



W.P.Nos.3919, 4966, 6556, 7499, 11028, 11032, 11033 & 11034 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 18.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.3919, 4966, 6556, 7499,
11028, 11032, 11033 & 11034 of 2022

and

W.M.P.Nos.4072, 5101,
6662, 7503, 10620, 10622, 10624 & 10626 of 2022

W.P.No.3919 of 2022:

- 1.The Chennimalai Siragiri Murugan Primary Handloom Weaver's Cooperative Society Ltd., Ch 2,
Rep by its President,
N.Elangovan,
S/o.K.Natarajan,
No.2/68, Ingur Road, Chennimalai 638 051,
Perundurai Taluk, Erode District.
- 2.Arachalur Anna Weavers Co-operative Production & Sale Society Ltd., No.EH.98,
Rep by its President,
K.Thangaraj,
S/o.Karuppanna Gounder,
No.4A, Veerappampalayam,
Arachalur 638 101, Erode District.



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3.The Chennimalai Sivan Weaver's Cooperative Production
& Sale Society Ltd., E.H.32,

Rep by its President,
K.M.Muthusamy Gounder,
No.3/223, Kaluri Nagar, K.L.Road,
Chennaimalai, Perundurai Taluk,
Erode District.

4.The Ammapalayam Primary Weavers Cooperative
Production & Sale Society Ltd., E.H.112,

Rep by its President,
K.Savithiri,
No.134/2, Roja Nagar,
Kattur Road, Chennimalai, Perundurai Taluk,
Erode District.

5.The Chennimalai Kongu Weaver's Cooperative
Production & Sale Society Ltd., E.H.113,

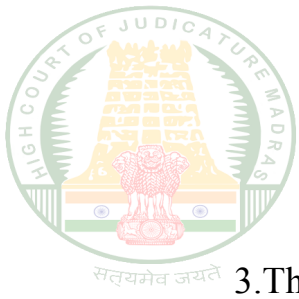
Rep by its President,
P.Ramesh,
Veppili, Chennimalai, Perundurai Taluk,
Erode District.

... Petitioner

Vs.

1.The Income Tax Officer,
TDS Ward, Income Tax Office,
Erode, Erode District.

2.The Managing Director,
Erode District Central Cooperative Bank Ltd.,
No.1, Bhavani Main Road,
Erode, Erode District.



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3.The Managing Director,
Tamil Nadu State Apex Cooperative Bank Ltd.,
No.4, NSC Bose Road,
Chennai 600 001.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.01560/95-96/Valarchi1, Dev.Circular No.12/2020-21, dated 01.04.2021 and quash the same.

For Petitioner in
W.P.Nos.3919
& 4966 of 2022

: Mr.C.Prakasam,
Senior counsel
for Mr.P.J.Rishikesh

WP.Nos.11028, 11033,
11034, 6556, 7499
& 11032 of 2022

: No appearance

For Respondents
in all petitions

: Dr.B.Ramaswamy,
Senior Standing counsel for R1

No appearance for R2 to R4



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COMMON ORDER

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These writ petitions have been filed challenging the impugned notices issued by the 3rd respondent dated 16.03.2021, 05.08.2021 and 01.04.2021.

2. The learned counsel for the petitioner would submit that the aforesaid impugned circulars were issued under Sections 194A and 194N of the Income Tax Act (hereinafter called as “IT Act”). As far as, the impugned circular issued under Section 194A of the IT Act is concerned, the same was issued by the 3rd respondent to the petitioners/Co-operative Societies directing them to deduct the TDS for the interest income, which exceeds a sum of Rs.40,000/-. As far as the circular pertaining to Section 194N of the IT Act is concerned, the same was with regard to the deduction of TDS as follows:

- i) 2% for the cash withdrawal, which exceeds a sum of Rs.20,00,000/- up to Rs.1 Crore; and
- ii) 5% for the cash withdrawal, which exceeds a sum of Rs.1 Crore.



