BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2020

CORAM :

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.6102 to 6125, 6140, 6147, 6148 to 6161, 6163 to 6165, 6167, 6168, 6169 to 6188, 6225 to 6228, 6235 to 6239, 6241 to 6254, 6259, 6261 to 6263, 6265, 6267, 6269 to 6272, 6275, 6283, 6291, 6304, 6329 & 7336 of 2020
and
W.M.P(MD)Nos. 5291 to 5314, 5330, 5338 to 5352, 5357, 5358, 5361 to 5384, 5432 to 5439, 5447 to 5450 to 5452, 5454 to 5467, 5471 to 5474, 5476 to 5479, 5481 to 5484, 5486 to 5491, 5493, 5494, 5502, 5503, 5510, 5511, 5527, 5528, 5560, 6198, 6785 & 6786 of 2020

in W.P.(MD).No.6102 of 2020 :

1.Tirunelveli District Central
Cooperative Bank Limited
rep. by its General Manager,
No.4, Thiruvananthapuram Road,
Vannarpet, Tirunelveli. 627 003. ... Petitioner

Vs.

1. The Joint Commissioner of Income Tax(TDS)
Income Tax Department,
Nellai City Centre, Thiruchendur Road,
Rahmat Nagar, Maharajanagar Post,
Tirunelveli.

2. The Income Tax Officer,
Income Tax Department,
TDS Ward , Nellai City Centre ,
Thiruchendur Road, Rahmat Nagar,
Maharajanagar Post,
Tirunelveli. ... Respondents

Prayer : Writ petition is filed under. Article 226 of the Constitution of India, to issue a Writ of Certiorari, call for the records relating to the impugned order passed by the second respondent vide No.12/MRIT 00623A/TDS/TNL/2019-20, dated 10.03.2020 and the consequential Demand Notice issued by the second respondent dated 10.03.2020 under Section 156 of the Income Tax Act, 1961 and quash the same.

For Petitioners in W.P.(MD).Nos.6102 of 2020, 6140 of 2020	Mr.D.Shanmugaraja Sethupathi
For Petitioners in W.P.(MD).Nos.6103 to 6125 of 2020, 6147 of 2020, 6163 of 2020, 6188 of 2020, 6148 of 2020 to 6161 of 2020, 6164 of 2020, 6165 of 2020, 6167 of 2020, 6169 of 2020 to 6187 of 2020, 6235 to 6239 of 2020, 6241 of 2020, 6242 of 2020, 6243 to 6354 of 2020, 6275 of 2020,	Mr.S.Ravikannan
W.P.(MD).Nos.6168 of 2020, 6225 of 2020, 6228 of 2020, 6269 of 2020, 6291 of 2020, 6304 of 2020, 6262 of 2020, 6263 of 2020, 6265 of 2020, 6267 of 2020, 6270 of 2020, 6259 of 2020, 6261 of 2020, 6271 of 2020, 6226 of 2020, 6227 of 2020, 6272 of 2020, 6283 of 2020 & 7336 of 2020	Mr.K.Vinayagam

For Petitioner in W.P.(MD).No.6329 of 2020	Mr.K.Ravi
For Respondents in 6102 of 2020, 6168 of 2020, 6225 of 2020, 6228 of 2020, 6140 of 2020, 6269 of 2020, 6304 of 2020, 6262 of 2020, 6263 of 2020, 6265 of 2020, 6267 of 2020, 6270 of 2020, 6259 of 2020, 6261 of 2020, 6271 of 2020, 6226 of 2020, 6227 of 2020, 6283 of 2020, 6272 of 2020, 7336 of 2020	Mrs.S.Srimathy Special Government Pleader
For Respondents in W.P.(MD).No.6103 of 2020, 6117 of 2020, 6118 of 2020, 6104 to 6116 of 2020, 6119 to 6125 of 2020, 6147 of 2020, 6175 of 2020, 6157 of 2020, 6158 of 2020, 6188 of 2020, 6181 of 2020, 6180 of 2020, 6148 to 6156 of 2020, 6159 of 2020 to 6161 of 2020, 6164 of 2020, 6165 of 2020, 6167 of 2020, 6169 to 6174 of 2020, 6176 to 6179 of 2020, 6182 to 6187 of 2020, 6235 of 2020, 6241 of 2020, 6242 of 2020, 6236 to 6239 of 2020, 6243 to 6254 of 2020, 6275 of 2020, 6329 of 2020	Mr.N.Dilip Kumar Standing counsel

