

Kerala High Court

The Thathamangalam Service ... vs The Income Tax Officer (Tds)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 14TH DAY OF SEPTEMBER 2012/23RD BHADRA 1934

WP(C).No. 14226 of 2012 (C)

PETITIONER:

1. THE THATHAMANGALAM SERVICE CO-OPERATIVE BANK LTD,
THATHAMANGALAM POST, PALAKKAD 678 102
REPRESENTED BY ITS SECRETARY SRI.R.SADANANDAN.
2. M/S.VADAVANNUR SERVICE CO-OPERATIVE BANK LTD,
VADUVANNUR POST, PALAKKAD 678 534
REPRESENTED BY ITS SECRETARY SRI.B.RAVI.
3. M/S.PERUMATTY SERVICE CO-OPERATIVE BANK LTD,
VANDITHAVALAM, POST, PALAKKAD 678 534
REPRESENTED BY ITS AUTHORISED PERSON SRI.N.HARIDASAN.
4. M/S.MOOLATHARA SERVICE CO-OPERATIVE BANK LTD
MEENAKSHIPURAM POST, PALAKKAD 678 533
REPRESENTED BY ITS SECRETARY SRI.K.S.KALADHARAN.
5. M/S.PATTANCHERRY SERVICE CO-OPERATIVE BANK LTD
PATTANCHERRRY POST, PALAKKAD 678 532
REPRESENTED BY ITS SECRETARY SRI.M.MOIDEENKUTTY.
6. M/S.CHITTUR SERVICE CO-OPERATIVE BANK LTD
CHITTUR, PALAKKAD 678 101
REPRESENTED BY ITS AUTHOIRSED PERSON SRI.K.CHENTHAMARA.
7. M/S.MUTHALAMADA SERVICE CO-OPERATIVE BANK LTD
MUTHALAMADA, PALAKKAD 678 507
REPRESENTED BY ITS SECRETARY SRI.B.SADANANDAN.
8. M/S.KOZHIPPARA SERVICE CO-OPERATIVE BANK LTD
KOZHIPPARA, PALAKKAD 678 557

REPRESENTED BY ITS SECRETARY SRI.M.MANIKANDAN.

9. M/S.VALLANGHY VITHANASSERRY SERVICE CO-OPERATIVE BANK LTD
VITHANASSERRY, NENMARA POST, PALAKKAD 678 508
REPRESENTED BY ITS AUTHORISED PERSON SRI.M.KUMARACHANDRAN.

Vk

WP(C).No. 14226 of 2012 (C)

10. M/S. ELAVANCHERRY SERVICE CO-OPERATIVE BANK LTD
ELAVANCHERRY POST, PALAKKAD 678 508
REPRESENTED BY ITS SECRETARY SRI.A.RAJAN.
11. M/S. KOLLENGODE SERVICE CO-OPERATIVE BANK LTD
KOLLENGODE POST, PALAKKAD 678 506
REPRESENTED BY ITS SECRETARY SMT.C.SARASIJA.
12. M/S. MOONGILMADA SERVICE CO-OPERATIVE BANK LTD
VANNAMADA POST, PALAKKAD 678 555
REPRESENTED BY ITS SECRETARY SMT.V.DEVAKI.
13. M/S. VELANTHAVALAM SERVICE CO-OPERATIVE BANK LTD
VELANTHAVALAM POST, PALAKKAD 678 557
REPRESENTED BY ITS SECRETARY SRI.P.SWAMIAPPAN.
14. M/S.PALLASSANA SERVICE CO-OPERATIVE BANK LTD
PALLASSANA POST, PALAKKAD 678 505
REPRESENTED BY ITS SECRETARY SRI.C.KADER MOIDEEN
15. M/S. KOZHINJAMPARA SERVICE CO-OPERATIVE BANK LTD
KOZHINJAMPARA POST, PALAKKAD 678 555
REPRESENTED BY ITS SECRETARY SMT.M.SOBHANA.
16. M/S. AYALUR SERVICE CO-OPERATIVE BANK LTD
AYALUR POST
PALAKKAD 678 510.REPRESENTED BY ITS SECRETARY
SRI.P.RAGHAVADAS.
17. M/S.KODUVAYUR SERVICE CO-OPERATIVE BANK LTD
KODUVAUR, PALAKKAD
REPRESENTED BY ITS SECRETARY SRI.K.UNNI.
18. M/S.KUTHANNUR SERVICE CO-OPERATIVE BANK LTD
KUTHANNUR POST, PALAKKAD 678 721
REPRESENTED BY ITS SECRETARY, SRI.T.SURESHKUMAR.
19. M/S.COYALMANNAM SERVICE CO-OPERATIVE BANK LTD
COYALMANNAM, PALAKKAD
REPRESENTED BY ITS SECRETARY SRI.S.SAJITH.

