BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.844 of 2025
and
C.M.P.(MD)Nos.5570 and 5571 of 2025

Q 719, IDAYAMELUR P A C B,
Represented by its Secretary,
Idayamelur,
Idayamelur Post,
Sivagangai District 630 561. ... Appellant

Vs.

The Assessment Unit,
Income Tax Department,
Ministry of Finance,
New Delhi. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.1792 of 2025, dated 23.01.2025.

For Appellant :Mr.T.Bashyam

For Respondent :M/s.M.Rajeswari
Standing Counsel

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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The writ appeal is filed by the writ petitioner against the order dated 23.01.2025 passed in W.P.(MD)No.1792 of 2025.

2. The writ petition was filed for issuance of a Writ of Certiorari, to quash the assessment order dated 20.03.2024 passed by the respondent.

3. The brief facts as stated in the writ petition are that the writ petitioner is a Primary Agricultural Cooperative Credit Society registered under the Tamil Nadu Cooperative Societies Act, 1983, providing credit facility to its members. The main issue that arise is whether the writ petitioner is entitled for deduction under Section 80P(2) (d) of the Act. The writ petitioner submitted that they have made investment with the Cooperative Bank from which they receive interest and therefore, they are entitled to claim deduction under Section 80P(2)(d) of the Act. But the respondent department has issued notice dated 29.03.2023 under section 148 of Income Tax Act, but there was no response from the appellant. Again, the respondent issued notice dated 09.08.2023 under section 142(1), but there was no

response from the appellant. Again, reminder letter dated 28.08.2024 was issued, but no response from the appellant. Thereafter the respondent issued notice dated 26.10.2023 under “centralised communication in no-responsive cases” then the appellant had submitted reply dated 25.11.2023 but only responded for part query. Then left with no option the respondent issued show cause notice dated 05.03.2024 and again there was no response from the appellant.

4. The contention of the writ petitioner is that the society had engaged a person as Auditor to file reply / return and produce accounts, but he had failed to file in time but filed it belatedly. Based on the part reply 25.11.2023, the respondent had passed the impugned assessment order on 20.03.2024. The respondent through the impugned order had levied tax for the deposit amount and also initiated penalty proceedings. The respondent failed to grant personal hearing before passing the assessment order.

5.After hearing the rival submissions, the Writ Court dismissed the writ petition stating that the writ petitioner did not submit any reply to the show cause notice and did not submit any by-laws of the Society justifying the interest of income. The Writ Court further stated that the writ petitioner was also given an opportunity of hearing, but the petitioner failed to avail the opportunity. Aggrieved over the same, the writ petitioner has preferred the present writ appeal.

6.Heard Mr.T.Bashyam, Learned Counsel appearing for the appellant and M/s.M.Rajeswari, Learned Standing Counsel appearing for the respondent and perused the records.

7. The primary contention of the appellant / assessee is that the impugned assessment order was passed under Section 144 read with Section 144B of the Income Tax Act. The section 144B of Income Tax Act clearly states that a draft assessment order shall be passed by the respondent before passing the impugned assessment order. But in the present case, no draft assessment order was passed by the respondent. Further the Section 144 of Income Tax clearly states that an opportunity of personal hearing shall be given before passing the assessment order.

8. On perusing the assessment order, it is not stated that the appellant was granted any personal hearing through VC. In many cases, this Court has clearly held that an effective personal hearing shall be given to the assessee and not for

name-sake. The appellant did not file return in time and also not replied to the notices, that does not mean the respondent shall pass assessment order without granting personal hearing.

9. The respondent by the assessment order stated that the total income determined is Rs.11,76,405/-. The contention of the writ petitioner it that as per the audit report of the Society, the deposit amount is different and it varies with the amount calculated by the respondent. Further the respondent had treated the deposits as unexplained money and the same is erroneous. It is seen that the appellant had submitted the bank statement wherein the amount is stated as deposits. Further the appellant is a credit society providing credit facilities to their members and doing transaction through Cooperative Bank. And the appellant's accounts were properly audited by Accounts General Audit. Their accounts are proper and they had proper audit report with them. The amount arrived by the respondent itself is not correct and it differs from the appellant audit report. Therefore, this Court is of the considered opinion if an opportunity is granted to the appellant, then the same may be explained. In such circumstances, the order passed by the Writ Court is liable to be set aside and accordingly set aside.

10. The appellant is directed to submit his reply with all the relevant documents within a period of four weeks from the date of receipt of the copy of the order. Thereafter, the respondents shall grant personal opportunity through Video Conference (VC). The assessment shall be completed within a period of 12 weeks therefrom.

11. With the above said observations and directions, the writ appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] [S.S.Y., J.]
07.04.2025

Index : Yes / No

Tmg

J.NISHA BANU, J.

and

S.SRIMATHY, J.

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