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3. Further, he would contend that as far as the cash withdrawal is

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concerned, if the provisions of Section 194N of the IT Act discourages the cash withdrawal beyond Rs.20 Lakhs, the same would apply only with regard to the cash withdrawal in the course of business transaction and not for the withdrawal, which was made by the Co-operative societies from the Co-operative Banks, for the purpose of distribution of cash to its members. On the other hand, in the present case, the cash withdrawn by the petitioners/Co-operative Societies was only with an intention to distribute the same to the farmers to meet out their minimum requirements i.e., to buy fertilizers, seeds and other equipments for the purpose of cultivation, and also for providing the reliefs such as Pongal enam, flood relief, etc.,

4. Further, he would contend that the Societies cannot keep more than a sum of Rs.10 Lakhs cash on each day, if the members deposit and the Sugar Mills credit the Sugarcane price amount with the Society account then the society cannot keep the same and deposit the name in their account and whenever requirement of cash for disbursement of the



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loan to the members then the society withdraw the cash from its savings

bank account maintaining by the 2nd respondent/Bank, for that withdrawals the Society cannot pay 2% TDS.

5. Further, he would contend that the petitioner/Co-operative Society only permitted to use the services of the 3rd party agents to provide banking and financial services such as credit and savings on their behalf and so only acted as business correspondence to pass on cash benefit as mandated by the State Government and so would qualify for being exempted under the proviso to Section 194N of the IT Act.

6. Further, he referred to Section 194A of the IT Act and advanced his arguments and submitted that in a similar way, the petitioners, being Co-operative Societies, are entitled for exemption from any deduction under the said Section of the Act. Therefore, they are not liable for deduction of any amount in terms of the provisions of Section 194N of the IT Act and the said circulars issued by the 3rd respondent are liable to be quashed.



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7. On the other hand, Dr.B.Ramaswamy, learned Senior Standing counsel appearing for the respondent had vehemently opposed for granting any exemption for the petitioner/Co-operative Society. He would contend that the petitioners are not exempt from TDS under Section 194N of the IT Act, since the said Section is only applicable for Agricultural Producers Market Committees (APMCs) from the requirement to deduct TDS on certain payments made to its members. However, the petitioners are not APMCs and they are not engaged in same type of activities as APMCs. The petitioners are Co-operative Weavers Societies and they are engaged in the business of issuing loans to their members and purchasing raw materials for them. This type of activities are not covered by the exemption under Section 194N of the Act.

8. He would contend that the petitioners had also argued that they are exempt from TDS under Section 80P of the IT Act. However, he would contend that Section 80P of the Act only exempts the Co-operative



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Societies from payment income tax on their income and it does not

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their members. Further, he would refer to the Bank Regulation Act, 1949, which defines banking as follows:

“Section 5(b).- “Banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;”

9. He would further contend that the petitioners are accepting funds from the Government and providing financial accommodation to non-members, this could potentially raise questions about whether its still maintaining its primary focus on serving its members for agricultural purposes, as defined in the Income Tax Act. The fact that PACs is providing financial services to non-members might raise concerns about whether its activities are more in line with those of a bank or a financial institution.



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10. Further, he would contend that the petitioners are providing

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financial accommodation to non-members, especially for purposes not directly related to agriculture or agriculture activities, this could potentially raise questions about whether they are deviating from their primary objective. If the majority of the financial accommodations are provided to non-members for non-agricultural purposes, this might lead to a characterization issue.

11. Further, he would contend that the petitioners/Co-operative Societies are suppose to restrict any of the deposit or payment or distribution only to its members but they are extending their services to the non-members and hence, providing assistance to the non-members cannot be described as legal work or following the Government order.

12. He would also submit that the TDS is a concept by which the Central Government ensures collection of Income Tax happens at a much earlier time than the filing of the return of Income/assessment. As per the concept, when certain payments are made by the certain category of



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persons to another person and such payments constitute and income in the hands of such person, then the specified category a person must deduct tax at source. The impugned orders are passed for non-deduction of tax at source U/s. 194N for the cash withdrawals.

13. He would further submit that on 24.03.2020 the letter of the state government sent by then Hon'ble Chief Minister addressed to the Minister of Finance, Govt. of India to increase the cash withdrawal limitation from 1 Crores to 3 crores. Based on which the CBDT has issued the following notification.

14. He had also referred to a combined order dated 03.03.2023, and submitted that the Hon'ble Madras High Court in Writ Petition (MD) Nos. 499, 4536 & 4592 of 2023, had directed the Department to examine the representation in D.o. Ir No. 15350/CC1/2022 dated 27.09.2022 ent by the Chief Seceretary, Government of Tamil Nadu and pass a reasoned order dealing with each of the contentions raised on merits and in accordance with law.



