

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 14<sup>TH</sup> DAY OF JULY 2020

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

W.P.No.147036/2020 (T-IT)

BETWEEN:

JYOTHI CO-OPERATIVE CREDIT SOCIETY LIMITED,  
NO.OPP. SBI NAVANAGER,  
BAGALKOT-587 103,  
REP.BY ITS CHIEF EXECUTIVE OFFICER,  
SHRI.BABU S/O SHANKRAPPA NADAGOUDAR,  
AGEDA BOUT 48 YEARS.

.. PETITIONER

(BY SRI.H.R.KAMBIYAVAR & SMT.PATRI SHASHIKALA, ADVS.)

AND:

1. THE INCOME-TAX OFFICER  
WARD 1, C R BUILDING,  
NAVANAGAR, BAGALKOTE-587202.
2. THE COMMISSIONER OF INCOME TAX (APPEALS),  
KIMJI BAI BUILDING, OPP-CIVIL HOSPITAL,  
BELAGAVI-590001.
3. THE PRINCIPAL COMMISSIONER  
OF INCOME TAX, (ADMINISTRATION),  
C.R. BUILDING, NAVANAGAR,  
HUBBALLI-580025.

.. RESPONDENTS

(BY SRI.Y.V.RAVIRAJ, ADV. FOR R1 TO R3)

THIS PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO

(i) QUASH AS FAR AS THE PETITIONER IS CONCERNED BY AN APPROPRIATE WRIT OR ORDER IN THE NATURE OF CERTIORARI OR OTHERWISE THE IMPUGNED REJECTED LETTER BEARING NO.ITBA/COM/F/17/2019-20/1024954749(1) DATED 11.02.2020 AND THE IMPUGNED ORDER BEARING NO.F.NO.STAY PETITION/PR.CIT-HBL/2019-20 DATED 17.03.2020 VIDE ANNEXURES-D AND F RESPECTIVELY BY THE 1<sup>ST</sup> AND 3<sup>RD</sup> RESPONDENT.

ii) ISSUE WRIT OF MANDAMUS OR WRIT OF DIRECTION TO THE 2<sup>ND</sup> RESPONDENT AUTHORITY TO CONSIDER THE APPEAL FILED BY THE PETITIONER BEFORE THE 2<sup>ND</sup> RESPONDENT AGAINST THE IMPUGNED ASSESSMENT ORDER THE PETITIONER HAS FILED AN APPEAL IN FORM NO.35, BEFORE THE 2<sup>ND</sup> RESPONDENT ON 01.01.2020 VIDE ANNEXURE-B.

iii) ISSUE WRIT OF PROHIBITION, DIRECTING THE RESPONDENT NO.1 REFRAINS FROM INITIATING RECOVERY PROCEEDINGS AGAINST THE IMPUGNED ORDER BEARING NO.F.NO. STAY PETITION/PR.CIT-HBL/2019-20, DATED 17.03.2020 VIDE ANNEXURE-F BY THE 3<sup>RD</sup> RESPONDENT.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed seeking writ of mandamus to direct respondent No.2 authority to consider the appeal filed by the petitioner before respondent No.2 against the impugned assessment order the petitioner has filed an appeal in Form No.35, before respondent No.2 on 01.01.2020.

2. Brief facts leading to this top noted writ petition are as under:

The petitioner herein is a co-operative society registered under the Karnataka Co-operative Society Act, 1959. The case of the petitioner is that, it has filed return of income declaring gross total income to the tune of Rs.64,95,598/- and after claiming deduction under Chapter VIA amounting to Rs.64,95,598/-, declared total income as Nil. The authorities have taken up the case of the petitioner-society for limited scrutiny under CASS by way issuing notice under Section 143(2) of the Income Act,

1961 (for short 'the Act'). The petitioner-society has submitted its replies online with a hardcopy in tapal. Respondent No.1 rejected the petitioner's claim of deduction under Section 80P(2)(a)(i) of the Act by placing reliance on the judgment of the Hon'ble Apex Court in the case of Citizen Co-operative Credit Society Limited Vs ACIT. The case of the petitioner is that respondent No.1 also treated the unexplained income under Section 68 r/w Section 115BBE of the Act, the cash deposits made during the demonetization period.