20. M/S.KANJIKODE SERVICE CO-OPERATIVE BANK LTD
KANJIKODE POST, PALAKKAD 678 621
REPRESENTED BY ITS SECRETARY SRI.M.RAMAKRISHNAN.

21. M/S.PARLI SERVICE CO-OPERATIVE BANK LTD
PARLI POST, PALAKKAD 678 612
REPRESENTED BY ITS SECRETARY, SRI.A.GOPAKUMAR.

BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SMT.NISHA JOHN
SRI.V.P.NARAYANAN
SMT.BOBY M.SEKHAR

VK

WP(C).No. 14226 of 2012 (C)

RESPONDENTS:

1. THE INCOME TAX OFFICER (TDS)
PALAKKAD RANGE, PALAKKAD 678 001.
2. THE COMMISSIONER OF INCOME TAX (CIB)
5TH FLOOR, KANDAMLOLATHY TOWERS, M.G ROAD
KOCHI 682 011.
3. THE ASSISTANT DIRECTOR OF INCOME TAX (INV.)
CHUNDACKAYIL COMPLEX, 1ST FLOOR, MANJAKULAM ROAD,
PALAKKAD 678 014.

BY SENIOR GOVERNMENT PLEADER SMT.SHOBANAMMA EAPEN
BY ADVS.SRI.P.K.RAVINDRANATHA MENON (SENIOR)
SRI.JOSE JOSEPH, SC, INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 9.8.2012 ALONG WITH WPC. 14846/2012 AND CONNECTED CASES,
THE COURT ON 14-09-2012 DELIVERED THE FOLLOWING:

VK

WP(C).No. 14226 of 2012 (C)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1. TRUE COPY OF THE JUDGMENT DATED 18.01.2011 IN WPC NO.1680 OF 2011 OF THIS HONOURABLE COURT.

EXHIBIT P2. TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 1ST PETITIONER.

EXHIBIT P2(a).TRUE COPY OF THE REPLY DATED 08.06.2012 GIVEN BY THE 1ST PETITIONER TO THE 1ST RESPONDENT.

EXHIBIT P3. TRUE COPY OF THE NOTICE NO.ARREAR COLLECTION/ITO(TDS) PKD/2011-12 DATED 18.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 2ND PETITIONER.

EXHIBIT P4. TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 3RD PETITIONER.

EXHIBIT P5. TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 4TH PETITIONER.

EXHIBIT P6. TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 5TH PETITIONER.

EXHIBIT P7. TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 6TH PETITIONER.

EXHIBIT P8. TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 7TH PETITIONER.

EXHIBIT P9. TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 8TH PETITIONER.

EXHIBIT P10.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 9TH PETITIONER.

EXHIBIT P11.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 10TH PETITIONER.

VK

WP(C).No. 14226 of 2012 (C)

EXHIBIT P12.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 11TH PETITIONER.

EXHIBIT P13.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12 DATED 20.01.2012 RECEIVED FROM THE 1ST RESPONDENT BY THE 12TH

PETITIONER.

EXHIBIT P14.TRUE COPY OF THE NOTICE NO.ARREAR COLLECTION/ITO(TDS)
PKD/2011-12 DATED 18.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE
13TH PETITIONER.

EXHIBIT P15.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12
DATED 20.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE 14TH
PETITIONER.

EXHIBIT P16.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12
DATED 20.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE 15TH
PETITIONER.

EXHIBIT P17.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12
DATED 20.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE 16TH
PETITIONER.

