

(2014) 11 MAD CK 0390

Madras High Court

Case No: Writ Petition No. 10036 of 2010 and M.P. No. 1 of 2010

Chennai, Kancheepuram,
Thiruvallur Lorry, Tanker, Tipper,
Trailer, Van Owners' Association
Welfare Committee

APPELLANT

Vs

Union of Bank

RESPONDENT

Date of Decision: Nov. 10, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14
- Income Tax Act, 1961 - Section 119, 139, 197(a)(1)(a), 201(1), 206 AA

Hon'ble Judges: T.S. Sivagnanam, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

T.S. Sivagnanam, J.

The petitioner is an Association said to be consisting of members who are owners of Lorry, Tanker, Tipper, Trailer, Van of Chennai, Kancheepuram and Thiruvallur District.

2. The prayer sought for in this writ petition is for issuance of writ of declaration to declare Section 206 AA of the Income Tax Act introduced by Finance Act 02/2009 to be effective from 01.04.2010 as ultra vires Article 14 of The Constitution of India.

3. The petitioner filed the writ petition taking inspiration from the writ petitions which were filed by others in WP Nos. 3048, 3049, 7449 and 7450 of 2010. In those four writ petitions, the first two writ petitioners were depositors in a finance company and the remaining two petitioners were finance company themselves.

4. Initially, when the writ petition came up for hearing before this Court, direction has been given to the Registry to post the matter alongwith the pending writ

petitions. However, it is brought to the notice of this Court that the said Writ Petition Nos. 3048, 3049, 7449 and 7450 of 2010 have been disposed of by this Court by order dated 10.12.2011. The operative portion of the order reads as follows -

1. W.P.Nos. 3048 and 3049 of 2010 are filed for Writ of Declaration to declare Section 260AA of the Income Tax Act, introduced by the Finance Act 2 of 2009, effective from 1.4.2010, as ultra vires Article 14 of Constitution of India.

2. The petitioners in W.P.Nos. 3048 and 3049 of 2010 are house wife and debenture holders of the third and fourth respondents. Considering the fact that the petitioners do not have any taxable income, they had not gone for any permanent account number (PAN) under Section 139 of the Income Tax Act. As per Section 197(a)(1)(a) of the Income Tax Act, for non-deduction of tax, the petitioners have to file Form 15G. The petitioners received a letter from the third and fourth respondents on 01.12.2009 informing the petitioners to apply for the PAN Number in case the petitioners did not have PAN number and if the petitioners had PAN number, they were asked to provide the same and pointed out to the provisions under Section 260AA of the Income Tax Act, introduced with effect from 01.04.2010, the question of non-deduction of tax at source would arise only if and when a declaration in Form 15G/H carried the PAN number. In the circumstances, the petitioners were directed to mention the details of their investment and forward a copy of the PAN number. Aggrieved by this, the petitioners have come before this Court challenging the provisions under Section 260AA of the Income Tax Act in W.P.Nos. 3048 and 3049 of 2010.

3. At the time of hearing before this Court, after hearing the petitioners in W.P.Nos. 7449 and 7450 of 2010, who happens to be the third and fourth respondents in W.P.Nos. 3048 and 3049 of 2010, this Court directed the petitioner in W.P.Nos. 3048 and 3049 of 2010 to apply for PAN card and directed the concerned jurisdictional office at Chennai to issue PAN card. It is stated that in respect of W.P.No. 3049 of 2010, where a similar prayer is made, the petitioner had already obtained PAN card and in respect of W.P.No. 3048 of 2010 too, the PAN number had already been obtained. In the circumstances, strictly speaking, nothing survives in W.P.Nos. 3048 and 3049 of 2010, for the petitioners to canvass their contentions. Thus learned standing counsel appearing for the second respondent also pointed out that the petitioners in the respective Writ Petitions have already obtained PAN card, as such, their grievance does not survive in any manner.

4. As far as W.P.Nos. 7449 and 7450 of 2010 are concerned, learned counsel appearing for the petitioner fairly submitted that although the petitioners are challenging the provisions as violative of Article 14 of the Constitution of India, strictly speaking, with the PAN card given, they do not have much grievance at all as against the said provision. He pointed out that the only grievance is that any delay in furnishing the said PAN number should not be viewed against the petitioners to its detriment in the matter of the assessment proceedings, since failure to deduct tax

carries consequence in the assessment proceedings under Section 40(a)(i)(a) of the Income Tax Act as well as charging interest on the petitioner.