3. The petitioner being aggrieved by the assessment order preferred an appeal in Form No.35 before respondent No.2 on 01.01.2020 and the same is pending for consideration. Having preferred an appeal, the petitioner submitted an application on 02.01.2020 for grant of stay against the assessment order before respondent No.1. The said application was rejected by respondent No.1 on the ground that 20% of the disputed demand is not

paid. This compelled the petitioner to file an application on 19.02.2020 seeking stay of demand for the assessment year 2017-18 against the assessment order before respondent No.3. Respondent No.3 has rejected the application. The grievance of the petitioner is that the order passed by respondent No.3 as per Annexure-F is contrary to the material placed on record. The order under challenge is not a speaking order. The next grievance of the petitioner is that the order passed by respondent No.3 is in gross violation of principles of natural justice. On these set of facts, the present writ petition is filed.

4. Learned counsel for the petitioner would vehemently argue and contend before this Court that since the petitioner is challenging the very assessment order pending before respondent No.2, he would request this Court to issue appropriate directions against respondent No.2 to dispose of the appeal expeditiously. To buttress his arguments, he would rely on the judgment of Co-ordinate

Bench of this Court rendered in W.P.4811/2008. Relying on this judgment, he would request this Court to direct respondent No.2 to dispose of the appeal by imposing time frame.

5. Per contra, Sri.Y.V.Raviraj, learned counsel appearing for the respondents would submit to this Court that this Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India cannot entertain the present writ petition. He would submit to this Court that the order passed by respondent No.3 as per Annexure-F does not suffer from any infirmities. However, he would submit to this Court that since the petitioner has already availed remedy before respondent No.2 challenging the assessment order, it is open for the petitioner to prosecute the appeal. The petitioner cannot seek writ of mandamus when the matter is already pending before respondent No.2. The petitioner is at liberty to seek early hearing of the appeal and press for disposal also which is well within

the reach of the petitioner. In this background, indulgence by this Court would not arise.

6. This Court is aware of the order passed by the Coordinate Bench of this Court rendered in W.P.No.145596/2020, which is identical and is squarely applicable to the present case on hand. Paragraph 4 and 5 would answer the lis that is raised in the present writ petition. This Court relying on the judgment rendered in ***Flipkart India (P), Ltd. Vs. Assistant Commissioner of Income-tax, Circle 3(1)(1), Bengaluru*** has held that, it is incumbent on the Principal Commissioner of Income-Tax to decide on the application for stay considering two questions, viz., whether the assessment is unreasonably high-pitched and whether the petitioner would be put to genuine hardship because of such assessment. This Court while examining the order of the authority was of the view that the order under challenge is not at all a speaking order and accordingly, this Court set aside the order and

remitted back for fresh consideration. The facts in the present case are replica and identical.

7. On perusal of the impugned order passed by respondent No.3 as per Annexure-F, it is clearly evident that there is totally non-application of mind. The authority has not at all examined as to whether the assessment is unreasonably high-pitched and whether assessment order has caused genuine hardship because of such an assessment. No reasons are forthcoming in the order passed by respondent No.3 as per Annexure-F. It is also forthcoming that this order is passed in gross violation of principles of natural justice. No opportunity was granted to the petitioner to put forth his case. This Court is of the view that the order under challenge is not at all a speaking order and the same is bad in law.

8. For the reasons stated supra, the order passed by respondent No.3 as per Annexure-F is not sustainable. Accordingly, I pass the following:

ORDER

The writ petition is allowed. The impugned order passed by respondent No.3 dated 17.03.2020 as per Annexure-F is quashed. The matter is remitted back to respondent No.3 for fresh consideration. On receipt of the order passed by this Court, respondent No.3 is required to fix a date and after hearing the petitioner shall pass appropriate orders in accordance with law.

MBS/-

Sd/-  
JUDGE