

**(2014) 06 KL CK 0029**  
**In the High Court Of Kerala**  
**Case No : WP(C). No. 5547 of 2012 (P)**

St. Mary's Charity Fund

APPELLANT

Vs

The Branch Manager

RESPONDENT

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**Date of Decision :** 26-06-2014

**Acts Referred:**

Income Tax Act, 1961 — Section 12AA, 133A, 139(5), 194A, 194A(1)

**Citation :** (2014) 06 KL CK 0029

**Hon'ble Judges :** A.V. Ramakrishna Pillai, J

**Bench :** Single Bench

**Advocate :** V.S. Chandrasekharan, Princy Xavier and Lekshmi Swaminathan, Advocate for the Appellant; I. Sheela Devi and Jose Joseph, SC, Advocate for the Respondent

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## Judgement

A.V. Ramakrishna Pillai, J.—Exts. P3, P8 and P9 notices issued by the first respondent are under challenge in this petition.

2. The petitioner is the registered Charitable Society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955. According to the petitioner, it is also registered as a charitable institution u/s 12AA of the Income Tax Act, 1961 with effect from 28.11.1977 as per the order of the Commissioner of Income Tax. According to the petitioner, it was having fixed deposits and other banking accounts with the first respondent since 18.3.1999 and is currently having one savings account and fixed deposits. The first respondent has been giving interest on fixed deposits without deducting tax at source based on the production of 12AA Registration Certificate issued by the Income Tax Department by the petitioner for the past several years. On 18.11.2011, the first respondent issued Ext. P3 notice on the petitioner asking to remit a sum of Rs. 89,830/- purported to be due because of non-deduction of tax at source out of interest paid to the petitioner by the first respondent.

3. The petitioner alleges that it cannot claim refund from the Income Tax Department, if tax is remitted by the first respondent on behalf of the petitioner

by deducting the amount from the petitioner's account since the period of filing the revised return as per section 139(5) and for claiming refund has expired for both the assessment years. The petitioner further alleges that this income is already reflected in the tax return filed by the petitioner. It is alleged that the petitioner cannot be asked to remit an amount which is neither due to the department nor that can be recovered from the department by way of refund. It is with this background, the petitioner has come up before this Court.

4. In the statement filed by the respondents 2 and 3 they have submitted that the first respondent bank comes under the purview of Section 194A(1) which requires deduction of income tax at source. However, the first respondent has not deducted tax on payment of interest to the petitioner as well as the Kerala State Co-operative Housing Federation Ltd. Accordingly, show cause notice was issued to the bank. According to them, tax and interest u/s 201(1) was levied as per the provisions of the Income Tax Act, 1961 in respect of the financial year 2008-2009 and 2009-2010 as the assessee bank has failed to deduct tax at source u/s 194A of the Income Tax Act, 1961 from the payment of interest paid/credited to the payees which includes the petitioner's fund. According to them, interest u/s 201(1A) is correctly raised against the deductor as per the provisions of the Act and it is a compensatory measure for withholding of tax which is mandatory. Therefore, they prayed for a dismissal of the petition.

5. Arguments have been heard.

6. What is prayed in the writ petition is for a direction to the first respondent to stop the entire proceedings pursuant to Exts. P3, P8 and P9. However, the statement filed by the respondents 2 and 3 would indicate that the first respondent bank comes under the purview of Section 194A and therefore, they were bound to deduct tax at the prescribed rate and remit the same to the Central Government account within the time prescribed. From the statement, it is clear that the respondents 2 and 3 collected the details through a survey u/s 133A of the Income tax Act, 1961 wherein it was revealed that the first respondent bank has not deducted tax on payment of interest to the petitioner's fund and the Kerala State Cooperative Housing Federation Ltd. Therefore, notice was issued to the bank to show cause as to why they should not be treated as an assessee in default in respect of non-deduction of tax at the rates in force and that interest u/s 201(1A) should not be charged against them. They furnished a reply. However, as it was not satisfactory, the first respondent was held to be an assessee in default in respect of the tax deductible on interest paid to the petitioner and Kerala State Co-operative Housing Federation Limited. Accordingly, orders were passed u/s 201(1) and 201(1A) for the financial years 2008-2009 and 2009-2010 raising the demand. Then, the first respondent demanded the petitioner to remit the amount deductible at source.

7. The argument of the petitioner that it cannot claim refund from the department would show that the petitioner has no case that the tax was not deductible at source as per the provisions of the Income Tax Act. Though the

petitioner has a case that the income already reflected in the tax return is subjected to verification and that the interest on the income against which demand now raised is included in the return of income tax filed, it appears to be incorrect in the light of Ext. P6 which is the photocopy of the acknowledgment of the return of income tax for the assessment year 2009-2010 which shows the total income as "nil".

8. It was argued by the learned standing counsel for respondents 2 and 3 that if the argument of the deductor is accepted, the provisions given u/s 197(1) regarding the certificate for deduction at lower rate and Section 197A regarding furnishing of declaration would be meaningless.

9. I see valid force in the said submission.

10. It appears from record that the interest u/s 201(1A) is correctly raised against the deductor as per the provisions of the Act which is a compensatory measure for withholding of tax. Therefore, on a consideration of the entire materials on record, this Court is of the definite view that the petitioner is not entitled to get the relief as prayed for.

Therefore, this writ petition is dismissed. No order as to costs.