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W.P.No.5308 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	24.01.2025
Pronounced On	25.02.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.No.5308 of 2022
and W.M.P.Nos.5394, 5395 & 5396 of 2022**

- 1.The Subramaniaswamy Weaver's Cooperative
Production and Sale Society Ltd., E.H.114,
Rep. by its President,
C.Nandhakumar, M/62,
S/o.Chenniappan,
No.75, Thoppupalayam,
Thoppupalayam Post – 638 051,
Chennimalai, Erode District.
- 2.The Chennimalai Indhira Weaver's Co-operative
Production & Sale Society Ltd. No.E.H.24,
Rep. by its President,
A.Ravichandran, M/68,
S/o. Arumuga Gounder,
No.205, Sakthi Nagar, P.R.S.Road,
Chennimalai, Erode District.
- 3.The Cheran Weavers Cooperative
Production & Sale Society Ltd., E.H.28,
Rep. by its President,
K.Ravi, M/50,
S/o.Ramasamy,
No.156-D, Kamaraj Nagar,
Chennimalai – 638 051,
Perundurai Taluk, Erode District.



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4.E.H.131, The Kalikkavalasu Primary Cum
Industrial Handloom Weavers Cooperative
Production and Sale Society Ltd.,
Rep. by its President,
N.Govindasamy, M/63,
S/o.Nanjappa Gounder,
Kalikkavalasu, Muruganthozhuvu Post,
Chennimalai – 638 051, Erode District.

5.E.H.258, Periyar Power Loom Weaver's
Cooperative Production & Sale Society Ltd.,
Rep. by its Director,
P.Sivashanmugam, M/50,
S/o.Palanisamy,
No.2/97, Bharathiyar Street,
Nathakadaiyur – 638 108.
Tiruppur District.

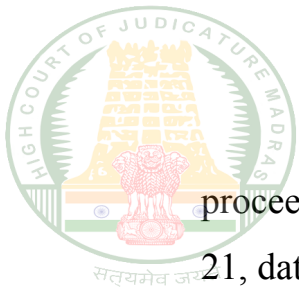
...Petitioners

Versus

- 1.The Income Tax Officer,
TDS Ward, Income Tax Office,
Erode, Erode District.
- 2.The Managing Director,
Erode District Central Cooperative Bank Ltd.,
No.1, Bhavani Main Road,
Erode, Erode District.
- 3.The Assessment Officer,
Income Tax Department,
Erode, Erode District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of certiorari calling for the entire records
relating to the impugned order passed by the 2nd respondent in his



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proceedings Na.Ka.No.01560/95-96/Valarchi 1, Dev.Circular No.12/2020-21, dated 01.04.2021 and quash the same.

WEB COPY For Petitioners : Mr.C.Prakasam

For Respondents – 1 & 3: Dr.B.Ramaswamy,
Senior Standing Counsel

ORDER

In this writ petition, petitioner has challenged the order passed by the 2nd respondent in proceedings bearing Na.Ka.No.01560/95-96/Valarchi 1, Dev.Circular No.12/2020-21 dated 01.04.2021.

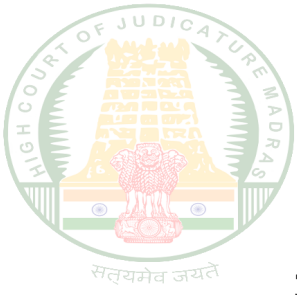
2. Operative portion of the impugned order reads as under:

“In the letter of Tamil Nadu State Chief Co-operative Bank found in Reference 2, details of the amendments made in the Finance Act – 2021 regarding the deduction and payment of TDS amount in connection with the income tax account have been given.

In the above circular of Chief Co-operative Bank, details of Income Tax Rate Structures to be deducted from the bank in the financial year 2021-2022, Service Tax Charges and submission of Tax Accounts have been given.

Chief Banking Divisional Manager and all Branch Managers of the Bank are hereby informed to strictly follow the instructions given in the circular of Chief Co-operative Bank attached hereto.

