(2003) 07 KL CK 0023

In the High Court Of Kerala

Case No : WA No''s. 1788 and 2207 of 1998 18 July 2003

ITO — APPELLANT

Vs

Thodupuzha Urban Co-operative Bank Ltd. — RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:
Income Tax Act, 1961 — Section 194A

Citation : (2004) 1 ILR (Ker) 52 : (2003) 264 ITR 36 : (2003) 132 TAXMAN 284

Hon'ble Judges : K.A. Abdul Gafoor, J;J.M. James, J

Bench : Full Bench

Advocate : P.K. Ravindranatha Menon and NRK. Nayar, for the Revenue V.M. Kurian, A.V. Thomas and Smt. I. Sheeladevi, for the Assessee, for the Appellant;

Judgement

Abdul Gafoor, J.

W.A. No. 1788 of 1998

The Income Tax Department has come up with this appeal against the judgment in G.P. No. 17082/1997. That petition was filed by five co-operative Societies, when they were faced with a notice from the appellant to deduct the Income Tax out of the interest paid by them on time deposits, in respect of every payment exceeding Rs. 10,000, at the relevant point of time. The learned single judge as per the impugned judgment, quashed the notices holding that going by the provisions contained in section 194A(3)(viia)(a) of the Income Tax Act, (hereinafter referred to as ''the Act''), the writ petitioners were not liable to deduct Income Tax at source in respect of the interest so paid, as sub-section (3) exempts them from the coverage of sub-section (1) of section 194A of the Act.

2. Aggrieved by the judgment, this appeal is filed only against the 4th petitioner in O.P. No. 17082/1997, namely, the Thodupuzha Urban Co-operative Bank Ltd. No. 394, Thodupuzha, Idukki District, represented by the secretary.

3. Sub-section 3 of section 194A of the Act makes it clear that "the provisions of sub-section (1) shall not apply" in respect of several situations mentioned under

that clause. Admittedly, sub-section (1) of section 194A cast the liability on all those institutions other than individuals and Hindu Undivided Family to deduct Income Tax at source, when such institutions pay interest on deposits exceeding the prescribed limit. Sub-section (3)(viia) reads as follows :

"(3) The provisions of sub-section (1) shall not apply

(viia) to such income credited or paid in respect of

(a) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;

(b) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking;"

The result will be that interest paid on time deposits by a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking will be covered by sub-section (1), and therefore, will be liable to deduct Income Tax.

4. The appellant does not have a case before us that the 4th petitioner, the first respondent herein, does not come within any of the types of co-operative societies made mention of in sub-clause (a) of clause (viia) of sub-section (3) of section 194A of the Act. Therefore, irrespective of Whether it is a time deposit or any other type of deposit, the 4th petitioner, first respondent will not be liable to deduct Income Tax, as such society is under sub-section (3) taken out of the purview of section 194A(1) of the Act. Therefore, the writ appeal fails, dismissed.

W.A. No. 2207 of 1998

5. A reading of the impugned judgment discloses that the writ petitioner, first respondent, was conceded to be an agricultural co-operative society. Consequently, it comes within the purview of clause (viia)(a) of sub-section (3) of section 194A of the Income Tax Act, 1961. Naturally, first respondent society will not be liable in terms of sub-section (1) of section 194A. The writ appeal fails, dismissed.

