perambalur District - 621101.

Vs.

1.The Income Tax Officer,
Office of Income Tax,
1st Floor, No.71,
Sri Dheenadayalan Complex,
Venkatesapuram, Perambalur – 621 212.

2.The Managing Director/ Joint Registrar of
Cooperative Societies,
Trichy District Central Cooperative Bank Ltd.,
Post Box No.324,
No.1, Fort Station Road, Trichy – 620 002.

3.The Registrar of Cooperative Societies,
170, Periyar EVR High Road,
Kilpauk, Chennai-10.

4.The Principal Secretary to Government,
Cooperation, Food and Consumer Protection Department,
Secretariat, Chennai-9.

5.The Secretary,
Ministry of Finance (Department of Revenue),
Central Board of Direct Taxes, Income Tax,
New Delhi. ...Respondents

W.P.(MD)No. 4592 of 2023:-

1.N.N.591, Thiruthervalai Primary Agricultural,
Cooperative Credit Society Limited,
Rep. by Secretary, Senthamangalam,
Thiruvadanai Taluk, Ramanathapuram District.

2.N.N. 579, Thumpadaikakottai Primary Agricultural
Cooperative Credit Society Limited,
Rep. by its Secretary,
Solanthur, Thiruvadanai Taluk,
Ramanathapuram District.

3.N.N. 560, Paranoor Primary Agricultural,
Cooperative Credit Society Limited,
Rep. by Secretary, Uppur,
Thiruvadanai Taluk, Ramanathapuram District.

4.N.N. 249, Muthuppattinam Primary Agriculural,
Cooperative Credit Society Limited,
Rep. by Secretary,
Muthuppatiinam, Thiruvadanai Taluk,
Ramanathapuram District.

5.N.N. 577, Radhanoor Primary Agricultural,
Cooperative Credit Society Limited,
Rep. by Secretary,
Radhanoor, R.S. Mangalam Taluk,
Ramanathapuram District.

6.N.N. 203, Anadur Primary Agricultural,
Cooperative Credit Society Limited,
Rep. by Secretary,
Anandur, R.S. Mangalam Taluk,
Ramanathapuram District.

7.N.N. 600, Valamavoor Primary Agricultural,
Cooperative Credit Society Limited,
Rep. by Secretary, Thiruppalaikudi,
Thiruvadanai Taluk, Ramanathapuram District.

8.N.N.49, Koodalur Primary Agriculural,
Cooperative Credit Society Limited,
Rep. by Secretary,
Nathakkottai, Thiruvadanai Taluk,
Ramanathapuram District.

9.N.N.596, Appirai Primary Agriculutral,
Cooperative Credit Society Limited,
Rep. by Secretary,
Appirai, R.S. Mangalam Taluk,
Ramanathapuram District.

10.N.N. 601, Kottakudi Primary Agricultural,
Cooperative Credit Society Limited,
Rep. by Secretary, Kottakudi,
Thiruvadanai Taluk, Ramanathapuram District.

11.N.N. 584, Bagavathimangalam Primary Agriculural,
Cooperative Credit Society Limited,
Rep. by Secretary, Puthanenthal,
R.S. Mangalam Taluk,
Ramanathapuram District. ... Petitioners

Vs.

1.Union of India,
The Department of Revenue,
Ministry of Finance, New Delhi 110001.

2.The Central Board of Director Taxes,

Rep. by its Chairperson,
Income Tax Office,
District Center, 6th Floor, Room No. 610,
Lakshmi Nagar, New Delhi 110 011.

3.The Government of Tamil Nadu,
Rep. By its Chief Secretary,
Secretariat, St.George Fort,
Chennai.

4.The Registrar of Cooperative Societies,
No. 170, Periyar E.V.R. High Road,
Kilpauk, Chennai 10.

5.The Income Tax Officer,
O/o. Income Tax, TDS Ward,
176, Vandikkara Street, Chalai Bazar,
Ramanathapuram, Tamil Nadu 623 501.

6.The Managing Director/ Joint Registrar,
Ramanathapuram District Central Cooperative Bank,
Vandikkara Street,
Ramanathapuram 623 707. ...Respondents

Common Prayer in W.P. (MD) Nos. 4499 and 4536 of 2023:- Writ Petitions filed under Article 226 of the constitution of India, to issue a Writ of Mandamus, direct the respondents not to take coercive steps including deduction of TDS pending disposal of the letter of request with the 5th respondent in R.C.No. 14172/2020/CBP1.