EXHIBIT P18.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12
DATED 20.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE 17TH
PETITIONER.

EXHIBIT P19.TRUE COPY OF THE NOTICE NO.ARREAR COLLECTION/ITO(TDS)
PKD/2011-12 DATED 18.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE
18TH PETITIONER.

EXHIBIT P20.TRUE COPY OF THE NOTICE NO.ARREAR COLLECTION/ITO(TDS)
PKD/2011-12 DATED 18.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE
19TH PETITIONER.

EXHIBIT P21.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12
DATED 20.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE 20TH
PETITIONER.

EXHIBIT P22.TRUE COPY OF THE NOTICE NO.CO-OP.BANKS/ITO(TDS)/PKD/2011-12
DATED 20.01.2012 RECEIVED FROM THE IST RESPONDENT BY THE 21ST
PETITIONER.

EXT.P23. COPY OF THE NOTICE F. NO. ITO (CIB), CLT/2008-09 DATED
2.02.2009 ISSUED BY THE INCOME TAX OFFICER (CIB), CALICUT.

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WP(C).No. 14226 of 2012 (C)

RESPONDENTS' EXHIBITS :

EXT.R1(A). COPY OF THE ASSESSMENT ORDER IN RESPECT OF MADAI

CO-OPERATIVE BANK LTD., KANNUR DATED 16.12.2011.

EXT.R1(B). COPY OF THE ORDER PASSED BY THE ITO (TDS), KANNUR ON THE DISTRICT TREASURY, KANNUR DATED 28.2.011.

EXT.R1(C). COPY OF THE NOTICE ISSUED BY THE INCOME TX OFFICER (CIB) CALICUT TO KANNUR SERVICE CO-OP. BANK DATED 2.2.2009.

EXT.R1(D). COPY OF THE NOTICE ISSUED BY THE INCOME TAX OFFICER (CIB) CALICUT TO THALAKKAD SERVICE CO-OP. BANK DATED 18.09.2009.

/ TRUE COPY /

P.A. TO JUDGE

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P.R. RAMACHANDRA MENON, J.

.....
W.P.)Nos.14226,14846,15191,

15286, 15330, 15736,15790

16188, 17189, 17386, 17387 &

17653 OF 2012

.....
Dated this the 14th September, 2012

J U D G M E N T

The petitioners are Primary Co-operative Societies/Primary Agricultural Credit Societies, who are aggrieved of the notices issued by the concerned Income Tax Officer (TDS) asking:

(1) to comply with the statutory requirements under Section 200(3) of the Income tax Act, submitting a statement in the Form 24Q/26Q/27Q as applicable;

(2) to furnish a list showing interest
credited/accrued in excess of Rs.5000/-

(individuals and other than individuals) during the financial year 2010-11 and 01.04.2011 to 31.12.2011 for verification and W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 (3) to furnish copies of the provisional receipts issued by the NSDL office regarding receipt of quarterly TDS statements for the last three Quarters of Financial year 2011-12 viz. 24Q, 26Q and 27Q and copies of Form No.16 and 16A issued by the Bank for the Financial Year 2010-11 and (4) to comply with such other requirements.

2. According to the petitioners such notices are part of a rowing enquiry and amounts to calling for general information under Section 133(6) of the Income Tax Act (hereinafter referred to as the Act); and that issuance of similar notices under Section 133(6) calling for such general information stands already stayed by the Supreme Court in SLP.3976 of 2010.

3. The respondents in W.P.(C) 14226 of 2012 has filed a detailed statement (which is sought to be adopted in other cases W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 as well) wherein, it has been asserted that the scope of the notice issued has been wrongly understood by the petitioners. It has been asserted that the notice is not under Section 133(6) of the Income Tax Act, but for the purpose of assessment, since the petitioners have failed to file the necessary returns under the Act and have not effected any TDS as prescribed and that it is very much necessary for the purpose of verification and to be dealt with in tune with the relevant provisions of law. It is also pointed out that the relevant particulars have been called for as an initial step, before issuing summons under Section 131 of the Act.