COMMON ORDER

The writ petitioners are Societies registered under the Tamil Nadu Co-operative Societies Act, 1983. They have been licensed by the Reserve Bank of India to carry on banking business. The main account holders with the writ petitioners are the various Primary Co-operative Societies, who provide loans and advances to the end recipients. In the affidavits filed in support of the Writ Petitions, the nature of activities

carried on by the writ petitioners have been spelt out. The writ petitioners grant loans to the member-Societies by crediting the same in the loan accounts standing in their names. The member-Societies in-turn transfer the funds to the farmers through banking channels, if they also having accounts. But financial inclusion is still a far cry. Most of the farmers do not have bank accounts. Therefore, the member-Societies withdraw cash from their accounts for making cash disbursements.

2.The Government of Tamil Nadu utilizes the banking infrastructure of the writ petitioners and their member-Societies for distributing welfare assistance to the ration cardholders on the eve of Pongal. Every ration cardholder is entitled to collect Rs.1,000/- along with Pongal gift. The Tamil Nadu Civil Supplies Corporation is the Nodal Agency and the writ petitioner-Banks along with the Primary Co-operative Societies have been roped in to lend their

logistical support. The writ petitioners specifically contend that such withdrawal of cash by the Primary Co-operative Societies from the Savings Bank Account maintained by them with the writ petitioners would not constitute income at the hands of the respective Primary Co-operative Societies.

3.While so, the jurisdictional Income Tax Officers conducted survey proceedings at the business premises of the writ petitioners under Section 133A [2A] of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and found that the writ petitioners were not deducting tax as required under Section 194N of the Act. Based on the data gathered during the survey proceedings, show cause notices were issued in the first week of March 2020. The jurisdictional authority informed the banks that they had failed to comply with the provisions of Section 194N of the Act and called upon them to explain in writing as to why an order should not be passed under Section 201[1] and 201[1A] of the Act to recover the

default amount with interest from them. The noticees were given time of less than a week to appear in person and show cause as to why they should not be deemed to be the assessees in default. Most of the writ petitioners appeared before the jurisdictional authorities and either sought adjournments or pleaded that they were not aware of the requirement of law. They further contended that in view of the nature of their activities, the transactions are out of the purview of Section 194N of the Act. Not satisfied with the response of the writ petitioners, the orders impugned in these writ petitions came to be passed.

4.The impugned orders state that the writ petitioners herein are Co-operative Banks engaged in the business of banking and that they had failed to comply with the terms of Section 194N of the Act and that the explanation given by them was not satisfactory.

5.The jurisdictional authorities noted that various Co-operative Societies are account holders of the writ petitioners herein. The account holders are not carrying on the business of banking. Therefore, the writ petitioner-Banks were obliged to have deducted tax when the cash withdrawals exceeded the prescribed limit of One Crore rupees. The writ petitioners failed to do so. Since the deductor Banks defaulted in complying with the provisions of the statutory provisions, they were deemed to be the assessees in default. The default amount was accordingly worked out and it was declared that the writ petitioners are liable to pay the said default amount with interest. The impugned orders were issued to that effect.

6.Questioning the same, these Writ Petitions have been filed. Heard the various learned counsel appearing for the writ petitioners and the learned Standing counsel appearing for the respondents / Income Tax Department.

7.The learned counsel appearing for the writ petitioners contended that having regard to the overall object and scheme of the Act, the transactions in question clearly fall outside the purview of Section 194N of the Act. Section 194N of the Act was brought into force with effect from 01.09.2019. The respondents ought not to have retrospectively enforced the said provision by taking into account the transactions that had taken place even prior to the said date. They would further contend that the sums withdrawn by the member-Societies would not constitute income at their hands and therefore, the question of liability to pay or deduct the income tax would not arise. They also pointed out that on occasions, the Primary Co-operative Societies had acted as correspondents for the writ petitioner-Banks and therefore, they would stand exempted from the operation of the provision itself. Most importantly, the impugned orders have been passed prematurely and without giving reasonable opportunity to the writ petitioners herein.

