(2010) 04 KL CK 0005

In the High Court Of Kerala

Case No : WP (C) No''s. 8368, 8485, 8512, 8849, 8857, 8861 to 8863, 8871, 8941, 9828 and 9940 of 2010

Kadirur Vanitha Co-operative Society Ltd. APPELLANT

Vs

ITO RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:
Income Tax Act, 1961 — Section 194A(3), 2(19), 201(1), 201(1A), 271(C)

Citation : (2011) 196 TAXMAN 418

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Judgement

P.R. Ramachandra Menon, J.—The issue involved in all these cases is whether the Petitioners Societies come within the purview of the term Credit Co-operative Society as defined under Sub-Section 3(viia) of Section 194A of the Income Tax Act, so as to get the benefit of exemption.

2. The term Co-operative Society is defined u/s 2(19) of the Income Tax Act, but the eligibility for exemption u/s 194A(3)(viia) seems to be rather restricted to the specified types of Co-operative Societies mentioned and not to all the Societies. This being the position, the question is whether the Petitioners Societies do come within the purview of the exempted category, so as to intercept the proceedings (Ext.P2 notice) issued by the department, asking for certain details from the Petitioners, as to the alleged failure to deduct TDS from the interest paid and if there is any failure in effecting statutory deductions, why no further proceedings should be followed and proceeded against them, as specified therein.

3. Obviously, Ext. P2 notice consists of two parts. As per the first limb the Petitioners have been required to furnish the details of the quarterly returns for the concerned financial years and details of the payments made towards the interest (above Rs. 5,000) and also to furnish copies of the P and L account and the balance sheet (on the basis of the information received to the department

that the Petitioners have already effected payment by way of interest to the persons concerned, from which the tax was liable to be deducted). Under the second limb, the Petitioners have been alerted that if they have failed to deduct/ collect the tax at source and remit the same to the department they have been asked to show cause, why they shall not be treated as an Assessee in default u/s 201(1) and why interest u/s 201(1A) should not be charged and further that why penal action u/s 271(C) should not be initiated. The above notice is subjected to challenge in all these cases, stating that the Petitioners are not liable to answer the same; for the primary reason that the Petitioners are entitled to get the benefit of exemption as provided under Sub-Section 3(viia) of Section 194A of the Income Tax Act and it is in support of the said contention, that Ext.P 1 bye law has been produced, to show that the Petitioners are Primary Credit Co-operative Societies, eligible for exemption.

4. When the matters came for consideration before this Court on 17-3-2010, the Petitioners were directed to implead the Registrar of Co-operative Societies as well as the State, so as to ascertain the actual facts and figures; simultaneously observing that they could very well substantiate their status, more so in view of the classification of the Societies as referred to, u/s 15 of the Kerala Co-operative Societies Rules. The learned Counsel for the Petitioners submits that necessary certificates have been issued from the office of the concerned Joint Registrar of Cooperative Societies as borne by Ext.P3 produced along with necessary I.A.s. like IA. 5218/2010 in WP(C) 8358/2010. Going by the contents of the said certificates, it is stated that the concerned Petitioner has been registered as a Co-operative Society under the Kerala Co-operative Societies Act and that the Societies are conducting credit activities as per the provisions contained in registered bye law. Prima facie. it appears that the status of the Petitioner as a credit society has been accepted by the Joint Registrar, though the same is not expressly stated therein.

5. Heard the learned Standing counsel for the income tax department as well.

6. After considering the facts and circumstances, this Court finds that the issue could be resolved by relegating the Petitioners to file a proper statement of objections in response to Ext.P2 notice before the departmental authorities, also producing the necessary certificates showing that they are Primary Credit Co-operative Societies, to avail the benefit of exemption u/s 194A of 3(viia) of the Income Tax Act. Since the time stipulated in Ext.P2 is already over, the Petitioners are permitted to file such statement of objections within a further period of three weeks from the date of receipt of a copy of the judgment, on which event, the same shall be considered and appropriate orders shall be passed by the concerned authority, after giving an opportunity of hearing to the Petitioners. It will also be open for the Respondent department to ascertain the views or seek clarification if so necessitated, to be obtained from the concerned Joint Registrar of Co-operative Societies or the State Government, as the case may be. All further proceedings including the consequential steps as

contemplated under Ext.P2 shall be pursued only after deciding the question of eligibility for exemption and a speaking order shall be passed in this regard, which shall be communicated to the Petitioners as expeditiously as possible, at any rate, within three months from the date of receipt of the objections to Ext.P2 notices.

All the Writ Petitions are disposed of accordingly.