

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 24TH DAY OF JUNE 2020 / 3RD ASHADHA, 1942

WP(C).No.12511 OF 2020(L)

PETITIONER/S:

THE ERNAKULAM DISTRICT POSTS TELECOM AND BSNL  
EMPLOYEES CO OPERATIVE SOCIETY LTD. NO.E.85  
P AND T CO-OPERATIVE BHAVAN, CHURCH LAND ROAD,  
COCHIN-682 016, REPRESENTED BY ITS SECRETARY MR.MANOJ  
THOMAS

BY ADV. SRI.ANIL D. NAIR

RESPONDENT/S:

- 1 THE INCOME TAX OFFICER  
NON CORPORATE WARD 1 (5), KOCHI-682 018
- 2 THE DEPUTY COMMISSIONER OF INCOME TAX,  
CPC, PST BAG-2, ELECTRONIC CITY POST OFFICE,  
BANGALORE-560 500

OTHER PRESENT:

SRI CHRISTOPHER ABRAHAM SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
24.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

**Dated this the 24th day of June 2020**

Challenging Ext.P7 this writ petition is filed. Petitioner is a Co-operative Society registered under the Co-operative Societies Act, 1969. It is an assessee under the Income tax Act. The return of income for the assessment year 2018-19 has to be filed on or before 31.10.2019. However, as per the circular dated 27.02.2019 of the Central Board of Direct Tax, time to file return was extended upto 28.02.2020. Petitioner filed the returns within the aforementioned provisions of the circular however received the assessment on 29.06.2019. Petitioner filed a rectification application dated 7.11.2019, however vide communication dated 29.01.2020 the concerned Income Tax Officer informed the petitioner that owing to non functionality that the petitioner rectification cannot be decided.

2. Sri. Anil D.Nair, learned counsel for the petitioner submits that without complying the principles of natural

justice the impugned order Ext.P7 dated 05.06.2020 has been passed by rejecting the rectification application. The impugned order is bereft of the reasons and cannot stand test of legitimate expectation. It is in these circumstances, instead of taking alternative remedy, extra ordinary jurisdiction of this Court under Article 226 has been invoked.

3. Issue notice before admission. Mr.Christopher Abraham, who present in the video court hearing accepts the notice and raised objection with regard to the maintainability of this writ petition in view of the alternative remedy available, and urges this Court for dismissal of this writ petition.

4. I have heard learned counsel for the parties and appraised the paper books and find some force and merit in the submission of Sri.Anil D.Nair.

5. The communication Ext.P5 dated 29.01.2020 and order impugned Ext.P7 dated 05.06.2020 are extracted herein below:

**Ext.P5:**“Grievance Raised: WE HAVE RECEIVED DEMAND ORDER UNDER SECTION 154 STATING THAT, THE DEDUCTION UNDER SECTION 80P WILL NOT BE AVAILABLE SINCE RETURN IS FILED AFTER DUE DATE. BUT WE HAVE FILED THE ORIGINAL RETURN BEFORE THE DUE DATE EXTENDED FOR THE STATE OF KERALA.

The resolution for your grievance application: As per CBDT's order u/s 119(2) dated 27.02.2019, it is mentioned that all return of income and reports of audit which are filed till 28/02/2019 shall be deemed to have been filed by 31/10/2018. On the basis of this the intimation u/s 143(1) has to be rectified. But the functionality of rectification of ITR for AY 2018-19 is not available in ITBA as of now, CPC informed that the same will be available soon. Hence rectification order can be passed only when the functionality for AY 2018-19 is available in the system.”

**EXT.P7:**“Grievance Raised: WE HAVE RECEIVED DEMAND ORDER UNDER SECTION 154 STATING THAT, THE DEDUCTION UNDER SECTION 80P WILL NOT BE AVAILABLE SINCE THE RETURN IS FILED AFTER DUE DATE. BUT, WE HAVE FILED THE ORIGINAL RETURN BEFORE THE DUE DATE EXTENDED FOR THE SATE OF KERALA.

The resolution for your grievance application: Disallowance of deduction u/s 80P shown in the intimation u/s 143(1) dated 29/06/2019 issued by CPC cannot be rectified as the same will not come under the purview of rectification u/s 154.”

On a joint reading of the contents of the aforementioned communication, it is clear that the rectification application would not have been undertaken, owing to certain technical problems i.e, the functionality of

the Department. However vide impugned communication dated 05.07.2019 Ext.P5, same has been rejected in a most sketchy and mechanical manner. Even the order do not disclose affording of any other opportunity of hearing.

6. Considering the facts and circumstances, I am of the view that the petitioner cannot be relegated to alternate remedy as the order prima facie is without jurisdiction. Accordingly, impugned order Ext.P7 dated 05.06.2020 is quashed and matter is remitted to 1<sup>st</sup> respondent to decide the rectification application Ext.P6 afresh, in accordance with law, after affording an opportunity of being heard to the petitioner. Let this exercise be undertaken within a period of two months from the date of receipt of a certified copy of the judgment. Till such time, no coercive measures shall be taken against the petitioner.

Sd/-

**AMIT RAWAL**

**JUDGE**

## APPENDIX

### PETITIONER'S/S EXHIBITS:

- |            |   |
|------------|---|
| EXHIBIT P1 | TRUE COPY OF INTIMATION DATED 29.6.2019<br>FOR THE ASSESSMENT YEAR 2018-19                      |
| EXHIBIT P2 | TRUE COPY OF COMMUNICATION DATED<br>12.2.2019 ISSUED BY THE 2ND RESPONDENT<br>TO THE PETITIONER |
| EXHIBIT P3 | TRUE COPY OF CIRCULAR UNDER SEC 119(2)<br>ISSUED BY THE CBDT                                    |
| EXHIBIT P4 | TRUE COPY OF ACKNOWLEDGMENT DATED<br>7.11.2019 TO THE PETITIONER                                |
| EXHIBIT P5 | TRUE COPY OF ORDER DATED 29.1.2020<br>ISSUED BY 1ST RESPONDENT                                  |
| EXHIBIT P6 | TRUE COPY OF APPLICATION DATED 5.6.2020<br>FILED BY THE PETITIONER BEFORE THE 1ST<br>RESPONDENT |
| EXHIBIT P7 | TRUE COPY OF ORDER DATED 5.6.2020<br>ISSUED BY 1ST RESPONDENT                                   |