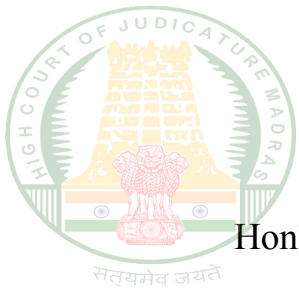
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15. Further, he would submit that on the above connection, as directed by the Hon'ble High Court, communications were issued by the CBDT to the Government of Tamil Nadu, requesting 10 certain details. However, as communicated by the CBDT, no reply has been received from the Government of Tamil Nadu

16. He would also submit that the CBDT has directed the respondent to issue communications to the petitioner Cooperative Societies in this connection, calling for information as per questionnaire issued by the CBDT. In compliance to the above, in the above mentioned Writ Petitions, requesting them to furnish the issued letters to the petitioner Cooperative Societies information, on or before 30.10.2023, as per the questionnaire issued by the CBDT. The replies from the Cooperative Societies will be collated on receipt and the same will be forwarded to the CBDT for further action. Thereafter, on 13th October 2023, the CBDT through office memorandum passed order in F.NO.370153/9/2023-TPL in which the CBDT discussed the order of the

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Hon'ble Madras High Court dated 03.03.2023 in subject "Order of

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Hon'ble Madras High Court dated 3 March, 2023 in Writ Petition 4499, 4536 and 4592 of 2023 and Representation made by Government of Tamil Nadu vide DO Lr NO. 15350/CC1/2022 dated 27.09.2022 regarding applicability of section 194N of the Income Tax Act

17. Further, he would submit that the CBDT having examined the various orders of Madras and Madurai Bench high courts and also after examining the representation by the Hon'ble Chief minister and by the Chief Secretary of government of Tamil Nadu, developed the following steps by giving full opportunity of hearing is to be granted to the government of Tamil Nadu and all stakeholders through public notice to explain their views. Further, the CBDT, has prepared a questionnaire to give to all societies and to all co-operative banks to get comprehensive information regarding taking decision on 194N.

18. Thereafter, on 22nd February 2023, CBDT circular No. F. NO. 370153 through office memorandum informed to all the co-operative

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society, wherein it has been stated that based on the Hon'ble Madras

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High Court's direction stating that applicability of section 19N to cooperative societies, after examining the issues in detailed manner, it is submitted that section 194N was inserted in the Income Tax ACT 1961 (The Act) wide finance act 2019 to further discourage cash transaction and encourage movement towards a less cash economy. However, to provide, relief to cooperative societies, it has been proposed in finance bill 2023 to amend section 194N of the act by providing a higher threshold of withdrawal of Rs.3 crores for the applicability of section 194N of the act in their case instead of Rs.1 crore. The above proposals, on its enactment, shall come into force from 1 April, 2023. At this juncture, on 24.03.2020 the letter of the state government by then Hon'ble Chief Minister addressed to the Minister of Finance, Govt. of India to increase the cash withdrawal from 1 Crores to 3 crores. Based on which the CBDT has issued the above notification providing such an immunity. Hence, he prays for the dismissal of these writ petitions.



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19. I have given due consideration with regard to the submissions made by the learned counsel for the petitioners and the learned Senior Standing counsel for the 1st respondent and also perused the materials available on record.

20. The crux of the issue involved and has to be decided in these writ petitions is as to whether the petitioners/Co-operative Societies are entitled for exemption from deduction of Tax under Sections 194N and 194A of the IT Act. At this juncture, it would be appropriate to extract Section 194N of the IT Act, which reads as follows:

“194N. Every person, being-

(1) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking, or

(iii) a post office,

who is responsible for paying any sum, being the amount



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or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, as income tax;”

21. A perusal of the operative portion of Section 194N of the IT Act makes it clear that the Co-operative Societies engaged in carrying on business of banking is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore during the previous year, to any person from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, as income tax. In the present case, the amount to be paid by the 2nd respondent/Co-operative bank is liable to deduction of tax, if the said amount is exceeding Rs.1 Crore. However, the 4th proviso provides the exemption as follows:



