IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.8161 of 2024 and
W.M.P.Nos.9106 & 9108 of 2024

KALAPATTY Primary Agricultural Cooperative Credit Society,
Kalapatti Kalapatti Post,
Saravanmpatti, Vellanaipatti,
Coimbatore 641 035,
Tamil Nadu. ...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. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in respect of the order dated 27.02.2024 in C.No.117(58)/Stay Petition/PCIT-I/23-24 in DIN and Letter No.ITBA/COM/F/17/2023-24/1061606165(1) for the assessment year 2018-2019 and quash the same in so far as it direct the petitioner to pay 20 % 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 until the disposal of the appeal by the 1st respondent.

For Petitioner : Mr.A.Adhi Chakravarthy
For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

Challenging the impugned order dated 27.02.2024 passed by the first respondent/Appellate Authority, the petitioner has filed the present Writ Petition.

2. The case of the petitioner is that the petitioner is a Co-operative Credit Society registered under the Tamil Nadu Co-operative's Society Act, 1983 (in short, the Act) and the petitioner-Society deals with collection of deposits from its members and lend loans to its members as per the regulations of the Act. Since the petitioner-Society is carrying on the activities for the welfare of its members, it is entitled to the benefit under Section 80-P of the Income Tax Act, 1961. Apart from that, the petitioner-Society is also running 14 ration shops (Public Distribution System) on behalf of the Government of Tamil Nadu in Coimbatore District and supplying food grains and materials at subsidized price. While so, all of a sudden, in respect of the assessment year 2018-2019, the Assessing Officer has passed an order an 09.03.2023 under Section 147 read with Section 144B of the Income Tax Act, assessing the income of the petitioner society at Rs.5,70,00,000/-. Aggrieved by the same, the petitioner-society had preferred an appeal before the Commissioner of Income Tax

Appeals, NFAC, on 23.03.2023 and the same is pending. While pending the appeal, the petitioner has moved a petition before the first respondent on 23.01.2024, seeking absolute stay of the demand till disposal of the appeal. However, the first respondent had mechanically passed an order dated 27.02.2024, by referring CBDT Circular No.1914, dated 31.07.2017 and directed the petitioner to pay 20% of the total disputed demand in respect of the assessment year 2018-2019 on or before 15.03.2024. Being aggrieved by the order dated 27.02.2024, the petitioner has filed the present Writ Petition for passing appropriate orders.

3. The main contention of the learned counsel for the petitioner is that without appreciating the fact that the petitioner being a cooperative society, and it is entitled for the benefit of Section 80P of the Income Tax Act, 1961, the impugned order came to be passed demanding 20% of the total disputed demand as pre-deposit. The said order is unsustainable. Further, he would submit that since the amounts which were deposited in the Bank account of the petitioner-society was erroneously treated as income, ultimately, the petitioner society is not liable to pay any amount. Hence, he submitted that the petitioner-society seeks waiver of 20% of the total disputed demand.

4. Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents submitted that the question of waiver of 20% of the total disputed demand will not arise, and generally the respondents used to impose 20% of the total disputed demand. Further, he would submit that in other matters, this Court suggested lesser percentage, that is 15% of the total disputed demand, and the same may be considered in this case also.

5. Heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondents and also perused the materials available on record.

6. Considering the submissions made by the learned counsel on either side and taking into consideration the petitioner being a cooperative society, and while passing the order dated 09.03.2023, the Assessing Officer was wrongly treated some of the cash deposits from its members as income of the petitioner-society, this Court feels that it would be appropriate to order the percentage of pre-deposit as 10% instead of 20% of the total disputed demand.

7. In view of the above, this Court passes the following orders:

(i) The petitioner is directed to deposit 10% of the total disputed demand to the first respondent within a period of three weeks from the date of receipt of a copy of this order.

(ii) Upon the deposit of aforesaid 10% of the total disputed demand, there shall be an order of stay for the recovery.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
1. The Principal Commissioner of Income Tax,
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Coimbatore 1.
2. The Income Tax Officer,
O/o. Income Tax Officer,
Non-Corp Ward 3(1),
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Krishnan Ramasamy,J.,
jd

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