Acknowledgement of receipt of this circular is requested to be sent by return post.”



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3. The specific case of the petitioners is that the petitioners are Weavers Cooperative Production and Sale Society engaged in utilizing the services of weavers by supplying yarn to weavers for making dhoties, sarees and bed etc.

4. The learned counsel for the petitioners submitted that the payments are made to the weavers for their labour and similarly, payments are made to the supplies of yarn. The amounts deposited into the 2nd respondent Bank by the Government towards the manufactured products by weavers are marketed through State Government Agencies, for which, the petitioners get 30% subsidy from the State Government. It is submitted that the activity undertaken by the petitioner is on No Profit & No Loss basis and therefore, deduction of TDS by the 2nd respondent Bank in terms of Tamil Nadu State Head Cooperative Bank Circular dated 17.03.2021 is contrary to Section 194N of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act').

5. On the other hand, learned Senior Standing Counsel appearing for



the respondents 1 & 3 submitted that as per Section 194N of the IT Act, 2nd

respondent Bank was duty bounded to deduct 2% TDS for paying any sum,

being the amount or the aggregate of amount, as the case may be, in cash

Rs.3 Crores during the previous year.

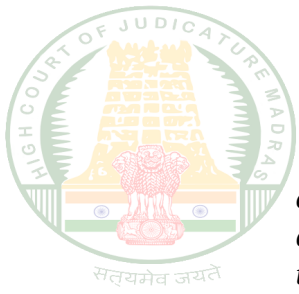
5.1. In this connection, learned Senior Standing Counsel drew the attention of this Court to Paragraph Nos.11 to 16 of the counter affidavit filed by the 1st respondent, wherein, it has been stated as follows:

“11. Further, as per the 2nd proviso to Sec.198 of the Income Tax Act, 1961, the sum deducted in accordance with Sec.194N for the purpose of computing the income of an assessee, is not deemed to be income received. Whereas in respect of TDS made under other sections of the Act, the TDS amount is considered as the income of the deductee. Sec.194N of the Act introduced TDS on amount which may not form part of the income of the deductee and this law has been duly approved by the Parliament. Therefore, the provisions of Sec.194N will have to be followed in word and spirit.

12. It is reiterated that Sec.194N has been inserted with an avowed object of phasing out black money through cashless transactions and encourage transactions through banking channels.

13. The provision of law introduce in Section 194N is intended to promote digital economy and curtail cash transactions. In any case of the deduction, if any made u/s. 194N in the case of the petitioner is made available as tax credit to the petitioner and can be claimed as refund by the petitioner while filing Return of Income. Hence, the deduction u/s.194N does not in any way affect the claim of petitioner u/s.80P of Income Tax Act, 1961.

14. It is submitted that provisions of Section 194N is applicable only if there are cash withdrawals exceeding Rs. One Crore during a financial year. As long as these societies operate through banking



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channels and cash withdrawals, if any, do not exceed Rs. One Crore, question of TDS under Section 194N of the Act would not arise. Thus, there is no issue of the section adversely affecting the operations of Primary Agricultural Societies, as claimed in the affidavit.

15. It is submitted that as per the Income Tax Act section 197A(1), Form 15G/15H is only applicable to the case of individual taxpayer who is resident of India and not applicable to other tax payers such as company, firms, HUF, AOP, Local body and Artificial Judicial person. Here section 197A(1) clearly mentions “Individual”, so it is not applicable to persons other than individuals.

16. It is submitted that if the loan amounts are directly transferred by the Societies to the bank accounts of the farmers the question of TDS under Section 194N would not arise. Almost all the farmers presently hold bank accounts and therefore, there is no difficulty in executing the loan transactions through banking channels and thereby avoiding application of the provisions of Section 194N. Application of Section 194N is made on cash withdrawals and there is no distinction made in the provision regarding the nature of transaction whether loan or not.”