4. To understand the factual position in the correct perspective, it is necessary to extract the contents of the specimen notice(Ext.P2) in W.P.(C) 14226 of 2012, which reads as follows:

"Sir, Sub: Deduction of tax at source and filing of Quarterly e TDS Statements in Form 24Q/26Q/27Q - F.Y. 2010-11 & 2011-12 -Reg.

W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 As per Section 200(3) of the Income Tax Act, it is mandatory that any person deducting any sum as TDS should prepare and submit a statement in the form 24Q/26Q/27Q as applicable, by the Deductor. You are therefore required to comply with the provisions of ACT immediately, if not already done, in order to streamline taxpayers grievances and also reconcile the mismatch.

It is requested that, a list showing interest credited/accrued in excess of Rs.5,000/- (individuals and other than individuals) during the F.Y. 2010-11 and 1.4.2011 to 31/12/2011 may please be produced for verification.

Your are also requested to furnish copies of provisional receipt issued by the NSDL office regarding receipt of quarterly TDS statements for the last three Quarters of F.Y.2011-12 viz. 24Q,26Q and 27Q and copies of Form No.16 and 16A W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 issued by the Bank for the Financial year 2010-2011. It is also requested that please produce copy of acknowledgement for Income Tax Return of the Bank filed

and P & I Account and Balance sheet and annexures thereto for the F.Y. 2010-2011 relevant to the Assessment Year 2011-

2012.

You are requested to appear before me either in person or through an authorized representative with the details mentioned above in my office at Aayakar Bhavan, English Church Road, Palakkad on 22.02.2012 at 2.15 PM. Please ensure compliance."

5. The learned Sr. Counsel Mr. T.M. Sreedharan appearing for the petitioners/Society in W.P.(C) 14226 and 15191 of 2012 submits that the petitioners in the said two cases do not have any objection at all with regard to the requirement in the 'first' and 'third' paragraphs of the notice; whereas the objection is W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 only with respect to the general information sought for, as to furnishing of a 'list' showing the interest credited/accrued in excess of Rs.5000/- for the relevant assessment years. According to the learned Sr. Counsel, this can only be treated as part of collection of general information as emanating from the provisions under Section 133(6) of the Income Tax Act. When similar information was called for by the Income Tax Department from similar Societies earlier, asking to furnish particulars of individuals who are having deposits of more than Rs. one lakh or above, such notices issued under Section 133(6) of the Act were subjected to challenge before this Court by the aggrieved parties. The main contention in the said writ petitions was that the said course was not permissible without the 'prior approval of the Director' as specified under the 'second proviso' to Section 133 (6), except in the course of an enquiry. Interference was declined and the said writ petitions were dismissed by a Single Bench of this Court, which led to W.A.No.1854 of 2009 and W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 connected cases. After considering the merits involved, interference was declined in the appeals as well, however, holding that, in so far as the notice did not disclose the factum of prior approval, the files were directed to be verified, enabling the respondents to proceed with further steps, after getting prior approval, in cases where such approval was not there. Being aggrieved with the verdict as above, some of the Co-operative Societies approached the Apex Court by filing SLPs, such as SLP.3976 of 2010 and connected cases and the said matters stand admitted, issuing notice and also granting interim stay. When similar matters came up for consideration before this Court, like W.P.(C) 1680 of 2011, pendency of the matters before the Apex Court and the interim stay granted in SLP.3976 of 2010 was taken note of and based on the submission made by the learned Standing Counsel for the respondents, the writ petition was disposed of (as per Ext.P1 judgment dated 18.01.2011) without prejudice to the rights of the Income Tax W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 Department to take further action, in accordance with the orders to be passed in the SLP, making it clear that the impugned notice shall not be enforced till such time. The learned Sr. Counsel submits that the impugned notices are yet further ones in this guise, which hence are sought to be intercepted by filing the present writ petitions.

