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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No. 10426 of 2024
and
W.M.P.Nos.11416 & 11417 of 2024

The Vellore District Central Co Operative Bank Limited
3/1 Anna Salai Officers Line
Vellore-632 001
Represented by its General Manager Mr.R.JAYASANKAR.
...Petitioner

Vs

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 1, VELLORE INOCOME TAX OFFICE
NO. 2 BARRACKS CROSS STREET,
OFFICERS LINE VELLORE -632 001. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the respondent contained in the notice issued under Section l48A(b) of the Income Tax Act 1961 bearing DIN and Notice No. ITBA/ AST/F/148A(SCN)/2023-24/1060813674(1) dated 12.02.2024 and all consequential proceedings including but not limited to the order passed by the respondent under Section 148A(d) of the Income Tax Act 1961 bearing DIN and Notice No. ITBA/ AST/F/148A/2023-24/1063718853(1) dated

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30.03.2024 and the notice issued by the Respondent under Section 148 of the Income Tax Act 1961 bearing DIN and Notice No.ITBA/AST/S/148_1/2023-24/1063721851(1) dated 30.03.2024 for PAN AAAAT0115G for Assessment Year 2017-18 and to quash the same, and consequently, to forbear the respondent from in any manner, reassessing the petitioner's income under Section 147 of the Income Tax Act, 1961 for the AY 2017-18.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Dr.B.Ramaswamy,
Senior Standing Counsel

Order

The challenge in this Writ Petition is to the notice issued under Section l48A(b) of the Income Tax Act 1961 dated 12.02.2024 and all consequential proceedings including but not limited to the order passed by the respondent under Section 148A(d) of the Act dated 30.03.2024 and the notice issued by the respondent under Section 148 of the Act dated 30.03.2024 for Assessment Year 2017-18 and to quash the same.

2. Mr.Suhrith Parthasarathy, learned counsel appearing for the

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petitioner would submit that the petitioner filed return of income (ROI) on 27.09.2017, declaring a total loss of income at Rs.14,20,68,504/-, and claimed a deduction of Rs.20,71,12,608/- under Section 36 (1) (vii) (a) of the Act towards provision for bad and doubtful assets; that the petitioner's case was selected for scrutiny and a notice under Section 143 (2) of the Act dated 09.08.2018 was issued, seeking for certain particulars from the petitioner and the petitioner also furnished all required documents; that after a scrutiny of all such details, an assessment order came to be passed on 10.12.2019 under Section 143 (3) accepting the ROI, but, the petitioner, to their shock and surprise on 12.02.2024, received a notice under Section 148 A (b) of the Act, to show cause, as to why, the deduction to the tune of Rs.4,48,18,285/- out of Rs.20,71,12,608/- claimed under Section 36 (1) (vii) (a) of the Act should not be disallowed and brought to tax.

2.1 The learned counsel for the petitioner contended that the reason, which formed the basis for issuance of notice under Section 148 A is that, according to the respondent, one of the petitioner's branches, situated at Kilvathinankuppam, (called as K.V.Kuppam) has a population of 1,28,679/-

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and the same would not fall within the purview of Rural area, therefore, the petitioner was not eligible to claim deduction under Section 36 (1) (vii) (a) of the Act; that the petitioner filed a reply dated 13.02.2024 setting on record its objections to the reopening of the assessment by contending that the petitioner's Branch situated at K.V.Kuppam is a Village, having population of only 5,321 as per 2011 census, in fact, the petitioner also enclosed a copy of a certificate obtained from the Village Administrative Officer, which confirms the population of the said Village as below 10,000; that further, the petitioner has stated in the said reply that they have been running their branch in the said Village from 28.01.1983, and claiming deduction under Section 36 (1) (vii) (a) of the Act for all the assessment years right from 28.01.1983 in respect bad and doubtful assets and that there was no escapement of income; that nevertheless, the respondent passed an order under Section 148 A (d) of the Act, dated 30.03.2024, whereby, the petitioner's objection were rejected by stating that the certificate obtained from VAO is not valid as he is not the Competent Authority to issue such Certificate and such certificate has to be obtained from Tahsildar.

3. Dr.B.Ramaswamy, the learned Senior Standing Counsel for

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respondent would submit that the petitioner's objections/reply was rejected by the respondent due to the sole reason that the petitioner was not able produce certificate obtained from a Competent Authority so as to prove that the area, where, the petitioner's branch is situated, has a population below 10,000, therefore, the petitioner is entitled to claim deduction of 10% of the aggregate average advances of K.V.Kuppam branch, and the present impugned order came to be passed, whereby, the deduction to the tune of Rs.4,48,18,285/- out of Rs.20,71,12,608/- claimed under Section 36 (1) (vii) (a) of the Act has been disallowed and brought to tax.