Prayer in W.P. (MD) No. 4592 of 2023:- Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned circular passed by the 6th respondent vide Na.Ka.002172/2014/A5 dated 26.10.2021 and quash the same and consequential direction to the 1st and 2nd respondents to consider the representation / proposal of the 3rd respondent vide D.O.Lr. No. 15350/CC1/2022 dated 27.09.2022 to accord exemption to the Primary Agricultural Cooperative Credit Societies from the provision of Section 194 N of the Income Tax Act 1961.

W.P. (MD) Nos. 4499 and 4536 of 2023:-

For Petitioners : Mr. V.O.S.Kalaiselvam

For Respondents : Mr. N.Dilipkumar (for R1)

Mr. D.Shanmugaraja Sethupathy (for R2)

Mr. R.Baskaran (for R3 & R4)
Additional Advocate General assisted by
Mr. A.Baskaran,
Additional Government Pleader

W.P. (MD) No.4592 of 2023:-

For Petitioners : Mr. S.Balamurugan

For Respondents : Mr. Alaguram Jothi (for R1 & R2)
Senior Panel Counsel

Mr. R.Baskaran (for R3 & R4)
Additional Advocate General assisted by
Mr. A.Baskaran
Additional Government Pleader

Mr. N.Dilipkumar (for R5)

Mr. D.Shanmugaraja Sethupathy (for R6)

COMMON ORDER

Heard Mr. V.O.S.Kalaiselvam, Learned Counsel for the Petitioners in W.P. (MD) Nos. 4499 and 4536 of 2023, Mr. S.Balamurugan, Learned Counsel for the Petitioners in W.P. (MD) No. 4592 of 2023, Mr. N.Dilipkumar, Learned Counsel takes notice for the First Respondent in W.P. (MD) Nos. 4499 and 4536 of 2023 and Fifth Respondent in W.P. (MD) No. 4592 of 2023, Mr. D.Shanmugaraja Sethupathy, Learned Counsel takes notice for the Second Respondent in W.P. (MD) Nos. 4499 and 4536 of 2023 and Sixth Respondent in W.P. (MD) No. 4592 of 2023 and Mr. R.Baskaran, Learned Additional Advocate General takes notice for the Third and Fourth Respondent in all the Writ Petitions and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners in these Writ Petitions are Primary Agricultural Co-operative Credit Societies functioning across the State of Tamil Nadu and they are aggrieved by the enforcement of Section 194-N of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for short), by which tax has been imposed for withdrawal of payments above Rs. 1,00,00,000/- by them.

3. It has been brought to notice that the then Hon'ble Chief Minister of Tamil Nadu in the letter dated 24.03.2020 addressed to the Hon'ble Minister for Finance, Government of India has stated as follows:-

"I would like to inform that the Government of India in its Finance Bill 2019 has introduced a new section, Section 194-N, in the Income Tax Act, 1961, under which 2% has to be deducted by the payer as Tax Deduction at Source (TDS) when the aggregate amount of cash withdrawal by an account holder from one or more of his bank accounts exceed rupees one crore. The 2% TDS will be deducted on the amount of cash withdrawal exceeding one crore.

In Tamil Nadu, Cooperative Societies are functioning under a three tie structure at Village, Taluk and District level, with State Apex Cooperative Bank at its top. Primary Agricultural Cooperative Credit Society (PACCS) at the Village level withdraw cash from their Savings Bank Account in the District Central Cooperative Bank (DCCB) and issue loans to farmers and members. Since the loans to PACCS are issued as cash credit, the repayment made by PACCS into their cash credit account is again drawn through their Savings Bank Account to issue loan to farmers or members. The difference between the interest paid by the PACCS borrowing from DCCBs and the interest collected from farmers or members on the loans issued *to them, is the only source of income for PACCS. This interest spread between borrowing and lending is the interest margin available for PACCS for their financial credibility and survival.*

Deduction of 2% as TDS, for the cash drawls exceeding one crore by PACCS from DCCBs will not only erode the interest spread available to them further, but will also erode the income it had earned. Furthermore, the interest margin available to PACCS will be realized only on repayment of loan by farmers, but TDS of 2% will have to be deducted even before the loans are issued by PACCS. This will create a cash crunch for PACCS for its lending to farmers, apart from eating all their income.

The Ministry of Finance, Department of Revenue, vide its Central Board of Direct Taxes Notification 70/2019/F No. 370142/12/2019-TPL (part 1) dated 20.09.2019 has exempted the commission agent or trader operating under Agriculture Produce Market Committee and registered under any law relating to Agriculture Produce Market Committee of the State with effect from 01.09.2019 from the provisions of Section 194-N of the Income Tax Act.

If similar exemption to Section 194-N of Income Tax Act is not provided to PACCS and other Primary Cooperative Societies for their cash withdrawal exceeding rupees one crore from their accounts in the District Central Cooperative Bank, credit delivery to farmers through PACCS will be crippled and their activities will come to a halt because of the negative margin in their lending operations to farmers.