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“Provided that nothing contained in this sub-section shall apply to any payment made to.-

(i) the Government;

(ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;

(iii) Any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India under the Reserve Bank of India Act, 1934

(iv) Any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the payment and Settlement Systems Act, 2007;”

22. A reading of the above would make it clear that if the payment has been made to the following organisations, the provision of Section 194N of the IT Act would not apply:-



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- 1) Government
- 2) Any banking Company or Co-operative Society engaging in carrying on the business of banking or post office
- 3) Any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India under the Reserve Bank of India Act, 1934
- 4) Any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the payment and Settlement Systems Act, 2007;

23. In the present case, the petitioner had taken a stand that they are business correspondents to pass on the cash benefits as mandated by the State Government and hence, they are qualified for being exempted under Section 194N of the IT Act.

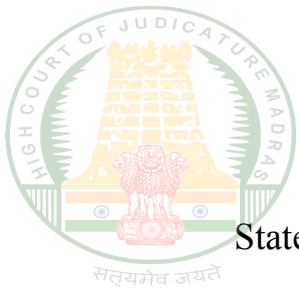
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24. No doubt that the petitioners/cooperative societies have been receiving deposits and thereafter redeeming the same. That apart, the cooperative societies are also granting loans to its members. However, they have taken a stand that they are acting as a business correspondents to pass on cash benefits as mandated by the State Government. However, though it is mandated by the Income Tax Act, it should come within the purview of the guidelines, which was issued in this regard by the Reserve Bank of India. Further, the petitioners/Co-operative Societies had not established that they had distributed the cash benefits as mandated by the State Government to its members as well as non-members in terms of the guidelines of Reserve Bank of India.

25. The activities of the Co-operative Societies, such as accepting the deposits, paying the interest and thereafter redeeming the same for granting loan to agriculturists, weavers or to its members, are appears to be partly as a banking activities, however, the active involvement of the petitioners/cooperative societies, to act as a business correspondents of a



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State Government for the distribution of the cash benefits to its members

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as well as to the non-members such as Pongal enam, flood relief, Covid reliefs and other reliefs, would appear that it is not a banking transaction but a transaction other than the banking activities in nature.

26. As contended by Dr.B.Ramaswamy, learned Senior Standing counsel, the Central government had also increased the limit of Rs.1 crore as determined in the provisions of Section 194N of the IT Act to a sum of Rs.3 Crore, and the same had come into force with effect from 01.04.2023 only with an intention to grant benefits to the members of the Co-operative Societies. In a similar situation, this Court had passed an order on 04.11.2022, which reads as follows:

“This batch of Writ Petitions has been filed by Primary Agricultural Co-operative Credit Societies (in short ‘Society/Societies’) and turns on the appreciation of a common set of facts as well as legal provisions.

2. All the petitioner societies challenge Circulars issued by the District Central Cooperative Banks, Salem, Kancheepuram and Kumbakonam, arrayed as R2 in all writ petitions (referred to as ‘Banks’) bearing



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Na.Ka.No.2416/95/Accts. dated 16.03.2021, Na.Ka.1545/2006-07/P.13 dated 29.03.2021 and Na.Ka.No.2727/2020-B3, dated 07.01.2022 respectively. The societies function for the purposes of advancing crop and fertilizer loans to agriculturalists and have accounts with R2 banks.

3. The impugned Circulars refer to the statutory mandate of Section 194 N of the Income Tax Act, 1961 (in short 'Act') providing for deduction of tax on cash withdrawal. The provisions of Section 194 N coming under Chapter XVII dealing with 'collection and recovery – deduction at source' provides for deduction of an amount equal to 2% of any cash withdrawal made by persons from (i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a co-operative society engaged in carrying on the business of banking; or (iii) a post office.

4. It is the case of the petitioners that there should be no deduction at all, that could be effected from the withdrawals made by them from the banks. The petitioner societies are intermediaries between the bank



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and agriculturists, who are beneficiaries of the withdrawals made by the petitioners.

5. In most instances, the amounts have been sanctioned by the State and the petitioner societies are mere conduits or facilitators. Thus, deduction of tax, in such a situation, would greatly prejudice the ultimate beneficiaries of the loans who are farmers and small traders.

