

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 07TH DAY OF JANUARY 2020 / 17TH POU SHA, 1941

WP(C).No.34119 OF 2019(L)

PETITIONER:

VATTIYOORKAVU SERVICE CO-OPERATIVE BANK LTD.  
NO. 1652  
REPRESENTED BY ITS SECRETARY, VATTIYOORKAVU P  
O, THIRUVANANTHAPURAM DISTRICT-695013.

BY ADV. SRI.T.R.HARIKUMAR

RESPONDENTS:

- 1 THE INCOME TAX OFFICER  
WARD -2(1), OFFICE OF THE JOINT COMMISSIONER OF  
INCOME TAX, RANGE-2, 1ST FLOOR, AYAKAR BHAVAN,  
KOWDIAR, THIRUVANANTHAPURAM DISTRICT-695003.
- 2 THE COMMISSIONER OF INCOME TAX (APPEALS)  
AAYAKAR BHAVAN, KOWDIAR, THIRUVANANTHAPURAM-  
695003.

OTHER PRESENT:

SRI.CHRISTOPHER ABRAHAM, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
07.01.2020, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**ALEXANDER THOMAS, J.**-----  
W.P.(C)No.34119 of 2019  
-----Dated this the 7<sup>th</sup> day of January, 2020**JUDGMENT**

The petitioner is the Primary Agricultural Credit Co-operative Society registered as per the provisions contained in Kerala Co-operative Societies Act, 1969 and the rules framed there under. It is pointed out that the Primary Agricultural Credit Co-Operative Society has been defined in terms of Section 2(oaa) of the Kerala Co-operative Societies Act, 1969. Further it is pointed out that Exts.P1 and P2 orders have been issued under Section 271B for the assessment year 2011-2012 and 2015-2016 against the petitioner. Aggrieved by those orders, the petitioner has filed appeals and stay applications before the 2<sup>nd</sup> respondent. While waiting orders on the stay applications, it was informed as per the impugned Exts.P3 and P4 communications that the appeals are defective and the defects have to be cured within 15 days. Exts.P5 and P6 communications were served on the petitioner stating that stay applications are rejected in the light of defective appeals and that liberty was granted to file fresh stay applications as and when the defects are cured. Exts.P7 and P9 appeals as well as Exts.P8 and P10 stay applications have been filed within the stipulated time, it is urged. Further that now, Exts.P11 and P12 proceedings have been issued dismissing Exts.P7 and P9 appeals stating that defects are not cured and that Exts.P11 and P12 orders have been received by the petitioner

only on 11.12.2019 etc.

2. It is in the light of these averments that the petitioner has filed the instant Writ Petition (Civil) with the following prayers:-

*“i) to issue a writ of certiorari calling for the records leading to the issuance of Exhibits-P11 and P12 and quash the same;  
ii) to issue a writ of mandamus or any other writ, order or direction, directing the 1<sup>st</sup> respondent not to proceed with recovery of the demand based on Exhibits-P1 and P2 penalty orders for the assessment years 2011-2012 and 2015-2016, till Exhibits-P7 and P9 appeals as well as Exhibits-P8 and P10 stay petitions are disposed off by the 2<sup>nd</sup> respondent.”*

3. Heard Sri. T.R. Harikumar, learned counsel appearing for the petitioner and Sri. Christopher Abraham, learned Standing Counsel for the Income Tax Department for Government of India appearing for the respondents.

4. The learned counsel for the petitioner would urge that it is now well settled by a series of rulings of the Apex Court and various High Courts in decisions as in ***State of Bihar v. Kameshwar Prasad Singh*** [2000 (9) SCC 94] that dismissing the statutory appeals on technical grounds of limitation would not in any way advance the interest of justice but admittedly, result in failure of justice etc. It is pointed out that the impugned action of the respondents in dismissing the appeals in terms of the impugned Exts.P11 and P12 proceedings is *per se* illegal and improper and that some breathing time should have been given to the petitioner to clear all the defects, so that their appeals and stay applications could have been considered and decided on merits etc.