In view of the position stated above, I request you to kindly consider granting exemption to the PACCS and other Primary Cooperative Societies from the provisions of Section 194-N of the Income Tax Act, 1961, as it is detrimental to the interest of the PACCS in the State which serve the farmers."

The said request made has been followed by another letter in D.O. Lr No. 15350/CC1/2022 dated 27.09.2022 from the Chief Secretary, Government of Tamil Nadu, Chennai to the Secretary to Government of India, Finance Department, New Delhi and the Chairperson, Central Board of Direct Taxes, New Delhi seeking to accord exemption to the Primary Agricultural Co-operative Credit Societies and other Primary Co-operative Societies from the provisions of Section 194-N of the Act.

4. It is submitted by Learned Counsel for the Petitioners that without even considering the said representation made by the Government of Tamil Nadu, the authorities of the Income Tax Department of the Central Government are taking coercive action against the Primary Agricultural Co-operative Credit Societies, like the Petitioners in these cases, by deduction of tax at source under the guise of implementing Section 194-N of the Act, which is causing grave financial hardship in carrying on their business transactions with their customers, who are farmers and mostly belong to the lower strata of the society. In that backdrop, these Writ Petitions have been filed seeking direction to the Central Government to consider the representation in D.O. Lr No. 15350/CC1/2022 dated 27.09.2022 sent by the Chief Secretary, Government of Tamil Nadu to the Chairperson, Central Board of Direct Taxes and the Ministry of Finance, Government of India to accord exemption to the Primary Agricultural Co-operative Credit Societies in the State of Tamil Nadu from the provisions of Section 194-N of the Act and to consequently restrain the concerned authorities from taking any coercive steps for recovery of tax deduction at source of payments made by the District Central Co-operative Banks to the Primary Agricultural Co-operative Cr edit Societies in that regard.

5. Having regard to the aforesaid submissions made, this Court without expressing any view on the merits of the controversy involved, passes the following order:-

(i) it shall be incumbent upon the Ministry of Finance, Government of India and the Central Board of Direct Taxes, New Delhi to immediately examine the representation in D.O. Lr No. 15350/CC1/2022 dated 27.09.2022 sent by the Chief Secretary, Government of Tamil Nadu;

(ii) if it is found that any other details or supporting documents are necessary for granting the relief claimed had not been produced, the deficiencies in that regard shall be informed in writing to the concerned persons requiring the same to be furnished within a time frame of not less than 15 clear working days for the same;

(iii) in the event of not being satisfied with the said requirements even thereafter, an enquiry shall be conducted affording full opportunity of hearing to the Government of Tamil Nadu and to all stakeholders through public notice to explain their views in that regard;

(iv) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated to the Government of Tamil Nadu in writing under acknowledgment; and

(v) the authorities under the Act shall be restrained from taking any coercive action for recovery of tax deduction at source under Section 194-N of the Act from the Primary Agricultural Co-operative Credit Societies in the State of Tamil Nadu till the aforesaid exercise is completed.

In the upshot, these Writ Petitions are ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

03.03.2023
(2/2)

Index : Yes/No
NCC : Yes/No
Sm

Note: Issue order copy by 23.06.2023.

To:

1.The Income Tax Officer,
Office of Income Tax, TDS Ward,
Madurai ME, Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalpuram, Madurai - 625 002.

2.The Managing Director/ Joint Registrar of
Cooperative Societies,
Madurai District Central Cooperative Bank,
North Veli Street, Madurai - 625 001.

3.The Registrar of Cooperative Societies,
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4.The Principal Secretary to Government,
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5.The Secretary,
Ministry of Finance (Department of Revenue),
Central Board of Direct Taxes, Income Tax,
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6.The Income Tax Officer,
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1st Floor, No.71,
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7.The Managing Director/ Joint Registrar of
Cooperative Societies,
Trichy District Central Cooperative Bank Ltd.,
Post Box No.324,
No.1, Fort Station Road, Trichy – 620 002.

8. The Union of India,
The Department of Revenue,
Ministry of Finance, New Delhi 110001.

9. The Chairperson,
The Central Board of Director Taxes,
Income Tax Office,
District Center, 6th Floor, Room No. 610,
Lakshmi Nagar, New Delhi 110 011.

10. The Chief Secretary,
The Government of Tamil Nadu,
Secretariat, St.George Fort,
Chennai.

11.The Income Tax Officer,
O/o. Income Tax, TDS Ward,

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Ramanathapuram 623 707.

P.D.AUDIKESAVALU,J.

Sm

W.P. (MD) Nos. 4499, 4536 and 4592 of 2023
(2/2)

03.03.2023