6. That apart, the funds withdrawn by the petitioners for onward transmission to the farmers, even if construed to be the income of the petitioner societies together with other incomes earned by the societies, are entitled for deduction in terms of Section 80P of the Act. This would also support their stand that no tax is liable to be deducted at source from the withdrawals.

7. The petitioners additionally submit that, in the budget speech of the Hon'ble Finance Minister, while introducing Section 194N, the proposal for deduction of tax of cash withdrawals was restricted to business payments only. The avowed object was 'to discourage the practice of making business payments in cash' and it was proposed 'to levy TDS of 2% of cash withdrawal exceeding one crore in an year from a bank account'.



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Thus, Section 194N must be held to be applicable only in respect of business payments and the present payments would not come within the ambit of Section 194N.

8. They also refer in their pleadings, to the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, New Delhi Vs. Eli Lilly and Co. (India) (P) Ltd., [178 Taxmann 505]. This judgment is to the effect that the purpose of provisions for tax deduction under Chapter XVIIIB, is to see that any sum which is chargeable to tax under Section 4 of the Income Tax Act must be brought within the ambit of tax with the requisite deduction.

9. Thus, it is only in respect of amounts that constitute income in the hands of the payee that tax should be deducted. In the present case, the withdrawals do not constitute income of the petitioner and hence such liability would not arise.

10. They place great reliance upon a CBDT Notification bearing No.70 of 2019 dated 20.09.2019, whereunder commission agents or traders operating under the provisions of the Agricultural Produce Market Committee (APMC) have been permitted to withdraw



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cash in excess of one crore without deduction of tax at source, upon them establishing that such withdrawals were for the purpose of making payments to the farmers for purchase of agricultural produce as well as satisfaction of other allied conditions. They would claim parity with the APMCs and thus argue that there would be no liability to tax and consequently no necessity to deduct tax at source.

11. The respondents contest the writ petitions vehemently. The Income tax department reiterates the mandatory nature of Section 194 N. Only the Kanchipuram Central Cooperative Bank Ltd has filed a counter in W.P.No.21856 of 2022 challenging the maintainability of the Writ Petitions in light of the decision of this Court in K.Marappan V. Deputy Registrar of Co-operative Society (2006 (4) MLJ 641).

12. The Full Bench of this Court has in the above decision, held that under the scheme of the Tamil Nadu Cooperative Societies Act, 1983, it is only the alternative and statutory appeal mechanism, particularly appeal provision under Section 153 that must be invoked by the Cooperative Societies. The Banks also point out that the Circulars merely draw



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attention to the statutory provisions of the Income tax Act in regard to tax deduction.

13. Heard learned counsel. The counter filed by the Kancheepuram Central Cooperative Bank Limited, R2 in W.P.No.21856 of 2022 states that there are 264 Primary Agricultural Societies (PACCS) functioning under it. Pursuant to the introduction of Section 194 N w.e.f. 01.07.2020, there was a wide ranging survey by the Income-tax Department where it was noticed that the bank had not deducted taxes for the cash payments exceeding, in aggregate, a sum of rupees one crore.

14. The bank was thus taken to task and its liability for non-deduction was determined at a sum of Rs.9,58,77,590/-. This demand relates to the period 01.09.2019 to 31.03.2020, post introduction of Section 194 N as well as the period 2020-21. It is only thereafter, that the banks proceeded to apply the provisions of Section 194 N to insulate themselves from any liability in this regard. The impugned circulars have been issued, and must be seen, in the background of the aforesaid events.

15. The provisions of Section 194 N provide for a mandatory deduction of 2% of cash withdrawals and the



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object is to discourage, and drive the move toward a cashless or cash-free economy. The scheme of tax deduction also allows, by way of an application under Section 197, for a payee to seek the remedy of deduction at nil/lower rate under various provisions of the Act. However, Section 194N is conspicuous by its absence therein, and does not figure in the list of such provisions.

16. The intention is clear, that compliance with the requirement of Section 194 N is nonnegotiable except in line with the specific exceptions stipulated under the proviso extracted below:

Provided also that nothing contained in this section shall apply to any payment made to

- (i) the Government;*
- (ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;*
- (iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934);*
- (iv) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the*



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business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007):

Provided also that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the provision of this section shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification.