4. In reply, the learned counsel for the petitioner would submit that after the Writ Petition is filed, the petitioner has also obtained a certificate from Tahsildar, dated 24.04.2024 wherein, it is stated that K.V.Kuppam Village has a population of 5,321 as per 2011 census and the learned counsel also produced the Certificate before this Court for reference, and therefore, prays that the impugned order may be set aside and the matter may be remanded back to the respondent for re-consideration, and the respondent may be directed to pass appropriate orders after taking into

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consideration of the Certificate issued by the Tahsildar.

5. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for respondent and perused the materials placed on record.

6. The petitioner is a Cooperative Bank, registered under the Cooperative Societies Act and licensed by Reserved Bank of India. The petitioner got registered as an Association of persons with the respondent-Income Tax Department. The petitioner filed its return of income (ROI) on 27.09.2017, declaring a total loss of Rs.14,20,68,504/-, and claimed a deduction of Rs.20,71,12,608/- under Section 36 (1) (vii) (a) of the Act towards provision for bad and doubtful assets, pursuant to which, an assessment order was also passed on 10.12.2019 under Section 143 (3) accepting the ROI.

7. Whileso, on 12.02.2024, the petitioner received a notice under

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Section 148 A (b) of the Act, to show cause, as to why, the deduction to the tune of Rs.4,48,18,285/- out of Rs.20,71,12,608/- claimed under Section 36 (1) (vii) (a) of the Act should not be disallowed and brought to tax. According to the respondent's contention, the population of K.V.Kuppam, which comprises of 38 Villages has a population of 1,28,679, therefore, the said Village does not fall within the purview of Rural, and therefore, the petitioner is not entitled to claim deduction under Section 36 (1) (vii) (a) of the Act towards bad and doubtful assets. The petitioner, on receipt of such notice, filed a reply/objection dated 13.02.2024 stating that the petitioner's branches, situated at K.V.Kuppam has a population of only 5,321 as per 2011 census, in fact, the petitioner also enclosed a copy of a certificate obtained from the Village Administrative Officer, which confirms the population of the said Village as per 2011 census was only 5,321, and the petitioner has been running their branch in the said Village from 28.01.1983, and claiming deduction under Section 36 (1) (vii) (a) of the Act for all the assessment years in respect bad and doubtful assets and that there was no escapement of income. However, the respondent passed an order dated 30.03.2024 under Section 148 A (d) of the Act, rejecting the

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petitioner's objection on the ground that the certificate obtained from VAO is not valid, as he is not the Competent Authority to issue such Certificate and it is the Tahsildar, who is competent Authority to issue such certificate.

8. Thus, in the light of the aforesaid facts and circumstances of the case, it is clear that the impugned order came to be passed on the ground that the petitioner was not able to produce the certificate from the Competent Authority so as to prove that the petitioner's branch situated at K.V.Kuppam comprising of 38 villages, has a population below 10,000/- and the same falls within the purview of rural area and the certificate that was produced by the petitioner before the respondent in support of their claim at the time of filing reply was a certificate issued by VAO, which according to the respondent was not valid and therefore, petitioner's claim for deduction in terms of Section 36 (1) (vii) (a) of the Act towards bad and doubtful assets was declined. However, taking into consideration of the fact that after the filing of the Writ Petition, the petitioner has obtained a certificate from the Tahsildar of the subject area, and also produced a copy of the same before this Court, wherein, it is stated that the said K.V.Kuppam

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comprising of 38 village has a population below 10,000 as per 2011 census, this Court is of the view that it would be appropriate to set aside the impugned order and remand the matter for re-consideration before the respondent, who shall pass appropriate orders after taking into consideration of the certificate issued by the Tahsildar dated 24.04.2024.

9. Accordingly, the impugned notice issued under Section l48A(b) of the Income Tax Act 1961 dated 12.02.2024 issued by the respondent and all consequential proceedings are set aside and the matter is remanded back to the respondent for re-consideration, who shall, after taking into consideration of the certificate issued by the Tahsildar dated 24.04.2024 and after hearing the petitioner, shall pass appropriate orders in accordance with law.

10. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

https://www.mhc.tn.gov.in/judis

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W.P.No. 10426 of 2024

23.06.2025

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Index : yes/no
Neutral Citation : yes/no

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OFFICERS LINE VELLORE -632 001.

Krishnan Ramasamy,J.,

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