5.2. Further, learned Senior Standing Counsel submitted that the issue involved herein is no longer *res integra* and is squarely covered by the decision of this Court rendered in **W.P.Nos.3919 of 2022 etc. batch dated 18.12.2023**, wherein, an identical challenge was made by the petitioners therein and this Court has answered the issue against the petitioners. Therefore, this writ petition is liable to be dismissed.

6. In reply, learned counsel for the petitioner submitted that the amounts deposited into the 2nd respondent Bank is the subsidy granted by



the Government to the petitioners, for sale of various items.

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7. Heard the learned counsel on either side and perused the materials available on record.

8. Section 194N of the IT Act is usefully extracted hereunder:

“194N. Every person, being,—

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, as income-tax:

Provided that in case of a recipient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit of file return of income under sub-section (1) of [section 139](#) has expired, immediately preceding the previous year in which the payment of the sum is made to him, the provision of this section shall apply with the modification that—

(i) the sum shall be the amount or the aggregate of amounts, as the case may be, in cash exceeding twenty lakh rupees during the previous year; and

(ii) the deduction shall be—

(a) an amount equal to two per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds twenty lakh rupees during the previous year but does not exceed one crore rupees; or



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(b) an amount equal to five per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds one crore rupees during the previous year:

Provided further that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the first proviso shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification:

⁴*[Provided also that where the recipient is a co-operative society, the provisions of this section shall have effect, as if for the words "one crore rupees", the words "three crore rupees" had been substituted:]*

Provided also that nothing contained in this section shall apply to any payment made to—

- (i) the Government;*
- (ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;*
- (iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934);*
- (iv) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007):*

Provided also that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the provision of this section shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification."

8.1. A reading of the above provision makes it clear that the 2nd respondent Bank is duty bounded to deduct tax on payments to be made to the petitioners. Even if tax was deducted on sources by the 2nd respondent



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Bank, if no tax was payable by the petitioners, the amount will have to be refunded back to the petitioners after assessments are completed pursuant to returns filed under Section 139 of the IT Act. Therefore, there is no merits in the case of petitioners.

9. It is pertinent to state that under similar circumstances, this Court vide its order ***dated 04.11.2022 in W.P.Nos.17136 of 2022 etc. batch*** dismissed a batch of writ petitions in the case of ***S.N.299 Molasi Primary Agricultural Cooperative Credit Society Ltd. Vs. The Income Tax Officer, Namakkal***. Relevant portion of the said order reads as under:

“3. The impugned Circulars refer to the statutory mandate of Section 194 N of the Income Tax Act, 1961 (in short 'Act') providing for deduction of tax on cash withdrawal. The provisions of Section 194 N coming under Chapter XVII dealing with 'collection and recovery - deduction at source' provides for deduction of an amount equal to 2% of any cash withdrawal made by persons from

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking;

or

(iii) a post office.

4. It is the case of the petitioners that there should be no deduction at all, that could be effected from the withdrawals made by them from the banks. The petitioner societies are intermediaries between the bank and agriculturists, who are beneficiaries of the withdrawals made by the petitioners.



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5. In most instances, the amounts have been sanctioned by the State and the petitioner societies are mere conduits or facilitators. Thus, deduction of tax, in such a situation, would greatly prejudice the ultimate beneficiaries of the loans who are farmers and small traders.

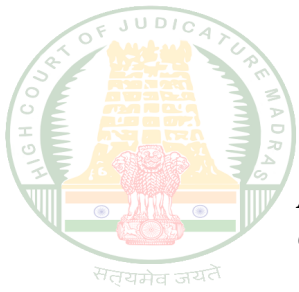
6. That apart, the funds withdrawn by the petitioners for onward transmission to the farmers, even if construed to be the income of the petitioner societies together with other incomes earned by the societies, are entitled for deduction in terms of Section 80P of the Act. This would also support their stand that no tax is liable to be deducted at source from the withdrawals.

7. The petitioners additionally submit that, in the budget speech of the Hon'ble Finance Minister, while introducing Section 194N, the proposal for deduction of tax of cash withdrawals was restricted to business payments only. The avowed object was 'to discourage the practice of making business payments in cash- and it was proposed 'to levy TDS of 2% of cash withdrawal exceeding one crore in an year from a bank account'. Thus, Section 194N must be held to be applicable only in respect of business payments and the present payments would not come within the ambit of Section 194N.