17. There is thus, an avenue provided for a recipient falling outside the scope of the exceptions, to seek exemption from the application of Section 194N and hence, if at all the petitioners believe that they qualify for the exemption, they may seek redressal under the in-built statutory mechanism provided as above, if they so choose.

18. To a query from the Court, as to who would constitute the specific authority before whom such prayer was to be made, the respondents have reported written instructions from the Commissioner of Income Tax (TDS), Coimbatore stating thus: 'As per business allocation rule, Central Government for tax purposes is Finance Minister of India. Hence, any request may be in the name of the Finance Minister with copy to CIT ITA



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CBDT North Block who would process such requests.'

The petitioners may thus approach the competent authority in the Government seeking relief from the application of Section 194N of the Act."

The above order passed by this Court had already attained its finality.

27. As far as the application of Section 194A of the IT Act is concerned, the petitioners are liable to deduct the TDS as provided thereunder. Whenever the deposits or investments are made with the societies, the societies are liable to deduct the tax on the interest payment. The eligibility for deduction must be tested by the Authorities in the course of assessment as it involves the determination of several questions of fact. The society is always entitled to, in the return of income filed by it, seek credit of the taxes attributable to the income returned by it and any excess deduction, if the stand of the societies is accepted in assessment, would have to be refunded to them. Therefore, it would be a premature petition to challenge the circular issued by the Authority concerned.



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28. In the present case, the petitioners/Co-operative Societies have challenged the three circulars dated 16.03.2021, 05.08.2021 and 01.04.2021 issued by the 3rd respondent. The said circulars mandate the compliance of provisions of Sections 194A and 194N of the IT Act and in those circulars, the 3rd respondent had not mentioned anything contrary to the provisions of Sections 194A and 194N of the IT Act. Merely, they had brought into the knowledge of the petitioners/Societies to comply with the said provisions along with the latest amendments thereunder. At any cost, the same cannot be challenged under Article 226 of the Constitution of India, unless and otherwise, the provisions of Sections 194A and 194N of the IT Act are struck down with regard to the Cooperative Societies are concerned.

29. Further, the objects and reasons for the introduction of Section 194N of IT Act are as follows:

- (i) To go for a cashless economy;
- (ii) To discourage the dealings and payments of cash;
- (iii) To control the circulation of illegal money in the economy;



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(iv) To track the financial transaction easily at any point of time;

(v) To carry on the official transactions easily at any point of time from any place;

30. Further, in the cashless economy, the money will be safe, since once the money deposited or invested in the bank account, there is almost nil chance of being lost, stolen or damaged unless paper money.

31. It is also pertinent to note that due to the permission granted to the Co-operative Societies to deal with the cash and to distribute the same to the members under the different reliefs, there is a large number of malpractices and mishandling of the cash. Even when this Court posted a question to the learned counsel for the petitioner, since he had appeared on behalf of many delinquent officers of the Co-operative Societies, who are all said to be involved in different types of malpractices, he had fairly accepted that in the cooperative societies, there are very bright chances for happening of very many types of malpractices and mishandling of money. Further, he would submit that in many number of cases, he had appeared before this Court for the delinquent officials to get reliefs from



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this Court. This Court had also come across many cases, where the officers of the cooperative societies viz., Secretary or other Officials, in collusion with other officers, had opened hundreds of fictitious accounts and granted loans to those fictitious accounts. Thereafter, if there is any loan waiver or interest waiver granted by the Government, the same benefits will go to the persons, who are all involved in the creation of those fictitious accounts. Hence, this is where the Societies are functioning in an unregulated manner. It is also due to the reason that the qualified Auditors had not been mandated to audit the accounts of the Societies and only the departmental audits have been conducted, which would pave the way for all sort of malpractices in those cooperative societies. Under these circumstances, Section 194N of the IT Act would be one of the ways to curb the malpractices in distribution of cash and encourage the cashless economy.

32. Now-a-days, the Central Government is granting benefits to the poor people through their bank accounts. Hence, if it is possible for the land-less people to open their bank accounts, certainly, the



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petitioners/Co-operative Societies cannot plead any excuse that its members, who are all having lands, are not in a position to open the bank accounts since it is very easy process to open the bank account for anyone at present.

