IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.2504 of 2024
and W.M.P.Nos.2746 & 2743 of 2024

M/S. Telugupalayam Primary Agricultural Cooperative Bank ,
Rep. by its Secretary, S.Devi Lakshmi, 15, Co-operative Nank,
Arumuga Udayar street, Telugupalayam Post,
Coimbatore - 641 039. ... Petitioner

-vs-

1.The Principal Commissioner Of Income Tax,
PCIT, Coimbatore -1.

2.The Income Tax Officer
O/o.Income Tax Officer, Non-Corp Ward 3(1),
Coimbatore. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, call for the records of the 1st respondent in respect of the order dated 29.11.2023 in C.No. 117(36)/Stay Petition/PCIT-1/23-24 in DIN and Letter No.

ITBA/COM/F/17/2023-24/1058313926(1) and quash the same in so far as it directs the Petitioner to pay 20 percentage of the disputed demand in respect of the Assessment Year 2018-2019 for grant of stay and consequentially direct the 1st respondent to stay the recovery of the tax demand for the assessment year 2018-19 until the disposal of the appeal by the first respondent.

For Petitioner : Mr.T.Sai Krishnan

For Respondents : Mrs.S.Premalatha, Jr. SC

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ORDER

The petitioner assails an order dated 29.11.2023 of the appellate authority in the petitioner's stay petition in the appeal against the assessment order for assessment year 2018-19. The petitioner states that the impugned order directed the petitioner to pay 20% of the disputed demand entirely on the basis of the CBDT Instruction

No.1914 dated 31.07.2017 (Instruction No.1914). An assessment order was issued on 06.11.2019 in respect of assessment year 2018-19. Such assessment order, along with the assessment order pertaining to assessment years 2017-18 and 2020-21 were assailed by filing statutory appeals before the first respondent on 11.02.2020. In the stay petition filed in the said appeal relating to assessment year 2018-19, the order impugned herein was issued.

2. Learned counsel for the petitioner invited my attention to an earlier order of this Court in *M/s.Kannammal v. Income Tax Officer, Tirupur, W.P.No.3849 of 2019, order dated 13.02.2019 (Kannammal)*, and submitted that the appellate authority is required to take into consideration the principles relating to consideration of a stay application and cannot impose conditions merely by referring to Instruction No.1914.

3. Mrs.S.Premalatha, learned junior standing counsel, accepts

notice on behalf of the respondents. She submits that assessment orders relating to three assessment years were challenged by the petitioner by filing statutory appeals. In respect of assessment year 2017-18, the petitioner made the pre deposit of 20%. It is also stated that the appellate authority is bound by the Instruction 1914, as stated in the order impugned herein.

4. Instruction 1914 sets out guidelines to be taken into account while deciding stay applications. As is evident on examining such guidelines, the discretion of the appellate authority remains and it is not mandated that in all cases 20% of the disputed tax demand should be pre-deposited. This aspect was noticed by this Court in the Order in *Kannammal*, wherein, the appellate authority was directed to take into account the classical principles relating to the consideration of stay petitions.

5. On examining the order impugned herein, I find that the

appellate authority has not recorded any reasons for the conclusion that the assessee should pay 20% of the disputed tax demand. Therefore, the order impugned herein calls for interference.

6. Hence, the impugned order is quashed and the matter is remitted to the appellate authority for re-consideration of the stay application after providing a reasonable opportunity to the petitioner. While re-considering such stay application, the appellate authority shall take into account the existence of a *prima facie* case, the financial condition of the assessee and the balance of convenience and thereafter dispose of the stay application within a maximum period of ***two months*** from the date of receipt of a copy of this order.

7. W.P.No.2504 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.2746 and 2743 of 2024 are closed.

06.02.2024

rna
Index : Yes / No

Internet : Yes / No
Neutral Citation: Yes / No

SENTHILKUMAR RAMAMOORTHY,J

rna

To

1.The Principal Commissioner Of Income Tax,
PCIT, Coimbatore -1.

2.The Income Tax Officer
O/o.Income Tax Officer, Non-Corp Ward 3(1),
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