

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943

WP(C).No.8610 OF 2021(A)

PETITIONER:

POOTHRIKKA SERVICE CO-OPERATIVE BANK LTD. NO.E
344, KOLENCHERY P.O., ERNAKULAM, PIN-682 311,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.C.A.JOJO

RESPONDENTS:

INCOME TAX OFFICER,
WARD-2, INCOME TAX OFFICE, R S ROAD,

1 ALUVA, ERNAKULAM-683 101.

COMMISSIONER OF INCOME TAX (APPEALS)-2,
OFFICE OF THE COMMISSIONER OF INCOME TAX,
2 CENTRAL REVENUE TOWER,

KOCHI-682 018.

3 ADDITIONAL COMMISSIONER,
NATIONAL E-ASSESSMENT CENTRE,
NEW DELHI - 110 005.

R1-3 BY SRI.CHRISTOPHER ABRAHAM, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.03.2021, ALONG WITH WP(C).8642/2021(E), WP(C).8652/2021(F), THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).Nos.8610 OF 2021 AND CONNECTED CASES

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943

WP(C).No.8642 OF 2021(E)

PETITIONER:

MAMALA SERVICE CO-OPERATIVE BANK LTD.
NO.2799, MAMALA P.O., ERNAKULAM, PIN-682 035,
REPRESENTED BY ITS SECRETARY

BY ADV. SRI.C.A.JOJO

RESPONDENTS:

1 INCOME TAX OFFICER,
WARD-2, INCOME TAX OFFICE,
R.S.ROAD, ALUV ,
ERNAKUAM-683 101.

2 COMMISSIONER OF INCOME TAX (APPEALS)-2,
OFFICE OF THE COMMISSIONER OF INCOME TAX,
CENTRAL REVENUE TOWER, KOCHI-682 018.

R1-2 BY SRI. CHRISTOPHER ABRAHAM, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.03.2021, ALONG WITH WP(C).8610/2021(A), WP(C).8652/2021(F),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).Nos.8610 OF 2021 AND CONNECTED CASES

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943

WP(C).No.8652 OF 2021(F)

PETITIONER:

VADAVUCODE FARMERS SERVICE CO-OPERATIVE BANK LTD.
NO.651,
VADAVUKODE P.O., ERNAKULAM, P N-682 310,
REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.C.A.JOJO

RESPONDENTS:

1 INCOME TAX OFFICER,
WARD-3, INCOME T X OFFICE,
R.S.ROAD, ALUVA,

ERNAKULAM-683 101.

2 COMMISSIONER OF INCOME TAX (APPEALS)-2,
OFFICE OF THE COMMISSIONER OF INCOME TAX,
CENTRAL REVENUE TOWER,
KOCHI-682 018.

3 ADDITIONAL COMMISSIONER,
NATIONAL E-ASSESSMENT CENTRE,

NEW DELHI-110 005.

R1-3 BY SRI. CHRISTOPHER ABRAHAM, STANDING COUNSEL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.03.2021, ALONG WITH WP(C).8610/2021(A), WP(C).8642/2021(E),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

**(W.P. (C) Nos.8610 of 2021,8642 of 2021 and
8652 of 2021)**

Dated this the 31st day of March 2021

Heard the learned counsel appearing for the petitioners in these writ petitions.

2. It is argued by the learned counsel appearing for the petitioners that petitioners are the co-operative banks and they are entitled for the benefits of Section 80(P) of the Income Tax Act. The learned counsel for petitioners submit that the assessment order denying the benefit of Section 80(P) of the Income Tax Act has been challenged by the petitioners by filing statutory appeals before the 2nd respondent, the Commissioner of the Income Tax (Appeals). However, during pendency of those appeals, the Assessing Officer has communicated to the petitioners that the petitioners should pay 20% of the demand and then apply for stay of demand. This course of action adopted by the respondents, in submission of the learned counsel for the petitioners is contrary to the judgment by the

Hon'ble Supreme Court in the matter of **Mavilayi Service Co-operative Bank Ltd. v. Commissioner of Income Tax, Calicut**, reported in **[2019(2) KHC 287]**.

It is further argued that this Court in a series of judgments has quashed such action on the part of the respondents.

3. The learned Standing Counsel takes notice for respondents and argues that the petitioners can at the most prefer stay petitions and can seek stay in the impugned orders.

4. I have considered the submissions in advance.

5. The question which is pending for adjudication before the appellate authority is whether the petitioners who are co-operative Societies are entitled for deduction under Section 80 (P) of the Income Tax Act. The Assessing Officer has denied the benefit of Section 80 (P) of the Income Tax Act to the petitioner societies. In the matter of Mavilayi Service Co-operative Bank Ltd.

the question regarding liability of the co-operative societies to pay the income tax assess was decided. The Division Bench of this Court relying on the said judgment in W.A.No. 1536/2019 dated 01-07-2019, has quashed the action on the part of respondents with the direction that the Commissioner of the Income Tax should consider and dispose of the statutory appeals filed by the appellant co-operative societies at the earliest taking note of Full Bench decision in the matter of Mavilayi Service Co-operative Bank Ltd. and till then the recovery and collection of taxes should be kept in abeyance. Similar is the judgment of the learned Single Judge in W.P.(C) No. 5234/2020, the Electricity Board Employees Co-operative Society Ltd. v. Income Tax Officer decided on 26-02-2020.

