

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.812 of 2018
and WMP.No.979 of 2018

M/s.The LIC Employees Co-operative Bank Ltd.,
Represented by its President Mr.AE Muthukumar,
No.8, United India Building, Esplanade Road,
Chennai - 600 108.

... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
O/o. The Assistant Commissioner of Income Tax,
Non-Corporate Circle-11,
Chennai - 6.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the impugned assessment order u/s. 143 (3) of the Income Tax Act, 1961 issued by the respondent dated 08.12.2017 in PAN:AAABL0162C for assessment year 2015-16 and quash the same as it was passed in violation of the law laid down by the judgment of this Court in the case of M/s.The Coimbatore District Central Co-operative Bank Ltd. vs. ITO, reported as (2016) 382 ITR 266 (Madras) and orders of the Income Tax Appellate Tribunal in petitioner's own case for assessment years 2009-10, 2010-11, 2013-14 and 2014-15 in ITA Nos.823 to 826/Mds/2016 and the CBDT Circular No.19/2015 dated 27.11.2015.

For Petitioner : Mr.K.Ravi

For Respondents : Mr.J.Narayanasamy

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O R D E R

The petitioner is a co-operative society, namely, The LIC Employees Co-operative Bank Ltd., registered under the provisions of the Co-operative Societies Act, 1983. The Co-operative Society has been formed for the welfare of the employees of the Life Insurance Corporation. In this writ petition, the petitioner is aggrieved by an assessment order dated 08.12.2017 for the assessment year 2015-2016 under Section

143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act")

2.Mr.J.Narayanasamy, learned counsel for the revenue vehemently opposed the maintainability of the writ petition and contended that the petitioner should be relegated to avail the appellate remedy under the Act and no indulgence should be granted to the petitioner to challenge an assessment order by way of a writ petition. It is further submitted that if this Court is inclined to entertain the writ petition, then the Department should be permitted to file a detailed counter affidavit and arguments to be heard.

3.Both the submissions are not convincing for the reason that the respondent has ignored the decision of the Division Bench of this Court which is the jurisdictional Court within whose jurisdiction the respondent exercises its power. Secondly, if there is a palpable error apparent on the face of the impugned order which does not require a long drawn reasoning, this Court would be well within its jurisdiction to exercise its powers under Article 226 of the Constitution of India. Furthermore, the respondent cannot be permitted to substitute reasons not contained in the impugned order by way of a counter affidavit. This position has been settled by the Hon'ble Supreme Court as early as in the year 1981. Therefore, the Court is inclined to entertain the writ petition.

4.Heard Mr.K.Ravi, learned counsel for the petitioner and Mr.J.Narayanasamy, learned counsel for the respondent.

5.The respondent issued a show cause notice which appears to have been issued after perusal of the Profit and Loss account of the petitioner and it is stated that the petitioner had not deducted tax at source on interest payments exceeding Rs.10,000/- as per Section 194(A)(1) read with Section 194A(i)(b) of the Act. Therefore the petitioner was directed to show cause as to why the provisions under Section 40(a)(ia) of the Act should not be invoked for non-compliance of TDS deduction. The petitioner in their reply stated that the assessee started functioning in the year 1939 in the name of United Union India Building Staff Cooperative Society Ltd. registered under the Madras Cooperative Societies Act, 1932 and after nationalization of the insurance sectors with effect from 01.09.1956, the name of the assessee was changed to the present name with area of operation extending to the State of Tamil Nadu. The petitioner assessee obtained license from the Reserve Bank of India on 01.03.1966 to carry out banking business. It was further stated that the petitioner assessee has two categories of membership, namely, one open to LIC employees only and second category is associate membership. Both categories of members can deposit

money into the petitioner Society but loan can be availed only by the LIC employee members. Further, it was stated that the amendment to Section 194A expressly provide that from a prospective date i.e. 01.06.2015 exemption has been provided. In this regard, reference was made to the circular issued by CBDT in Circular No.19/2015. Therefore, it was contended that the co-operative bank was not required to deduct tax at source from the payment of interest on time deposits of its members paid or credited before 01.06.2015. Reliance was placed on the decision of the Hon'ble Division Bench in the case of Coimbatore District Central Cooperative Bank Ltd. vs. Income Tax Officer, TDS Ward I(5), Coimbatore reported in (2016) 382 ITR 266 (Madras).

6.Further, the concept of single transaction was also explained apart from theory of prospectivity vs. retrospectivity. The petitioner Society encloses a copy of the explanatory note given by the CBDT, a copy of the decision in the case of Coimbatore District Central Cooperative Bank Ltd. and the orders passed by the ITAT in the assessee's own case for the assessment years 2009-2010, 2010-2011, 2013-2014 and 2014-2015.

7.On perusal of the impugned order, I find that there has not been due application of mind to the stand taken by the petitioner in their reply dated 04.12.2017. The respondent has proceeded entirely on a different ground than what was mentioned in the show cause notice. In other words, the decision arrived at while completing the assessment is not on the ground on which the petitioner was required to show cause. This would be sufficient to set aside the impugned proceedings. That apart, the respondent has passed the impugned order by drawing a distinction between different types of Cooperative Societies and has stated that the petitioner is involved in banking business though it is a cooperative society and tax has to be deducted at source. In fact, this very issue was considered by the Hon'ble Division Bench in paragraph No.42 of the judgment. It appears that the respondent has not gone through the decision, copy of which was filed by the petitioner along with their reply to the show cause notice. The Assessing Officer was bound by the decision rendered by the jurisdictional High Court. It is stated that as on date there is no appeal by the revenue as against the decision in the case of Coimbatore District Central Cooperative Bank Ltd. That apart, in the assessee's own case for the previous assessment years, the Tribunal has held in favour of the petitioner assessee.

8.The learned senior counsel for the revenue submits that appeals have been preferred against the said orders. Mere pendency of an appeal would not amount to an order of stay.

Therefore, even assuming appeals have been presented as long as orders passed by the ITAT, has not been stayed or set aside it is binding upon the Assessing Officer.

9. For all the above reasons, the impugned order calls for interference. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for passing fresh orders, who is directed to take into consideration the decision of the Hon'ble Division Bench in the case of Coimbatore District Central Cooperative Bank Ltd. and also the circular issued by the CBDT in Circular No.19/2015 dated 27.11.2015 and pass revised orders in accordance with law. While re-doing the assessment, the respondent should bear in mind the observations made by the Hon'ble Supreme Court in the case of Union of India and others vs. Kamlakshi Finance Corporation reported in AIR 1992 SC 711. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cse
To

The Assistant Commissioner of Income Tax,
O/o. The Assistant Commissioner of Income Tax,
Non-Corporate Circle-11,
Chennai - 6.

+1cc to Mr.J.Narayanaswamy, Advocate Sr.No.4695
+1cc to Mr.K.Ravi, Advocate, Sr.No.3968

KJI (CO)
RRK:22.2.2018

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