6. The learned Counsel for the petitioners in the other writ petitions, while supporting the submissions of the learned Sr. Counsel who appeared for the petitioners in W.P.(C)Nos.14226 of

2012 and 15191 of 2012 as aforesaid, have advanced another submission as well, to the effect that the concerned petitioners/ Societies are Primary Agricultural Credit Societies/ Service Co-operative Societies as defined under Section 2(oa) of the Kerala Co-operative Societies Act and are taken care of by the definition of the term 'co-operative Society' as given under Section 2(19) of the Income Tax Act. A certificate to this effect as to the classification/registration of the Society as a W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 Primary Agricultural Credit Society has been produced in some writ petitions. Based on the said status, it is contended that such Societies stand specifically excluded from effecting any TDS by virtue of clear stipulation under Section 194A(3)(viiia)

(a) of the Act. This being the position, they are not supposed to effect any TDS in respect of the interest credited to the accounts of the members and hence are not supposed to comply with the requirements under Section 200(3) of the Act or such other provisions as pointed out in the impugned notices.

7. Mr. M.P. Ashok Kumar, the learned Counsel appearing for the petitioner in W.P.(C)No.15736 of 2012, Shri Sajan Varghese, the learned Counsel for the petitioner in W.P.(C) No.14846 of 2012 and Mr..K.T.Thomas, the learned Counsel appearing for the petitioners in the other cases assert that the competent authority to satisfy the status of the Petitioners Societies as Primary Agricultural Credit Societies is the departmental authority in the State of Kerala and once a W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 certificate is issued in this regard, it is no more open for the authorities of the Income Tax Department to ignore the same or to pursue any independent fact finding exercise.

8. Mr. Jose Joseph, the learned Standing Counsel appearing for the respondents submits with reference to the contents of the statement filed in W.P.(C)No.14226 of 2012 that the idea and understanding of the petitioners as to the scope of the impugned notice is quite wrong and misconceived. As discernible from the notices produced and impugned, no reference is made to Sec.133(6) and it is actually with reference to the mandatory duty cast upon the Societies concerned under Section 200(3) of the Income Tax Act and such other requirements, particularly in the course of verification of the facts and figures. The learned Counsel further submits that several Co-operative Societies proclaiming themselves as Agricultural Credit Societies and seeking exemption under Section 80P of the Act, have wrongly claimed the benefits without meeting the requirements to be W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 considered as Primary Agricultural Credit Societies. With reference to sub-section (4) of Section 80P, the learned Counsel submits that the Primary Agricultural Credit Society has been referred to as a 'Society' as defined under the Banking Regulation Act and as such, the classification or the status as available in different States or the certificates issued accordingly cannot have any significance. To meet the requirements and to have the status of Primary Agricultural Credit Society, the main object should be, to provide assistance in the Agricultural Sector. Several Societies claiming such benefits, on verification of the accounts were found as having provided financial assistance in the agricultural sector only to a negligible extent, which cannot be considered as the main objective and hence they cannot be considered as a Primary Agricultural Credit Societies.

9. Reference is also made to the amended definition of the term 'Primary Agricultural Credit Society' as given under W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 Section 2(oa) of the Kerala Co-operative Societies Act, whereby a 'proviso' was added as per the amendment brought about in the year 2010 (as per Act 7 of 2010). As per the amended provision (second proviso), it is stipulated that, if the principal object is not fulfilled, such societies shall lose all characteristics of a Primary Agricultural Credit Society, as specified in the Act, Rules and Bye-laws except the existing staff strength. Thus, merely for the reason that a Society happens to be classified or registered as an Agricultural Credit Society, that by itself is not enough to claim the benefit under the Income Tax Act and such Society has to continue to meet the obligation for which it was constituted, i.e., the principal object should be fulfilled throughout, by providing agricultural credit activities and providing loans and advances for agricultural purposes.

10. The learned Counsel for the petitioners submits that the very constitution of the Society, the scope of enactment, particularly the Co-operative Societies Act and the concept has W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 to be appreciated in the light of hard realities. The very co- operative movement was with a specific intent of social obligation, to extend help and assistance to the needy general public, with easy access and without need or necessity to face much hurdles. The petitioners Societies have to confine their area of operation to a particular Village/Panchayat/Municipality and have to compete with other Public Sector Banks including in the National Sector. It is in the said circumstance, that the petitioners have been permitted to grant interest on deposits slightly at a higher rate than that is being provided by the Scheduled Banks, to attract deposits. This is not governed by the Regulations of the RBI, but by the instructions of the Registrar of the Co-operative Societies in the State. When the petitioners are called for, to disclose the particulars of the individuals having deposits of Rs.One lakh or more or to provide particulars of interests given to an extent of more than Rs.5000/- per year, it will unnecessarily cause embarrassment to the depositors, W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 leading to 'deposit drain', affecting the very survival of the Societies. It is also pointed out that, even going by the mandate of Section 194 A, the tax liability will be attracted only in respect of interests credited to an extent of more than Rs. 10,000/- and as such, there is no rationale in seeking for the particulars of interests credited to an extent of more than Rs.5000/- per year.

