IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Dated : 22.11.2024**

Coram

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.35638 of 2024**
**and**
**W.M.P.Nos.38499, 38500, 38502 & 38503 of 2024**

THE TIRUVANNAMALAI DISTRICT
CENTRAL CO-OPERATIVE BANK LIMITED,
REPRESENTED BY ITS JOINT REGISTRAR/MANAGING DIRECTOR, MR. JAYAM, COLLECTORATE MASTER COMPLEX, VENGIKAL,
TIRUVANNAMALAI -606 604. ...Petitioner

Vs.

INCOME TAX OFFICER (TDS),
TDS WARD, VELLORE,
VELLORE-INCOME TAX OFFICE NO. 2,
BARRACKS CROSS STREET,
OFFICERS LINE,
VELLORE -632 001. .... Respondent

**Prayer:** This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records contained in order dated 07.10.2024 in ITBA/COM/F/17/2024-25/1069504522(1) passed by the Respondent for Assessment Years 2021-22 and 2022-23 for TAN.CHET03727D and to quash the same as arbitrary, illegal and unjust, and to consequently direct the Respondent to lift the attachment of the Petitioner's bank accounts towards the recovery of the demands raised for Assessment Years 2021-22 and 2022-23, and to further direct the Respondent to refrain from taking any coercive action towards recovery of demands for Assessment Years 2021-22 and 2022-23 pending disposal of the Petitioner's appeals by the Commissioner of Income Tax (Appeals).

For Petitioner : Mr.Suhrith Parthsarathy

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

**ORDER**

By consent of learned counsel on both sides, this writ petition is taken up for final disposal at the admission stage itself.

2. The present Writ Petition is filed challenging the impugned order dated 07.10.2024 whereby the respondent dismissed the stay application filed by the petitioner praying for stay of demand until the disposal of the appeal before the CIT(A).

3. The petitioner is a cooperative bank engaged in carrying on the business of banking. The petitioner has its head office at Tiruvannamalai and has 36 branches across the State of Tamil Nadu. A survey was carried out on 25.08.2022 under Section 133(2A) of the Income Tax Act (herein after referred to as the "Act"). During the course of survey it was allegedly found that the

petitioner had while making payment of interest, not deducted TDS under Section 194A of the Act. Pursuant thereto order was passed under Section 201(1) of the Act raising a demand of Rs.32,95,83,714/- and Rs.2,80,19,466/- for the assessment years 2021-22 and 2022-23. Aggrieved the petitioner preferred an appeal before the CIT(A) the same is stated to be pending. During the pendency of the appeal the petitioner filed a stay petition dated 20.08.2024 before the respondent. The respondent had vide order dated 07.10.2024 dismissed the stay petition on the ground that the petitioner-bank has not furnished any documentary evidence in order to verify the genuine hardship faced by the petitioner. It is this order dated 07.10.2024 which is the subject matter of challenge in the present writ petition.

4. The primary ground of challenge is that the petitioner in support of the application for stay dated 20.08.2024, stated that unless there is stay of recovery / demand the petitioner bank's daily and routine banking system will be seriously affected and the petitioner's bank and its branches working capital for their daily activities will be disturbed and money cannot be returned to the depositors. Again, the petitioner vide letter dated 25.08.2024 and 12.09.2024 submitted a more detailed petition / request for stay. However, the respondent

herein rejected the stay application on the premise that the petitioner had not furnished any documentary evidence in order to verify the genuine hardship faced by the applicant for the payment of aforesaid demand and that mere filing of an appeal before the Commissioner of Income Tax (CIT) (Appeals) is not a sufficient ground for granting stay.

5. The learned counsel for the petitioner would submit that pursuant to the order of rejection, there is a Bank attachment under Section 226 of the Income Tax Act, 1961, vide proceeding dated 14.11.2024. It is submitted that unless the Bank attachment is lifted, the petitioner-Bank would be subject to grave hardship and it would have serious implication on the public who had deposited with the petitioner-Bank.

6. Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondent would submit that the petitioner ought to have deducted Tax Deducted at Source (TDS) while making the payment, failure to comply with the statutory mandate has resulted in the impugned order being passed. He would further submit that the impugned order does not warrant interference more so since the petitioner has not even appeared for personal hearing on

05.09.2024.

7. In response, the learned counsel for the petitioner would submit that on 05.09.2024, they requested for time to furnish the additional details and evidence on or before 12.09.2024 and as a matter of fact, the petitioner had submitted more detailed explanation on 12.09.2024, however, the impugned order has been passed on the basis that the petitioner had neither appeared nor submitted any reply, which according to the petitioner suffers from error apparent on the face of record and also shows non-application of mind to the material on record.

8. Heard both sides and perused the materials on record.

9. This Court finds that there is merit in the submission of the petitioner inasmuch as the impugned order does not even make a reference to the petitioner's letter dated 12.09.2024 and also disregards that in the application for stay, the petitioner had in fact stated that the petitioner bank's daily and routing banking system would be seriously affected apart from the fact that the petitioner bank and its branches working capital will be disturbed

and the petitioner bank would also find it difficult in returning money due to its depositors. The failure to consider the letter dated 12.09.2024 shows that the impugned order has been passed without considering the material on record and thus stands vitiated.

10. In view thereof, this Court is inclined to set aside the impugned order dated 07.10.2024 and remand the matter back to the respondent authority for fresh consideration of the stay application.

11. In view of the fact that the impugned order dated 07.10.2024 passed by the respondent is set-aside, the petitioner's Bank attachment shall also stand lifted. This direction is being issued keeping in view that the bank attachment made pursuant to the impugned order rejecting the stay petition if permitted to continue could result in the petitioner facing difficulty in maintaining the Cash Reserve Rate in terms of the Reserve Bank Regulation, which could have serious consequences.

12. In the circumstances, it is open to the petitioner to appear before the respondent/Authority within a period of two weeks from the date of receipt

of a copy of this order with additional material etc., to demonstrate the hardship, which they would face if stay of the demand arising out of the order dated 25.07.2024 under Section 201(1) of the Act is not granted. If any such material is placed by the petitioner, the same shall be considered by the respondent/Authority and appropriate orders passed in accordance with law.

13. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

**22.11.2024**

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
jd
***Note: Issue order copy on 26.11.2024.***

**MOHAMMED SHAFFIQ, J.**
jd

To
INCOME TAX OFFICER (TDS),
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VELLORE-INCOME TAX OFFICE NO. 2,
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