8.Per contra, the learned standing counsel contended that the writ petitions are not maintainable. The writ petitioners ought to have availed the statutory remedy of Appeal under Section 246A of the Act. They strongly denied the contentions that there has been the violation of the principles of natural justice. In fact, the impugned exercise was undertaken only after concluding the survey exercises. During survey, the department officials closely interacted with the officials of the writ Petitioner-Banks and all the facts were fully gathered during that stage itself. The impugned orders were preceded by show cause notices. The writ petitioners did appear during the enquiry. In fact, the writ petitioners did not have anything to say. Therefore, it cannot be stated that the respondents had unilaterally or arbitrarily passed the impugned orders. The core argument of the learned standing counsel is that having regard to the object behind the incorporation of Section 194N of the Act, the nature of

transaction becomes irrelevant. Even if the sum received by the member-Societies did not constitute income at their hands still the writ petitioner-Banks had an obligation to deduct at the prescribed rates. The writ petitioners would draw my attention to a few other provisions of the Act to emphasize this point. Section 198 of the Act states that the amount deducted as per Section 194N of the Act would not be included as an income at the hands of the assessee. Provisions such as Section 206 C (1F) of the Act were referred to to drive home the point that this Court should apply the principle of deemed income. The writ petitioners had not challenged the constitutional validity of Section 194N of the Act. Therefore, this Court ought to apply the provision as such. There is no scope for reading principles of equity into taxing provision. It has to be interpreted as such. So applied, it can be noted that the writ petitioner-Banks have failed to effect deduction. Therefore, they were rightly treated as assessees in default by the respondents. The member-Societies can by no stretch of

imagination be called as assessees carrying on the business of Banking. The learned Standing counsel contested all the other contentions made by the writ petitioners' counsel. They also filed notes of submissions and reiterated the contentions set out therein.

9.I carefully considered the rival contentions and went through the entire materials available on record.

10.The objections raised by the learned standing counsel as regards the maintainability can be disposed of first. It is true that Section 146 (1) (i) of the Act states that any assessee aggrieved by an order under Section 201 of the Act may appeal to the appellate authority. The question is whether the writ petitions should be dismissed on the ground of non exhaustion of the alternative remedy of appeal. It is no doubt a statutory remedy. It is true that the litigants should not be allowed to bypass such statutory remedies and straight away invoke the writ jurisdiction of this Court.

11.The Hon'ble Supreme Court in the decision reported in ***(2005) 6 SCC 499-(State of Himachal Pradesh and others Vs. Gujarat Ambuja Cement Limited and another)*** held that there are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. One such exception is that the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. In the case on hand, no doubt, the impugned orders were preceded by show cause notices. But the noticees were given hardly a few days time to appear and respond. Natural justice is not only about affording an opportunity, but also, giving reasonable time to the noticees to prepare their defence. If the opportunity given is not reasonable, then the outcome is equally vitiated. Granting an opportunity cannot be a matter of empty formality.

12.The respondents have tried to sustain the impugned orders by referring to the stand taken by the officials of the writ petitioner-Banks during survey

proceedings. As rightly contended by the writ petitioners' counsel, granting of opportunity to the writ petitioners to explain during survey proceedings cannot be taken as compliance with the requirements of the principles of natural justice. The writ petitioners had contended before the respondents that the transactions in question would not fall within the purview of Section 194N of the Act. Therefore, they ought to have been given some more time to make good their defence. I have no doubt whatsoever in my mind that the respondents have simply rushed through the process. Surveys were conducted followed by show cause notices. Enquiries were held for formality sake and the impugned orders were passed either on the same day or on the next day. The civil consequences are enormous. The financial implications are humongous. Therefore, the process adopted by the respondents cannot be said to be a fair compliance with the principles of natural justice. Hence, I would not non suit the writ petitioners on the ground of maintainability.

13.Section 194N of the Act which was inserted by the Finance Act, 2019, with effect from 01.09.2019 reads as under:

"194N. Every person, being,-

(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,

who is responsible for paying any sum, as the case may be, aggregate of sums, in cash, in excess of 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 percent of sum exceeding one crore rupees, as income-tax:

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 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 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);

(v)such other person or class of persons, which the Central Government may, by notification in the Official Gazette, specify in consultation with the Reserve Bank of India).”

