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WA. Nos.666 & 669 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos. 666 and 669 of 2024
and
CMP Nos. 4615 and 4618 of 2024

The Salem Urban Co-operative Bank limited,
Rep. by its General Manager,
No.405, First Agraharam,
Salem - 636 001.

.. Appellant in both WAs

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 in both WAs

Writ Appeals filed under Clause 15 of Letters Patent praying to set aside the orders dated 01.12.2023 passed by the learned Judge in W.P. Nos.35066 and 35051 of 2022.



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For Appellant

: Mr. T.Ramesh in both WAs

For Respondents

: Mr. B.Ramaswamy
Senior Standing Counsel in both WAs

COMMON JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J)

Both these appeals are filed by the Salem Urban Co-operative Bank Limited, Salem, aggrieved by the separate orders dated 01.12.2023 passed by the learned Judge in WP Nos. 35066 and 35051 of 2022.

2. The appellant has filed the aforesaid writ petitions challenging the orders dated 30.09.2022 passed by the second respondent refusing to entertain the appeals filed by them against the orders of assessment dated 26.03.2022 of the first respondent, for the assessment years 2019-2020 and 2018-2019 respectively.

3. According to the appellant, as against the orders of assessment dated 26.03.2022 passed by the first respondent for the assessment years in question, they have filed statutory appeals before the second respondent. While filing the appeals, the appellant could not remit the 20% of the amount towards pre-deposit along with the appeals, due to extreme financial hardship



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confronted by them and hence, they prayed the second respondent to adjudicate the appeals without the pre-deposit. Notwithstanding the plea of the appellant, the second respondent passed the orders dated 30.09.2022 permitting the appellant to deposit the 20% of the amount in two equal instalments out of which the first instalment shall be remitted before 31.12.2022 and the second instalment on or before 15.03.2023. Aggrieved by such orders dated 30.09.2022 of the second respondent, the appellant has filed the Writ Petitions before the writ court.

4. When the writ petitions were taken up for hearing, the learned Judge concluded that already the appellate authority has given relief by directing the appellant to remit the 20% of the amount towards pre-deposit in two equal instalments, while so, the plea of waiver made by the appellant cannot be considered. However, taking note of the financial hardship expressed by the appellant, the learned Judge permitted the appellant to deposit the amount in three instalments. Aggrieved by the order dated 01.12.2023 of the learned Judge, the appellant has come up with the present writ appeals.



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5. The learned counsel appearing for the appellant reiterated the fact that the appellant bank is reeling under extreme financial doldrums and that was the reason they have approached the second respondent with applications seeking waiver and also filed the writ petitions before the learned Judge for the same reason. According to the learned counsel, the Assessing Officer passed the orders of assessment mainly on the ground that the appellant did not upload the Form Nos. 15G and 15H along with the returns. It is further stated that the customers of the appellant bank are agriculturists and they are exempted from payment of Income Tax under Section 80P (2) of the Income Tax Act. While so, the assessment orders itself are not legally not sustainable and therefore the appellant sought for waiver of the pre-deposit of 20% of the amount. It is also the contention of the learned counsel that if the appeals are entertained on merits, the appellant has every chance to convince the appellate authority about the legal flaw committed by the Assessing Officer and succeed in the appeals. Therefore, the learned counsel prayed for a direction to the appellate authority to entertain the appeals without pre-deposit.

6. On the other hand, the learned Senior standing counsel for the respondents vehemently opposed the relief sought in the writ appeals by contending that remitting 20% of the amount arrived at by the Assessing



Officer is a condition precedent for entertaining the statutory appeals. In fact, taking note of the financial difficulties portrayed by the appellant, the Appellate Authority permitted the appellant to remit the amount in two instalments, which was further modified by the learned Judge to be paid in three instalments. Therefore, the appellant cannot seek for waiver of the pre-deposit and they are liable to remit the 20% of the amount for entertaining their appeals. If any further indulgence is shown, it would prejudice the respondents inasmuch as the orders of assessment have been passed by following the due process of law. Stating so, the learned Senior Standing Counsel for the respondents prayed for dismissal of the appeals.

7. We have heard the learned counsel for the appellant as well as the learned Senior Standing Counsel for the respondents and also perused the records.

8. The grievance expressed by the appellant is that due to extreme financial hardship confronted by them, they have filed applications before the second respondent for waiver of the 20% pre-deposit payable by them as a condition precedent for entertaining the appeals. According to the appellant, the assessment orders are *per se* vitiated as they were passed ignoring the provisions for exemption as contemplated under Section 80P (2) of the Income



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Tax Act. It is also submitted that already the appellant had deposited 10% of the amount (Rs.18,82,780/- and Rs.14,59,440/- for the assessment years 2018-2019 and 2019-2020 respectively) and therefore, prayed for directing the appellate authority to take up the appeals and dispose of the same on merits.

9. At the outset, we are not inclined to go into the merits or otherwise of the contentions urged on the side of the appellant. The present writ appeals have been filed as against the order passed by the learned Judge, modifying the orders passed by the second respondent, and permitting the appellant to pay the 20% of the pre-deposit in three instalments. Now, it is submitted by the counsel for the appellant that they have already remitted 10% of the amount towards pre-deposit in both the appeals. Taking note of the same, we modify the orders dated 01.12.2023 passed by the learned Judge in the writ petitions and direct the second respondent/appellate authority to entertain the appeals filed by the appellant, without insisting the balance 10% of the amount towards pre-deposit. The second respondent is also directed to take up the appeals preferred by the appellant and dispose of the same, on merits and in accordance with law, after affording reasonable opportunity to the appellant, within a period of eight weeks from the date of receipt of a copy of this judgment.



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10. With the above directions, both the appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
04.03.2024

Index : Yes / No
Internet : Yes / No
av/rsh

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