8. They also refer in their pleadings, to the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, New Delhi Vs. Eli Lilly and Co. (India) (P) Ltd., [178 Taxmann 505]. This judgment is to the effect that the purpose of provisions for tax deduction under Chapter XVIIB, is to see that any sum which is chargeable to tax under Section 4 of the Income Tax Act must be brought within the ambit of tax with the requisite deduction.

9. Thus, it is only in respect of amounts that constitute income in the hands of the payee that tax should be deducted. In the present case, the withdrawals do not constitute income of the petitioner and hence such liability would not arise.

10. They place great reliance upon a CBDT Notification bearing No.70 of 2019 dated 20.09.2019, whereunder commission agents or traders operating under the provisions of the Agricultural Produce Market Committee (APMC) have been permitted to withdraw cash in excess of one crore without deduction of tax at source, upon them establishing that such withdrawals were for the purpose of making payments to the farmers for purchase of agricultural produce as well as satisfaction of other allied conditions. They would claim parity with the



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APMCs and thus argue that there would be no liability to tax and consequently no necessity to deduct tax at source.

11. The respondents contest the writ petitions vehemently. The Income tax department reiterates the mandatory nature of Section 194 N. Only the Kanchipuram Central Cooperative Bank Ltd has filed a counter in W.P.No.21856 of 2022 challenging the maintainability of the Writ Petitions in light of the decision of this Court in K.Marappan V. Deputy Registrar of Co-operative Society (2006 (4) MLJ 641).

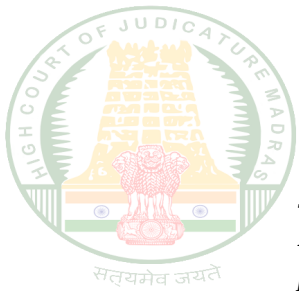
12. The Full Bench of this Court has in the above decision, held that under the scheme of the Tamil Nadu Cooperative Societies Act, 1983, it is only the alternative and statutory appeal mechanism, particularly appeal provision under Section 153 that must be invoked by the Co-operative Societies. The Banks also point out that the Circulars merely draw attention to the statutory provisions of the Income tax Act in regard to tax deduction.

13. Heard learned counsel. The counter filed by the Kancheepuram Central Cooperative Bank Limited, R2 in W.P.No.21856 of 2022 states that there are 264 Primary Agricultural Societies (PACCS) functioning under it. Pursuant to the introduction of Section 194 N w.e.f. 01.07.2020, there was a wide ranging survey by the Income-tax Department where it was noticed that the bank had not deducted taxes for the cash payments exceeding, in aggregate, a sum of rupees one crore.

14. The bank was thus taken to task and its liability for non-deduction was determined at a sum of Rs.9,58,77,590/-. This demand relates to the period 01.09.2019 to 31.03.2020, post introduction of Section 194 N as well as the period 2020-21. It is only thereafter, that the banks proceeded to apply the provisions of Section 194 N to insulate themselves from any liability in this regard. The impugned circulars have been issued, and must be seen, in the background of the aforesaid events.

15. The provisions of Section 194 N provide for a mandatory deduction of 2% of cash withdrawals and the object is to discourage, and drive the move toward a cashless or cash-free economy. The scheme of tax deduction also allows, by way of an application under Section 197, for a payee to seek the remedy of deduction at nil/lower rate under various provisions of the Act. However, Section 194N is conspicuous by its absence therein, and does not figure in the list of such provisions.

16. The intention is clear, that compliance with the requirement of Section 194 N is non-negotiable except in line with the specific exceptions



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stipulated under the proviso extracted below:

Provided also that nothing contained in this section shall apply to any payment made to-

- (i) the Government;*
- (ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;*
- (iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934);*
- (iv) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007):*

Provided also that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the provision of this section shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification.