In this view of the matter, in the light of ratio of judgment of this Court, in the matter of **The Angadipuram Service Co-operative Bank Ltd. v. The Commissioner of Income Tax (Appeals)**, the writ petitions are allowed. The 2nd respondent is directed

WP(C).Nos.8610 OF 2021 AND CONNECTED CASES

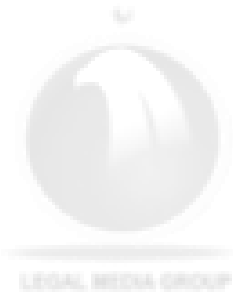
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to decide the pending appeals expeditiously and till then the respondents are directed to keep the recovery proceedings pursuant to the assessment order in abeyance.

Sd/-

A.M. BADAR
JUDGE

SSK/31/03



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APPENDIX OF WP(C) No.8610/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1** A TRUE COPY OF THE CERTIFICATE IN THIS REGARD ISSUED BY THE ASSISTANT REGISTRAR(GENERAL) KUNNATHUNADU DATED 23.05.2017.
- EXHIBIT P2** A TRUE COPY OF THE ASSESSMENT ORDER FOR AY 2018-19 DATED 09.02.2021 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P3** A TRUE COPY OF THE DEMAND NOTICE FOR AN AMOUNT OF RS. 70,79,119/- U/S. 156 DATED 09.02.2021 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P4** A TRUE COPY OF THE APPEAL FOR AY 2018-19 BEFORE THE 2ND RESPONDENT DATED 18.12.2019.
- EXHIBIT P5** A TRUE COPY OF THE STAY PETITION FOR AY 2018-19 BEFORE THE 2ND RESPONDENT DATED 24.03.2021.
- EXHIBIT P6** A TRUE COPY OF THE NOTICE OF DEMAND DEMANDING 20% OF TAX DATED 24.03.2021 FOR AYS 2018-19 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7** A TRUE COPY OF THE JUDGMENT IN WA 1536 OF 2019 DATED 01.07.2019.
- EXHIBIT P8** A TRUE COPY OF THE JUDGMENT IN WP(C) 5234 OF 2020 DATED 26.02.2020.

RESPONDENT'S EXHIBITS:NIL

APPENDIX OF WP(C) No.8642/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1** A TRUE COPY OF THE CERTIFICATE IN THIS REGARD ISSUED BY THE ASSISTANT REGISTRAR (GENERAL) KUNNATHUNADU DATED 14.12.2016.
- EXHIBIT P2** A TRUE COPY OF THE ASSESSMENT ORDER FOR AY-2017-18 DATED 29.12.2019 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3** A TRUE COPY OF THE DEMAND NOTICE FOR AN AMOUNT OF RS.1,45,27,306/- U/S. 156 DATED 30.12.2019 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P4** A TRUE COPY OF THE APPEAL FOR AY 2017-18 BEFORE THE 2ND RESPONDENT DATED 22.01.2020.
- EXHIBIT P5** A TRUE COPY OF THE STAY PETITIONER FOR AY 2017-18 BEFORE THE 2ND RESPONDENT DATED 24.03.2021.
- EXHIBIT P6** A TRUE COPY OF THE NOTICE OF DEMAND DEMANDING 20 % OF TAX DATED 24.03.2021 FOR AYS 2017-18 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7** A TRUE COPY OF THE JUDGMENT IN WA 1536 OF 2019 DATED 01.07.2019.
- EXHIBIT P8** A TRUE COPY OF THE JUDGMENT IN WP(C) 5234 OF 2020 DATED 26.02.2020.

RESPONDENT'S EXHIBITS:NIL

SSK

//TRUE COPY//

PA TO JUDGE

APPENDIX OF WP (C) No.8652/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE ASSISTANT REGISTRAR PERUMBAVOOR DATED 4.10.2018.
- EXHIBIT P2 A TRUE COPY OF THE ASSESSMENT ORDER FOR AY 2017-18 DATED 31.12.2019 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE DEMAND NOTICE FOR AN AMOUNT OF RS.8,36,62,521/- U/S 156 DATED 31.12.2019 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P4 A TRUE COPY OF THE APPEAL FOR AY 2017-18 BEFORE THE 2ND RESPONDENT DATED 13.1.2020.
- EXHIBIT P5 A TRUE COPY OF THE STAY PETITION FOR AY 2017-18 BEFORE THE 2ND RESPONDENT DATED 24.3.2021.
- EXHIBIT P6 A TRUE COPY OF THE ASSESSMENT ORDER FOR AY 2018-19 DATED 17.2.2021 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P7 A TRUE COPY OF THE DEMAND NOTICE FOR AN AMOUNT OF RS.1,90,97,273/- U/S 156 DATED 17.2.2021 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P8 A TRUE COPY OF THE APPEAL FOR AY 2018-19 BEFORE THE 2ND RESPONDENT DATED 8.3.2021.
- EXHIBIT P9 A TRUE COPY OF THE STAY PETITION FOR AY 2018-19 BEFORE THE 2ND RESPONDENT DATED 24.3.2021.
- EXHIBIT P10 A TRUE COPY OF THE NOTICE OF DEMAND DEMANDING 20% OF TAX DATED 24.3.2021 FOR AYS 2017-18 AND 2018-19 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P11 A TRUE COPY OF THE JUDGMENT IN W.A.1536 OF 2019 DATED 1.7.2019.

RESPONDENT'S EXHIBITS:NIL