5. Taking note of the submissions made by the learned counsel appearing for the petitioners in W.P.Nos. 7449 and 7450 of 2010 and considering the fact that in the course of hearing and pending the Writ Petitions, the petitioners in W.P.Nos. 3048 and 3049 of 2010 had already obtained PAN number and that the assessment in respect of the petitioners in W.P.Nos. 7449 and 7450 of 2010 are yet to be completed, in fairness to the claim of the petitioners, this Court directs the concerned Assessing Authority to take note of the PAN number given by the concerned depositors and grant the relief to the petitioner in W.P.Nos. 7449 and 7450 of 2010.

6. As regards the claim of the petitioners in W.P.Nos. 7449 and 7450 of 2010, it is seen from the memo filed before this Court in W.P.Nos. 7449 and 7450 of 2010 that the number of depositors without PAN number, but without any liability for TDS on account of Form 15G/H furnished is given as follows:

7. The petitioner had also informed the investors as early as 1st December 2009 about the need for furnishing PAN details. It is also a matter of relevance herein that during the pendency of Writ Petitions, in M.P.No. 1 of 2010 in the above-said Writ Petitions, this Court considered the case of the petitioners for an interim direction that the respondent shall not insist upon the petitioners to quote the PAN number in Form 15G/H and get the tax deduced at source on the interest paid by the petitioners, but subject to the condition that the petitioners obtained Form 15G/H from the depositors, with the declaration as to their status as non-assessee. Learned counsel appearing for the petitioners submits that pursuant to the said orders, the interest payable to these non-assesseees had also been released. In the circumstances, if at this stage the petitioners are to suffer on account of non-compliance of Section 260AA of the Income Tax Act, they would be charged with penal provisions under Section 40 of the Income Tax Act, apart from interest leviable thereon under Section 201(1) of the Income Tax Act. In the circumstances, learned counsel appearing for the petitioner seeks protection from this Court from the said provision.

8. Taking note of the above-said circumstances and the validity of the provisions of the Act thus not in question, this Court feels that the proper course herein would be for the petitioner to intimate all the depositors, who are non-assesseees, to secure PAN number immediately thereon or in the alternative, it is for the petitioner to take steps to seek PAN number for these non-assesseees having no liability to pay tax under the provisions of the Act. If and when any such application is made by the petitioners or through the petitioners in W.P.Nos. 7449 and 7450 of 2010, the Income Tax Department shall take immediate steps to favour the petitioner with the PAN number for these applicants before the completion of the assessment proceedings on the petitioners in W.P.Nos. 7449 and 7450 of 2010 of the year under

consideration consequent on the introduction of Section 260AA of the Income Tax Act. In the event of the petitioner not getting PAN number for any of the depositor/non-assessee, it is always open to the petitioners in W.P.Nos. 7449 and 7450 of 2010 to approach the Board under Section 119 of the Income Tax Act for any relaxation from the applicability of Section 40(a)(i)(a) of the Income Tax Act as well as the provision on interest on non-deduction. It is hereby made clear that this concession thus given to the petitioner is applicable with reference to the assessment year 2011-12 alone and not for any subsequent year. Thus the petitioners in W.P.Nos. 7449 and 7450 of 2010 are hereby granted six months time to make their applications on behalf of the depositors for the grant of PAN number. The above time permit is given considering the fact that the time limit is sufficient enough for even completing the assessment for the assessment year 2011-12.

9. The above Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

5. The learned counsel for the petitioner would submit that appropriate directions given in the above order may also be issued in this writ petition. This plea is resisted by the learned Standing counsel appearing for the respondent stating that the facts in the above writ petitions are entirely different wherein two of the writ petitioners in the earlier batch of four cases were depositors in Finance Company and other two were the finance company themselves. However, in the instant case, the petitioner is an Association which is said to consist of members of owners of Lorry, Tanker, Tipper, Trailer and Van of Chennai, Kancheepuram and Thiruvallur districts respectively. Therefore, the factual matrix in this case are entirely different. If the individual members of the Association are aggrieved by the notification issued by the Government of India, then it is for them to approach the Court or the Authority concerned for appropriate relief.

6. Hence, with the above observation, leaving it open to the members of the Association to work out the remedy in accordance with law, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.