BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.14662 to 14671 of 2024
and
W.M.P.(MD)Nos.12858, 12859, 12861 to 12865, 12869 to 12872, 12874, 12876, 12885, 12886, 12889, 12890, 12891, 12893 & 12867 of 2024

N.N.625 V.Pudur Primary Agricultural Co-operative Credit Society,
Represented by its Secretary,
V.Pudur, V.Pudur Post,
Thiruppathur Taluk,
Sivagangai District – 630 410. ... Petitioner in W.P.(MD)No. 14662 of 2024

Vs.

The Assessment Unit,
Income Tax Department,
Ministry of Finance,
Delhi – 110 003. ... Respondent in W.P.(MD)No. 14662 of 2024

<u>PRAYER in W.P.(MD)No.14662 of 2024:</u> Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned assessment order passed by the respondent in

DIN:ITBA/AST/S/147/2023-24/1062728917(1), dated 16.03.2024, quash the same.

For petitioner in all W.Ps	:	Mr.Krishnamoorthy for Mr.T.Bashyam
For respondent in all W.Ps	:	Mr.N.Dilip Kumar Standing Counsel

*****

COMMON ORDER

By this common order, all these Writ Petitions are taken up for disposal.

2. In these Writ Petitions, the respective petitioners are Primary Agricultural Co-operative Credit Societies registered under the provisions of Tamil Nadu Co-operative Societies Act, 1983 and providing credit facilities to their members.

3. The case of the petitioners in all these Writ Petitions are that the petitioners are entitled to the deduction under Section 80P(2)(d) of the Income Tax Act, 1961 (hereinafter called as 'Act'). The respective petitioners have made investments in the Co-operative Banks, from whom, they have received interest and therefore, the case of the petitioner is that the respective petitioners are

entitled to the deduction under Section 80P(2)(d) of the Act, on the interest received from the Co-operative Banks.

4. The respective petitioners have blamed their Auditors for not filing the regular Returns under Section 139(4) of the Act. The respective petitioners were, therefore, issued with notices under Section 148A(d) of the Act, which were also not responded by the respective petitioners and ultimately, it was culminated in the orders passed under Section 148A(d) of the Act and notices under Section 148 of the Act.

5. After the notices were sent to the respective petitioners, they have filed their Returns, however, failed to participate in the proceedings initiated against the respective petitioners. The respective petitioners have again blamed their respective Auditors for failure to assist the petitioners in responding to the notices, which preceded the respective impugned orders.

6. Elaborate submissions made by the learned counsel for the petitioner stating that the petitioners are indeed entitled for benefit under Section 80P(2)(d)

of the Act. It is submitted that the mandatory requirement under Section 144B of the Act, for issuance of the draft order, has not been complied with.

7. In this connection, a reference was made on the decision rendered by this Court in ***M/s.Take solutions limited vs. Income Tax Officer and another in W.P.No.12817 of 2021 dated 19.07.2023***.

8. A specific reference was made to para 9 and the conclusion in paras 14, 15 and 16 which reads as under:

> *"9. The provisions of Section 144B of the Income Tax Act, 1961 as it stood prior to a substitution with the new provisions with effect from 01.04.2022 is clear. Under Sub-clause (xiv) to Sub-section (1) to Section 144B of the Income Tax Act, 1961 as it stood prior to 01.04.2022 for the relevant period in dispute, the assessment unit was required to make a Draft Assessment Order after taking into account all relevant materials available on the records or in a case where intimation referred to in clause (xii) was received from the National Faceless Assessment Centre make a Draft Assessment Order to the best of its judgment, either accepting the income or was payable or was refundable to the assessee as per his Return or making such variation to the said income or same and send a copy of the said order to the National Faceless Assessment Centre.*
>
> .....
>
> *14. It is evident that under Sub clause (xvi) to Sub section (1) to Section 144B of the Income Tax Act, 1961, as it stood in case any variation prejudicial to the interest of the assessee, the*

National Faceless Assessment Centre is required to serve a notice calling upon the assessee to Show Cause as to why the proposed variation should not be made.

15. As impugned order has been passed over looking as safeguard prescribed under the above provision, the Court is inclined to quash the Impugned Order and remit the case back to the respondents to pass a fresh order within a period of sixty (60) days from the date of receipt of a copy of this order.

16. The petitioner shall be heard in accordance with the procedure prescribed in force. The respondents are directed to enable the portal to facilitate the petitioner to file a reply within a period of thirty (30) days from the date of receipt of a copy of this order."

9. On the other hand, the learned Standing Counsel for the respondent in all Writ Petitions would submit that the respective petitioners are regularly assessed under the Act and deliberately, failed to file their Returns under Section 139(4) of the Act.

10. It is, therefore, submitted that in the absence of Return under Section 139(4) of the Act, the benefit of Section 80P(2)(d) of the Act will not available to the petitioner in all these Writ Petitions.

11. That apart, it is submitted that the respective petitioners have neglected

assessment in as much as neither filed their Returns nor participated in the proceedings after the notices were issued under Section 148 of the Act and thus, the respective impugned orders have been passed.

12. The learned Standing Counsel for the respondent would also submits that the notices were issued to the addresses of the respective petitioners, which were received by them. Despite the same, the respective petitioners have not come forward to participate in the proceedings and thus, the respective impugned orders have been passed.

13. Having considered the submissions made by the learned counsel for the respective petitioners and the learned Standing Counsel for the respondent in all Writ Petitions, the Court is of the view that the final issue relating to the availability of exemption under Section 80P(2)(d) of the Act, cannot be decided under Article 226 of the Constitution of India.

14. In these cases, no doubt the petitioners have neglected. However, the petitioners do deserve one more opportunity to went out their grievances in the

re-assessment proceedings. Therefore, the cases are remitted back to the respondent to pass fresh orders on merits and in accordance with law from the stage of show cause notice after the issuance of Section 148 notices to the respective petitioners, since the petitioners have neglected by not filing of Return both at the stage of filing of regular Return under Section 139(4) of the Act and have not participated in the proceedings, despite the service of the respective show cause notices through post to the respective petitioners.

15. Since the respective petitioners have neglected and did not comply with the requirements of the Act, under new regime, the respective petitioners are directed to pay a sum of Rs.10,000/- each to the credit of Siddha Centre, Madurai, Madurai Bench of Madras High Court, Madurai operated by the Registrar (Administration) (Account No:-6865578213,IFSC Code:- IDIB000H040, Indian Bank, High Court Branch, Madurai), within a period of 15 days from today.

16. It is made clear that the petitioner shall participate in the *de-novo* proceedings and co-operate with the respondent, failing which, the respondent is at liberty to proceed against the respective petitioners in accordance with law

based on the available material on record.

17. The impugned orders, which stand quashed, shall be treated as addendum to the respective show cause notices issued to the respective petitioners. The respective petitioners shall file their consolidated reply within a period of 30 days from the date of receipt of a copy of this order and be ready to upload the same as and when the intimation is received. In any event, the respective petitioners shall also transmit the same to the jurisdictional Assessing Officer.

18. All these Writ Petitions are disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Post the cases on 26.07.2024, for reporting compliance.

Index : Yes / No
Internet : Yes / No
apd

11.07.2024

C.SARAVANAN, J.

apd

W.P.(MD) Nos.14662 to 14671 of 2024

11.07.2024