14.The writ petitioners' counsel initially endeavoured to contend that the primary Societies, who had withdrawn sums beyond the ceiling limit of One Crore Rupees are also Co-operative Societies engaged in carrying on the business of banking. But this contention has been effectively demonstrated to the incorrect by the learned Standing counsel. But the exempting proviso to Section 194N of the Act also includes business correspondents of the Co-operative Societies engaged in carrying on the business of banking. The writ petitioners' counsel drew my attention to G.O.(2D).No.66, Co-operation, Food and Consumer Protection (D1) Department, dated 26.11.2019, whereby, the Government of Tamil Nadu sanctioned a sum of Rs.2363.13 Crores towards Pongal hamper and cash support of Rs.1,000/- to all the rice cardholders. The Tamil Nadu Civil Supplies Corporation was appointed as the Nodal Agency for distribution of cash support for the Pongal festival 2020. It was to coordinate with the Co-operative Societies to ensure the distribution of cash support

to all the rice cardholders. The petitioners had acted as a conduit between the Government and the end recipients. The Government had placed this welfare fund at the hands of the petitioner-Banks, who in-turn credited the same in the Saving Bank accounts of the member-Societies, who after withdrawing the same, distributed to the end-recipients, namely, rice cardholders. Thus, the Primary Co-operative Societies had acted as business correspondents for the writ petitioner-Banks. This business correspondent model was initiated by the Reserve Bank of India in 2006 to promote financial inclusion in India. Under this framework, the Banks are permitted to use the services of third party agents to provide banking and financial services such as credit and savings on their behalf. In the case on hand, the Primary Co-operative Societies had acted as business correspondents to pass on the cash benefit as mandated by the State Government. I therefore have no hesitation to come to the conclusion that at least this part of the transaction between

the petitioners and their member-Societies would qualify for being exempted under the proviso to Section 194N of the Act. Therefore, when the entire volume of transaction is taken into account, this part has to be necessarily segregated. By no stretch of imagination, the writ petitioner-Banks could have deducted 2% from the Pongal gift fund even if it had breached the ceiling limit of Rupees One Crore. If the writ petitioner-Banks had done so, they would have violated the mandate issued by the State Government. The impugned orders has failed to take note of this relevant aspect. If a quasi judicial order does not take note of relevant materials, it is liable to be quashed on that ground.

15.As rightly contended by the learned counsel appearing for the writ petitioners, the key expression occurring in Section 194N of the Act is "during the Previous Year". Section 3 of the Act defines "previous year" as the financial year immediately preceding the assessment year. It

is beyond dispute that the transactions in question had taken place during 01.04.2019 to 31.03.2020. The assessment year can only be 2020-2021. In fact, in all the impugned orders 2020-2021 has been rightly shown as the assessment year. But, the assessments had been made even before the previous year ended. Thus, on the very face of it, the impugned orders have been hastily and prematurely passed.

16.The impugned orders have been passed under Section 201 of the Act. The said provision is as under.

> ***"201. Consequences of failure to deduct or pay.***—*1[(1) Where any person, including the principal officer of a company,—*
>
> *(a) who is required to deduct any sum in accordance with the provisions of this Act; or*
>
> *(b) referred to in sub-section (1A) of section 192, being an employer,*
>
> *does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences*

which he may incur, be deemed to be an assessee in default in respect of such tax:

2[Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income;

and

(iii) has paid the tax due on the income declared by him in such return of income,and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:]

1[Provided further that] no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.]

2[(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under

this Act, he or it shall be liable to pay simple interest,—

(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:]

[Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.]

(2) Where the tax has not been paid as aforesaid after it is deducted, 1[the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A) shall be a charge] upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

[(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.]

(4) The provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation 1 to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).]

[Explanation.—For the purposes of this section, the expression -accountant? shall have the meaning assigned to it in the Explanation to sub-section (2) of section 288.]"

17.A mere look at Section 201 of the Act would indicate that the deductor even if he had failed to comply with the requirements of Section 194N of the Act, shall not be deemed to be an assessees in default in respect of such tax, if the payee has furnished his return of income under Section 139 of the Act and has taken into account such sum for computing income in such return of income and has paid the tax due on the income declared by him in such return of income and that certificate is furnished in the prescribed