5. Having heard both sides and after taking into account the facts and circumstances of the case, this Court is inclined to take the view that the impugned rejection orders Exts.P11 and P12 would warrant interdiction in

these writ proceedings, so that the appeals and stay applications could be decided on merits, after affording reasonable opportunity of being heard to the petitioner. Accordingly, it is ordered that the appeals filed by the petitioner as per Exts.P7 and P9 and the stay applications as per Exts.P8 and P10 will stand remitted to the 2<sup>nd</sup> respondent appellate authority for consideration and decision afresh and on merits. To effectuate such a remit, it is ordered that the impugned Exts.P11 and P12 rejection orders will stand set aside. Further the learned counsel for the petitioner would point out that the petitioner has not raised some of the relevant grounds in the appellate memorandum and permission may be granted to ensure that additional memorandum of grounds is filed by the petitioner in pursuance of the appeals filed as per Exts.P7 and P9 and this Court may grant reasonable time in that regard. Having regard to the facts and circumstances of the case, this Court is of the view that the said limited plea need not be declined.

6. Accordingly, it is ordered that the petitioner may file additional memorandum of grounds in support of their Exts.P7 and P9 appeals as well as Exts.P8 and P10 stay applications, which the petitioner may appropriately file before the 2<sup>nd</sup> respondent appellate authority without much delay preferably within a period of ten days from the date notified for receiving a certified copy of this judgment. In case such additional memorandum of grounds is duly filed by the petitioner as aforestated, then the 2<sup>nd</sup> respondent appellate authority shall treat those additional grounds as part and continuation of the appeals and stay applications as already filed. Thereafter, the 2<sup>nd</sup> respondent may afford reasonable opportunity of being heard to the petitioner on the

matters raised in Exts.P8 and P10 stay applications and orders may be passed on those stay applications without much delay preferably within a period of six weeks from the date of filing of the aforestated additional memorandum of grounds. It is only for the purpose of preservation of the subject matter of the lis, it is ordered that until orders are passed on Exts.P8 and P10 stay applications as aforedirected, further coercive steps for enforcing the impugned order may be kept in abeyance. It is made clear that the aforesaid directions have been issued by this Court only for the purpose of preservation of the subject matter of the list and shall not be construed in any manner as an opinion on the part of this Court regarding the merits of the controversy which would fall exclusively within the province of the 2<sup>nd</sup> respondent appellate authority for decision independently and on merits.

With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of.

sd/-  
**ALEXANDER THOMAS, JUDGE.**

acd

**APPENDIX****PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1                    A TRUE COPY OF THE ORDER DATED 11.04.2019 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 271 B, IMPOSING PENALTY FOR THE ASSESSMENT YEAR 2011-2012.
- EXHIBIT P2                    A TRUE COPY OF THE ORDER DATED 13.05.2019 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 271B, IMPOSING PENALTY FOR THE ASSESSMENT YEAR 2015-2016.
- EXHIBIT P3                    A TRUE COPY OF THE COMMUNICATION DATED 08.11.2019, ISSUED BY THE 2ND RESPONDENT, FOR THE ASSESSMENT YEAR 2011-2012.
- EXHIBIT P4                    A TRUE COPY OF THE COMMUNICATION DATED 08.11.2019, ISSUED BY THE 2ND RESPONDENT, FOR THE ASSESSMENT YEAR 2015-2016.
- EXHIBIT P5                    A TRUE COPY OF THE COMMUNICATION DATED 13.11.2019, ISSUED BY THE 2ND RESPONDENT, FOR THE ASSESSMENT YEAR 2011-2012.
- EXHIBIT P6                    A TRUE COPY OF THE COMMUNICATION DATED 13.11.2019, ISSUED BY THE 2ND RESPONDENT, FOR THE ASSESSMENT YEAR 2015-2016.
- EXHIBIT P7                    A TRUE COPY OF THE ONLINE APPEAL ALONG WITH GROUNDS OF APPEAL DATED 01.12.2019, FILED BEFORE THE 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2011-2012.
- EXHIBIT P8                    A TRUE COPY OF THE STAY PETITION FILED ALONG WITH EXT-P7 APPEAL DATED 04.12.2019.
- EXHIBIT P9                    A TRUE COPY OF THE ONLINE APPEAL ALONG WITH GROUNDS OF APPEAL DATED 01.12.2019, FILED BEFORE THE 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2015-2016.
- EXHIBIT P10                  A TRUE COPY OF THE STAY PETITION FILED ALONG WITH EXT-P9 APPEAL DATED 04.12.2019.
- EXHIBIT P11                  A TRUE COPY OF THE ORDER DATED 29.11.2019 IN ITA NO.4/EF/TVM/CIT(A)/TVM/2019-20 OF THE 2ND RESPONDENT.

**EXHIBIT P12**

**A TRUE COPY OF THE ORDER DATED 29.11.2019  
IN ITA NO.86/EF/TVM/CIT(A)/TVM/2019-20 OF  
THE 2ND RESPONDENT.**