17. There is thus, an avenue provided for a recipient falling outside the scope of the exceptions, to seek exemption from the application of Section 194N and hence, if at all the petitioners believe that they qualify for the exemption, they may seek redressal under the in-built statutory mechanism provided as above, if they so choose.

18. To a query from the Court, as to who would constitute the specific authority before whom such prayer was to be made, the respondents have reported written instructions from the Commissioner of Income Tax (TDS), Coimbatore stating thus: 'As per business allocation rule, Central Government for tax purposes is Finance Minister of India. Hence, any request may be in the name of the Finance Minister with copy to CIT ITA CBDT North Block who would process such requests.' The petitioners may thus approach the competent authority in the Government seeking relief from the application of Section 194N of the Act.

19. The submissions in relation to the grant of deduction under Section 80P are premature as is reliance upon the judgement in the matter of Eli Lilly. Eligibility to deduction must be tested by the authorities in the course of assessment as it involves the determination of several questions of fact. The society is always entitled to, in the return of income filed by it,



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seek credit of the taxes attributable to the income returned by it and any excess deduction, if the stand of the societies is accepted in assessment, would have to be refunded to them.

20. My attention is also drawn to an order passed by learned Judge in Madurai in Tirunelveli District Central Cooperative Bank Limited V. The Joint Commissioner of Income Tax (TDS) (W.P.(MD)Nos.6102 to 6125 of 2020 etc. batch, order dated 27.07.2020).

21. Those Writ Petitions have been allowed and the impugned assessments remitted to the file of the assessing officers to be redone afresh. Inter alia, a direction has been given to the assessing officers to exclude the Pongal cash gift distributed by the petitioner banks at the instance of the Government of Tamil Nadu on the reasoning that the societies had merely acted as business correspondents of the banks.

22. The learned Judge also proceeds to state that it was open to the banks to establish before the assessing officers that the sums withdrawn by the member societies did not represent income in their hands, after considering the evidence available in that regard. In my considered view, the aforesaid examination can be carried out only in the instance of the societies and not at the instance of the banks, who are payers, with statutory responsibility to deduct. That apart, the matter is stated to be pending in appeal in W.A.(MD)Nos.1137 of 2020 etc. batch and interim stay granted on 17.12.2020.

23. For the above reasons, the challenge to the impugned Circulars cannot be entertained as the District Central Cooperative Banks have, therein, merely sought to bring to the notice of the petitioner societies the statutory provisions in regard to deduction of tax, enjoining that they adhere to, and comply with the same, scrupulously. There could be no fault attributed to R2 Banks in this regard.

24. In light of the discussion as above, the challenge to the Circulars fail and these Writ Petitions are dismissed both on the ground of maintainability as well as merits. No costs. Connected Miscellaneous Petitions are also dismissed.”



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10. Later, in a case of identical nature, this Court followed the above order and dismissed a batch of writ petitions vide its order ***dated 18.11.2022*** in ***W.P.Nos.2221 of 2022 etc. batch.***

11. This writ petition is therefore liable to be dismissed in the light of the observations made by this Court in order ***dated 18.11.2022*** passed in ***W.P.Nos.2221 of 2022 etc. batch.*** It is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

25.02.2025

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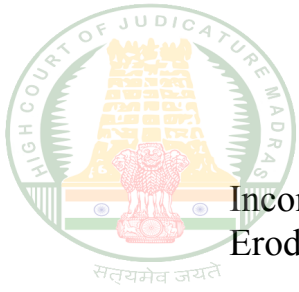
Speaking Order (or) Non-Speaking Order

To

1.The Income Tax Officer,
TDS Ward, Income Tax Office,
Erode, Erode District.

2.The Managing Director,
Erode District Central Cooperative Bank Ltd.,
No.1, Bhavani Main Road,
Erode, Erode District.

3.The Assessment Officer,



Income Tax Department,
Erode, Erode District.

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C.SARAVANAN, J.

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**Pre-Delivery Order in
W.P.No.5308 of 2022**

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