33. If any distribution of cash for reliefs such as Pongal enam, flood relief, covid relief, etc., the same can be routed through the respective bank accounts directly, whereby unnecessarily the members need not approach the Co-operative Societies for claiming the said reliefs. On the other hand, it will be automatically credited to their respective bank accounts and message, intimating the said deposit, will also be sent to their phones. In such case, the valuable time of the farmers and other members of the societies will be saved and the work of the cooperative society will also get reduced.

34. Even in the ration shop of my village, I had personally experienced, where my relatives had purchased only the eligible sugar but they had received an intimation through message as if they had



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purchased wheat, oil, etc., and it is not only happening for them, but for

many persons, against which the complaints were also made. Even if the

Government is intend to curb these types of fraud, still the persons, who

are sitting and distributing the goods, are always finding the innovative

ways to cheat the poor public. Hence, keeping all these aspects in mind,

this Court is of the considered view that if there is any relief, the same

has to be distributed directly to the members. Otherwise, the persons,

who are working in the Co-operative Societies will always find some

innovative methods and swindle the money from the poor farmers and

other weavers, etc. Therefore, in such view of the matter, this Court is

inclined to suggest and pass the following orders:

- (i) Any benefit, such as pongal enam, flood reliefs, etc., shall be made only through the bank accounts of the respective members or non-members of the Co-operative Societies. The said act will save the valuable time of the members of the said Societies since if they are called for the payment of cash, initially they have to approach the Society or ration shop, etc., to register their name along with the address and thereafter, again they have to approach the Society or ration shop, etc., to collect the



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money, which would unnecessarily cause hardship for the members as well as the general public. On the other hand, if the funds are transferred to the respective bank accounts of the beneficiaries, it would be hassle-free for the public and there will be no question of mishandling of any cash;

(ii) If there is payment of cash for all the benefits provided by Government, such as pongal enam, flood reliefs, etc., it would only encourage and pave way for the mishandling of money and the same will also lead to the misappropriation of money and corruption at a large extent. When a way is available to completely eradicate the corruption and mishandling of money, etc., necessarily the Government/Societies, etc., should follow the same and distribute all sorts of reliefs through their bank accounts, in which case, the question of TDS would not arise.

(iii) When the reliefs are credited to the respective bank accounts of the beneficiaries, the withdrawal of the same should be allowed only in the presence of the beneficiaries in person. At any cost, the officials of the cooperative societies/ration shops, etc., should not be allowed for withdrawal of the said reliefs by bringing the cheques from its members. If it is allowed, there are chances for malpractices and mishandling of cash hereagain.



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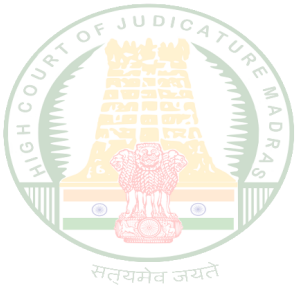


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(iv) In a similar way, if any loan is granted to the members of the societies, the said loan has to be directly credited to the respective bank accounts of the members, in which case, the withdrawal should be permitted only in the presence of respective members of the cooperative society since there is a chance for collecting of cheques by the Societies from its members and withdrawing the loan amount under the guise of helping the poor farmers, which again lead to mishandling of money. Hence, the same should not be allowed. The aforesaid aspects has to be ensured by the respective banks and Co-operative Societies and other Government Agencies, who are involved in the distribution of cash to public.

(v) Further, this Court would suggest to consider and make a provision to audit the Co-operative Societies through the Chartered Accountant in addition to the present method of scrutinising the records by the Auditors.

(vi) The 1st respondent shall also consider with regard to the issuance of appropriate circulars for entertaining the cashless transactions by the Co-operative Societies by amending the IT Act. Once if the petitioners/Co-operative Societies have followed the above suggestions, there is no need for them to handle any cash transaction any more.



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35. The above order would also avoid the distribution of reliefs in the fictitious name, since the same will happen very often at the cooperative societies, due to which, a large number of cases were also filed against the officials of the cooperative society and pending before the Courts.

36. With all these observations and directions, these writ petitions are disposed of. No cost. Consequently, the connected miscellaneous petitions are also closed.

18.12.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

nsa

To

The Income Tax Officer,
TDS Ward, Income Tax Office,
Erode, Erode District.



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KRISHNAN RAMASAMY.J.,

nsa

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18.12.2023
(1/2)