11. The learned Sr. Counsel appearing for the petitioners in the concerned cases submits that the idea of the Income Tax Department in demanding to furnish a 'list' of persons and particulars in respect of interests credited to an extent of more than Rs.5000/- is only to shift the work to be done by the staff and officers of the Income Tax Department, to the shoulders of the petitioners Societies. Even in the case of the Societies who are supposed to effect TDS under Section 194A, once the particulars as contemplated under Section 200(3) are provided in Form Nos.24Q, 26Q and 27Q, as applicable, it is open for the W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 staff/officers of the Income Tax Department to get the particulars of the deposits, generating interests of more than Rs.5000/- from the particulars revealed therefrom. Furnishing of a 'list' in respect of such accounts is not a statutory requirement and as such, any additional work cannot be thrust upon the petitioners Societies, who are virtually functioning on the strength of minimum staff and who find it difficult to engage or deploy the service of any other staff,

so as to cater to the requirements of the Income Tax Department, to make things easy for them, that too, without any statutory backing. Appointment of any additional hands to do such work is not permissible and even if allowed, it may have a bearing on the classification of the Society, as to the staff strength inviting such other adverse circumstances and hence not possible to be pursued.

12. During the course of hearing, the learned Standing Counsel for the respondents submits that notices issued by the W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 Department earlier seeking for the particulars of the deposits generating interests of more than Rs. 5000/- and also seeking for some other details, referring to the penalty provisions, had come up for consideration before this Court in W.P.(C)No.4605 of 2010 and connected cases, wherein interference was declined and all the writ petitions were dismissed as per the judgment reported in [(2010) 329 ITR 609 (Ker.)] (Thaliparamba Municipal Vanitha Service Sahakarana Sangham Ltd. vs. Income Tax Officer (TDS) and another). It is stated that no appeal has been preferred therefrom and it has become final.

13. Notices therein were issued seeking for the following particulars :

"1. Details of quarterly returns filed for the financial years 2006-07, 2007-08 and 2008-09

2. Details of payment made towards interest (above Rs.5000) for the financial years 2006-07, 2007-08 and 2008-09.

W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012

3. Copy of the profit and loss account and balance sheet for the financial years 2006- 07, 2007-08 and 2008-09."

The said notices also required the addressee to show cause in writing as to:

1. Why the assessee should not be treated as in default under Section 201(1) in respect of non-deduction/short eduction of tax,

2. Why interest under Section 201 (1A) should not be charged and

3. Why penal action under Section271C should not be initiated."

The contention of the Societies therein, that the Societies did not constitute a 'person' as defined under Section 2(31)of the Act, was considered meticulously and held against them and in favour of the Revenue; simultaneously sustaining the notices, referring to the purpose for which the notices have been issued. W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 But, as on date, the scope of collection of particulars of payment made towards interests to an extent of above Rs.5000/- for the financial years concerned, virtually is

having a direct link with regard to the issue pending before the Apex Court. In view of the submissions made from the part of the Department in W.P. (C) 1680 of 2011 as covered by Ext.P1 judgment, referring to the pendency of SLP, this Court finds that paragraph No. 2 (ie. particulars of the interest of more than Rs.5000/-) can be enforced, only subject to the outcome of the decision in the matter pending before the Apex Court. But this does not bar the Department from verifying the records pursuant to the materials to be furnished by the concerned Societies, who are bound to comply with Section 194A and Section 200(3) of the Income Tax Act, based on the facts and figures available therefrom, although and the burden to furnish a 'list' of the relevant particulars, need not be shifted to the shoulders of the Societies concerned.

