

W.P.(MD)No.15046 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD)No.15046 of 2022

and

WMP(MD) Nos.10763 and10765 of 2022

Q.837, Muhavoor Primary Agricultural
Co-operative Society Ltd.,
Rep. by its Secretary,
Muhavoor 626 111
Rajapalayam Taluk
Virudhunagar District

.. Petitioner

Vs

1. The Additional/Joint/Deputy
Assistant Commissioner of Income Tax
National Faceless Assessment Circle,
Delhi.

2. The Income Tax Officer
Ward No.3,
130, Railway Feeder Road,
Virudhunagar- 626 001

.. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned assessment order passed by the 1st respondent vide DIN No. ITBA/AST/S/147/2021-22/1041701200 (1) dated 26.03.2022 and quash the same



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For Petitioner : Mr.D.Shanmugaraja Sethupathi
For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

This petition has been filed to quash the assessment order passed by the 1st respondent vide DIN No. ITBA/ AST /S /147/2021- 22/ 1041701200 (1) dated 26.03.2022.

2. The petitioner, Secretary of Muhavoor Primary Agricultural Co-operative Society . The primary object of the society is to provide all assistance to the Members/Farmers for development of agriculture activities including making land fit for cultivation, improvement of land and development of source of irrigation and all activities incidental and ancillary thereto. It is not profit oriented establishment. The first respondent had initiated e.proceedings under Faceless Assessment Scheme and issued a notice dated 28.12.2021 through e.mail under Section 142(1) of the Income Tax Act for the purpose of making assessment. The petitioner society was directed to submit account and document online electronically to the official website of the respondents



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on or before 07.01.2022. The petitioner society is a primary society situated at far off rural place not electronically equipped for submitting documents and accounts online by availing e-facility. Further the employees of the society are not well versed and qualified. The Society thereafter was issued with another notice dated 03.02.2022 seeking further clarification in respect of the accounts and documents submitted by the society, directed to explain the nature and the source of income earned by the society during assessment year 2017-2018. The petitioner society furnished documents and accounts as required by the first respondent. Thereafter nothing was heard. To their surprise the first respondent issued impugned demand notice under Section 147 of the Income Tax along with a computation sheet dated 26.03.2022 demanding to pay a sum of Rs.56,77,436/-towards including interest of Rs.12,67,760/-for default in furnishing return under Section 234(A) and a sum of Rs.16,53,600/- for default in payment of advance payment under Section 234(B) of the Income Tax Act. Thereafter the petitioner sent representation/appeal to the first respondent to rectify the order passed under Section 147 r/w.144(B) of the Income Tax Act after allowing deduction under Section 80 P of the Income Tax Act. He had

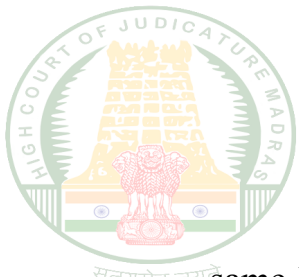


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requested for deduction under Section 80(p)(2)(a)(iii) of the Act. He further submitted that the issue involved is for the assessment year 2017-2018. The Department on wrong notion had proceeded against the petitioner as per Section 80(A)(C) of the Act for the reason seeking exemption the statement of income has to be filed within time. This amendment came into force w.e.f 01.04.2019 and it has not given retrospective effect. In view of the same, the proceedings against the petitioner is not proper. The petitioner was not given any personal hearing to explain all these facts, hence sought for quashing the order and remit back the case to the respondent so that the petitioner to be given personal opportunity to appear before them, produce the documents and give his explanations.

3. The learned counsel appearing for the Department would submit that the petitioner not furnished income returns for the assessment year 2017-2018. Thereafter notice was issued on 28.12.2021 under Section 142(1) of the Act followed by another two notice dated 31.01.2022, 03.02.2022. In the meanwhile notice under Section 143(2) was issued to the petitioner on 30.06.2021. The petitioner had failed to respond the



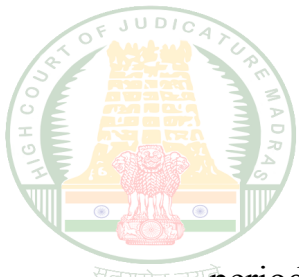
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same had not filed documents, sought for any personal hearing or given clarification, left it as it is and thereafter draft assessment order was passed on 20.03.22 giving all the details and the particulars. The petitioner after receipt of the same had replied and thereafter assessment order was passed on 26.03.2022 under Section 147 r/w144 of the Act. The petitioner had filed his returns, filed documents through the portal now making claim that it is a primary society not equipped with technically qualified persons, hence unable to follow the income tax portal, to file their returns cannot be accepted. He fairly submitted that it is primary cooperative society catering to the agriculturist.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

5. It is seen that the petitioner is the primary agricultural cooperative society , catering to the needs of the agriculturist and it is not a profit making organization. It earlier availed benefits under Section 80 P of the Act. The issue involved is whether within the stipulated



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period income tax return been filed along with 80 P deductions. Finding that the petitioner is a primary cooperative society catering to the needs of agriculturist and also considering the technical difficulties faced by the petitioner society, further finding that the draft assessment order has been passed on 20.03.2022 and within three days assessment order has been passed give little time or no time to the petitioner to make his submission, give the petitioner a personal hearing following principles of natural justice.

6. In view of the same, this Court finds that opportunity to be given to the petitioner before finalizing the assessment with sufficient time. Hence the assessment order dated 26.03.2022 is hereby is set aside directing the department to give the petitioner an opportunity to file his documents, make his submissions and personal hearing and thereafter the authorities to pass orders considering the representation and documents in accordance with law.



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7. In the result, the Writ Petition stands allowed. No costs.

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Consequently connected miscellaneous petitions are closed.

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Index: Yes/No
Internet : Yes/No
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M.NIRMAL KUMAR, J.

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