BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.7227 of 2024
and
W.M.P.(MD)Nos.6671, 6672 and 6673 of 2024

The Kumbakonam Central Co-operative Bank Limited,
150, TSR Big Street, Kumabkonam,
Tamil Nadu – 612 001.
Represented by its Managing Director,
V.Periyasamay ... Petitioner

Vs.

1.The Commissioner of Income Tax (Appeals),
Income Tax Department,
National Faceless Appeal Centre (NFAC),
Delhi.

2.The Assistant Commissioner of Income Tax,
Circle 2(1), Trichy,
3rd Floor, Trichy-Main Building,
Williams Road, Cantonment,
Tiruchirapalli – 620 015. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records contained in Order dated 04.01.2024 bearing No.ITBA/NFAC/S/250/2023-24/1059371229(1) issued by the first respondent to the petitioner under Section 250 of the Income Tax Act, 1961 for Assessment

Year 2017-18 for PAN: AAAAT0148B, and to quash the same as arbitrary, illegal and unjust and contrary to the principles of natural justice, and to consequently remand the appeal to the file of the first respondent to hear and consider the appeal denovo.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

This Writ Petition is filed challenging the order dated 04.01.2024 of the first respondent/appellate authority on the premise that it is made in gross violation of principles of natural justice and also suffers from the vice of non application of mind to the material on record.

2. The petitioner is a co-operative Bank registered under Co-operative Societies Act. For the assessment year 2017-2018, the petitioner filed its return of income on 31.10.2017. The petitioner return was initially processed under Section 143(1) of the Income Tax Act, 1961. The petitioner was issued with a notice under Section 143(2) of the Act on 28.08.2018 selecting the petitioner's return for scrutiny. It is submitted that notices were issued to the petitioner, in response to which the petitioner replied by furnishing the requisite details /

documents.

3. While so, an assessment order dated 30.12.2019 came to be passed by the second respondent under Section 144 of the Act making an addition of Rs.6,42,05,841/- as “income from other sources”, on finding that the petitioner had not submitted correct and complete details in the E-filing portal, rejecting the petitioner's claim that the source for the said cash deposits are receipts from its banking business. The second respondent proceeded to treat the above sum of Rs.6,42,05,841/- as unexplained cash deposit as per the ITS data relating to cash deposit during the demonetization period.

3.1 Further, the petitioner had shown a sum of Rs.16,67,76,127/- as liability under the head “suspense account”, the assessment order has been made adding back the same as income on the premise that there is no explanation as to why the suspense account of Rs.16,67,76,127/- could not be reconciled, when the audit was conducted and report furnished under Section 44-AB of the Act.

4. Aggrieved by the order dated 30.12.2019, the petitioner preferred an appeal on 24.01.2020 before the first respondent *inter alia* submitting as under:

a) The assessment under Section 144 of the Act is unwarranted in view of the fact that the Petitioner had submitted the information called for;

b) The addition of Rs.6,42,05,841/-is unlawful in view of the fact that the petitioner carried on banking business, as duly authorised by the Reserve Bank of India and that cash had been deposited by customers (for whom KYC had been done) by the petitioner in the normal course of banking activities. Further, out of the same, only Rs.1,92,02,500/- constituted cash deposited during demonetisation. The Petitioner had further submitted that reasonable opportunity was not provided by the 2nd respondent before making the above addition.

c)The addition of Rs.16,67,76,127/- as "suspense liability" is without any basis as the 2nd respondent had neither called for any explanation in this regard before making the addition. The petitioner had submitted that the said sum was not the petitioner's money but constituted amounts payable to sundry creditors of the petitioner like cooperative societies, crop jewel loan auction refund, insurance and Government subsidy accounts etc. In fact, out of Rs.16,67,76,127/-, Rs. 2,50,00,000/- was income tax provision for financial year 2016-2017, which was duly remitted to the department. Importantly, it was submitted that the appeal papers were presented by the petitioner along with supporting documents.

5. It is further submitted by the learned counsel for the petitioner that additional details and grounds were raised by them on 13.12.2023 explaining the cash deposits received during demonetization period. It is submitted that the matter stood adjourned to 26.12.2023 to file its objection on or before 03.01.2024. The petitioner submitted its objection on 04.01.2024 as it was unable to upload on 03.01.2024 due to technical difficulties, the documents / response were uploaded on 04.01.2024. However, the impugned order was passed on 04.01.2024 without taking into account its response dated 04.01.2024. It is submitted that the delay, if any, was only in view of the time taken to gather/collect the evidence which was voluminous. It was submitted by the learned counsel for the petitioner that in any view the majority of the documents have already been submitted along with the appeal papers and thus a duty was cast upon the appellate authority to examine the same and thereafter proceed to pass orders on merits. However, the appellate authority had failed to discharge its obligation and instead rejected the grounds by saying that they are vague. According to the petitioner, the cash deposits were received by the petitioner's bank during the demonetization period and they would be in a position to explain the discrepancies if one more opportunity is granted.

6. To the contrary, it was submitted by the learned Senior Standing Counsel for the respondents that the petitioner has been granted several opportunities and thus the plea of violation of principles of natural justice may not be justified and would submit that the impugned order does not warrant interference.

7. Having considered the submission on both sides, this Court is of the view that there is merit in the submission of the learned counsel for the petitioner. Having submitted the documents along with the appeal papers, the appellate authority ought to have examined the same before proceeding to pass any orders. The order of the appellate authority stating that the petitioner herein failed to co-operate with the appellate authority and that no submissions were filed by the appellant assessee bank, except taking adjournments and that the grounds are vague, would only reveal that the appellate authority failed to consider the supporting documents filed along with the appeal, which vitiates the proceedings. It is trite law that tax proceedings are not adversarial in nature unlike civil proceedings[1]. The object of assessment is only to arrive at the correct tax liability. The authorities administering fiscal laws are under an

1 ***National Thermal Power Co. Ltd Vs, Commissioner of Income-Tax [1998] 229 ITR 383 (SC) ,***
State of Tamil Nadu vs Arulmurugan And Company (1982) 51 STC 381.

obligation to determine the liability in accordance with law after taking into account the material on record. This Court finds that the Appellate Authority has passed the impugned order without even considering the material on record, thereby, vitiating the entire proceedings. Further, though the petitioner was required to submit the documents/materials on 03.01.2024, the same was submitted on 04.01.2024, delay, if any, is only in view of the fact that voluminous evidence had to be gathered, which again was not considered by the appellate authority as the impugned order was made on 04.01.2024.

8. Considering the circumstances, this Court is of the view that the petitioner may be granted one final opportunity to submit additional grounds, if any, along with documentary evidence/records before the appellate authority within a period of four (4) weeks from the date of receipt of a copy of this order. In view thereof, the impugned order dated 04.01.2024 is set aside and the matters stand remanded to the first respondent who shall pass orders afresh after taking into account the response dated 04.01.2024 filed by the petitioner and any other documents that may be filed within the stipulated period i.e., four (4) weeks from the date of receipt of a copy of this order and pass orders in accordance with law, after providing reasonable opportunity of hearing to the petitioner.

9. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

27.08.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

1.The Commissioner of Income Tax (Appeals),
Income Tax Department,
National Faceless Appeal Centre (NFAC),
Delhi.

2.The Assistant Commissioner of Income Tax,
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Williams Road, Cantonment,
Tiruchirapalli – 620 015.

MOHAMMED SHAFFIQ, J.

Nsr

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