14. Coming to the next question, as to whether the W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 petitioners have failed to comply with the requirement under Section 200(3) of the Income Tax Act, the liability to submit the particulars in the relevant Form (i.e. 24Q, 26Q and 27Q) is mulcted only upon the persons, who are actually liable to deduct the tax at source as provided under Section 194A of the Income Tax Act. By virtue of the mandate under Section 194A(3)(viii)

(a) of the Act, the said provision is not applicable in respect of deposits with Primary Agricultural Credit Societies or Primary Credit Societies or Co-operative Land Mortgaged Banks or Co-operative Land Development Banks. The question is whether the petitioners are entitled to have the benefits thereunder.

15. True, there is a reference to the Banking Regulation Act, 1949, as given in sub section (4) of Section 80P of the Income Tax Act. A society claiming the benefit of exemption under Section 80P has necessarily to satisfy the requirements and specifications of a Primary Agricultural Credit Society as defined under the Banking Regulation Act. But coming to the W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 instant cases and the impugned notices, the position is something else. The cause is not with regard to the claim for exemption, but in respect of alleged necessity to have effected TDS under Section 194A, in respect of interest on the deposits and also as to the particulars of deposits generating interests of more than Rs.5000/- per year. Sections 194A and 200(3) do not make a reference to the term Primary Agricultural Credit Society, as defined under the Banking Regulation act; more so since Section 194A is applicable to all the persons concerned including the individuals and Body Corporates which takes in a Co-operative Society as well, by virtue of the definition of the term 'person' under Section 2(31). Section 80P provides exemption only in respect of a Primary Agricultural Credit Society as mentioned in sub section (4) and as such, the status of the Society becomes more relevant, as defined under the Banking Regulation Act. However, this may not have much significance to the case in hand, as pointed out in the statement filed by the W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 respondents, that such objective has already been brought about by amending the Kerala Statute as well, incorporating the 'second proviso' to the definition of the term Primary Agricultural Credit Society, as given under Section 2(oa) of the Kerala Co-operative Societies Act, as per Act 7 of 2010.

16. True, some of the petitioners have obtained a certificate as to the classification/registration as Primary Agricultural Credit Societies. But, by virtue of the amendment to Section 2(oa) of the Kerala Co-operative Societies Act, if the Society does not continue to fulfill the obligation, it will lose the colour and characteristics of a Primary Agricultural Credit Society, except for the purpose of staff strength. Thus, it is very much obligatory for the petitioners Societies, who claim the status and the benefits of Primary Agricultural Credit Societies, to substantiate that their main object of incorporation is being continued to be fulfilled as well. As such, they have to obtain a certificate from the competent authority by producing the W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 relevant facts and figures including the balance sheet, profit and loss accounts etc., that they satisfy the requirements of the 'second proviso' to Section 2(oa) of the Act, to claim the status of Primary Agricultural Credit Societies so as to contend that they stand exempted by virtue of Section 194A(3)(vii)(a) of the Act and hence are not required to effect any TDS. As a natural consequence, they are not supposed to comply with the requirements of Section 200(3) as well, if they succeed.

17. As held already, it is for the petitioners to establish their status as Primary Agricultural Credit Societies by obtaining and producing the relevant certificate from the competent authority, as mentioned hereinbefore. It is also open for the petitioners to opt to produce the relevant records before the Income Tax authorities as well, to establish their status and credentials, that there is no lapse in fulfilling the objective as Primary Agricultural Credit Societies so as to absolve from further proceedings at the hands of the Income Tax Department, W.P.)Nos.14226,14846,15191,15286, 15330, 15736,15790 16188, 17189, 17386, 17387 & 17653 OF 2012 in relation to Section 194A and Section 200(3) of the Act. So as to enable the petitioners to pursue such exercise, further proceedings shall be kept in abeyance for a period of three months from the date of receipt of a copy of the judgment. If the petitioners fail to produce the certificates in the manner as specified hereinbefore (with reference to the 'second proviso' to Section 2(oa) of the Kerala Co-operative Societies Act), it will be open for the respondents to proceed with further steps in connection with the requirements of Section 194A and Section 200(3) of the Act.

The writ petitions are disposed of as above.

P.R. RAMACHANDRA MENON, JUDGE.

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