

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 25TH DAY OF MAY 2020 / 4TH JYAISHTA, 1942

WP(C).No.10227 OF 2020(C)

PETITIONER/S:

THE ARANATTUKARA ORIENTAL SERVICE CO-OPERATIVE BANK
LTD NO.171
ARANATTUKARA, THRISSUR-680 618, REPRESENTED BY ITS
SECRETARY.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT/S:

- 1 THE COMMISSIONER OF INCOME TAX (APPEALS)
AAYAKAR BHAVAN, S.T. NAGAR, THRISSUR.
- 2 THE INCOME TAX OFFICER,
WARD 2(1), THRISSUR, OFFICE OF THE INCOME TAX
OFFICER, SHAKTHANTHAMPURAN NAGAR, THRISSUR-680 001

OTHER PRESENT:

SRI JOSE JOSEPH SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.05.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 25th day of May 2020

Petitioner is a primary Co-operative Agricultural Credit Society registered under the Kerala Co-operative Societies Act. Petitioner is an assessee on the file of the 2nd respondent. While so, the 2nd respondent issued a notice under Section 156 of the Income tax Act pertaining to the assessment year 2017-18.

2. Aggrieved by the assessment order petitioner preferred appeal before the 1st respondent along with a stay application. It is submitted that neither the appeal nor stay petition has been considered by the respondents. Apprehending coercive action, petitioner has approached this Court by filing this writ petition. In this regard he relied upon the judgment of the Division Bench of this Court in writ appeal No.1536/19 dated 1.7.2019 arising out of judgment dated 31.5.2019 W.P.(C)12843/19. The Division Bench after noticing the decision of the Full Bench of this Court in ITA No.97/16 and connected cases, decided on 19.3.2019 titled as ***Mavilayi Service Co-operative Bank Ltd. Vs. Commissioner of Income Tax 2019 (2) KHC 287***, wherein for considering the

appeal the demand of 20% as a condition precedent has been negated.

4. Issue notice before admission. Sri.Jose Joseph accepts notice on behalf of the income tax authorities. He submits that the order is in consonance with the provisions of Section 144 of the Income Tax Act and the Circular dated 31.7.2017 mandating the appellate authorities to ask for deposit 20% of the amount for the purpose of entertaining the adjudication of the appeal.

5. Having heard learned Counsel for the parties and appraised the paper book, I am of the view that the argument of the petitioner is in consonance with findings rendered in the judgment referred to above and reiterated by the Division Bench. The assessing officer or the appellate authority while exercising the power of appeal or stay of the assessment proceedings under section 226 of the Income Act 1961 are enjoined obligation to give regard and respect to the directions of the Hon'ble High Court. In other words, it would not be necessary that the payment of 20% can be dispensed with only if there is an order of the high court. The judgment of the Full Bench followed by the Division Bench has an enuring effect on all the authorities.

There will be a direction to the 1st respondent to decide the

appeal on merits within a period of six months, without asking for 20% of the demanded amount, after affording an opportunity of hearing to the petitioner and the revenue and pass a reasonable and speaking order.

The writ petition is disposed of.

sd/-

AMIT RAWAL

JUDGE

Jm/

APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | TRUE COPY OF THE ASSESSMENT ORDER DATED
19.12.2019 ALONG WITH COMPUTATION SHEET. |
| EXHIBIT P2 | TRUE COPY OF DEMAND NOTICE DATED
19.12.2019. |
| EXHIBIT P3 | TRUE COPY OF THE APPEAL DATED 16.1.2020. |
| EXHIBIT P4 | TRUE COPY OF THE STAY PETITION DATED
18.03.2020. |
| EXHIBIT P5 | TRUE COPY OF THE JUDGMENT DATED 1.07.2019
IN W.A.1536 OF 2019. |