format. The learned standing counsel would urge that I should ignore the nature of the transaction by having regard to the object behind incorporation of Section 194N of the Act and the language of Section 198 of the Act. It is true that Section 194N of the Act was introduced to promote digital payments and to discourage the practice of making business payments in cash. It is seen from the speech of the Hon'ble Finance Minister that to promote less cash economy, TDS at 2% was proposed to be levied on cash withdrawal exceeding Rupees One Crore in an year from the bank account. The core argument of the learned Standing Counsel is that even if the sum withdrawn by the member-Societies does not represent income at their hands still the writ petitioner-Banks were obliged to have deducted an amount equal to 2% on sum exceeding One Crore Rupees. But Section 194N of the Act indicates that this deduction is to be a deduction of income tax at source. The expression “to deduct an amount equal to 2% of sum exceeding one Crore Rupees as income tax” is

clearly figuring in the provision. Section 194N of the Act is very much falling under Chapter XVII that deals with collection and recovery of tax. It is true that Section 198 of the Act states that the sum deducted in accordance with Section 194N of the Act for the purpose of computing the income of an assessee should not be deemed to be the income received. But having regard to the overall scheme of the chapter and particularly, by reading Section 194N along with Section 201 of the Act, one can safely come to the conclusion that if the sum received by the assessee will not be an income at his hands, then, the question of deduction under Section 194N of the Act will not arise. The Hon'ble Supreme Court in a recent decision reported in ***(2019) 13 SCC 747 (Commissioner of Income Tax Vs. M/s. Vasisth Chay Vyapar Limited)*** observed that income tax is levied on income. If income does not result at all, there cannot be levy of tax. Even if an entry of hypothetical income is made in the books of account, but, if the income does not result at all,

then there is neither accrual nor receipt of income and no tax can be levied. This principle laid down in the decision of the Hon'ble Supreme Court reported in ***1962 46 ITR 144 SC - (Commissioner of Income Tax Vs. Shoorji Vallabdhas and Co)*** has been reiterated in a decision of the Hon'ble Bombay High Court reported in ***2019 (417) ITR 169-(Rupesh Rashmikant Shah Vs. Union of India),*** which held as follows:-

> *"The provision for deduction of tax at source is not a charging provision. It only makes deduction of tax at source on payment of same, which, in the hands of payee, is income. If the payee has no liability to pay tax on such income, the liability to deduct tax at source in the hands of the payer cannot be fastened."*

18.Though the learned counsel appearing for the writ petitioners strongly relied on a decision of the Hon'ble

Supreme Court reported in ***[2009] 312 ITR 225 (Commissioner of Income Tax vs. M/s. Eli Lilly and Company (India) Private Limited)*** the said decision itself clarifies that it should be understood only in the context of computation of salaries. Hence, I refrain from discussing it.

19.Of course as rightly contended by the learned standing counsel, the deductor cannot himself decide whether the sum withdrawn by the account-holder would not represent income at his hands and therefore, they are not obliged to deduct TDS at 2% on the sum exceeding the ceiling limit. But if in the enquiry, the deductor is able to place materials before the authority so as to bring his case within the proviso to Section 201 (1) of the Act, the authority is bound to drop further proceedings. I may refer to the decision of the Hon'ble Supreme Court reported in ***(2007) 8 SCC 463 (Hindustan Coca Cola Beverages Private Limited Vs. Commissioner of Income Tax)*** in this regard. The Hon'ble Supreme Court in the said decision observed as follows:

"9.Be that as it may, the circular No. 275/201/95- IT(B) dated 29.1.1997 issued by the Central Board of Direct Taxes, in our considered opinion, should put an end to the controversy. The circular declares "no demand visualized under Section 201(1) of the Income- tax Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been paid by the deducted-assessee. However, this will not alter the liability to charge interest under Section 201(1A) of the Act till the date of payment of taxes by the deducted-assessee or the liability for penalty under Section 271C of the Income-tax Act."

20.I would not fault the respondents for having issued show cause notices to the writ petitioners for not having complied with Section 194N of the Act. But then, the enquiry could have been held only after the commencement of the assessment year and not in the previous year itself. I do not agree with the stand of the writ petitioners' counsel that the volume of transaction that had taken place prior to 01.09.2019 should be ignored. The learned standing counsel bring it to my notice that the computation of tax has been

made only with effect from 01.09.2019 and there has been no levy on the transaction before the cut off date. The Central Board of Direct Taxes had issued a clarification that the provision having come into effect from 01.09.2019 any cash withdrawal prior to the said date will not be subjected to TDS. However, since the threshold of One Crore Rupees is with respect to the previous year, with reference to the assessment year 2020-2021, the cash withdrawal for triggering Section 194N of the Act shall be counted from 01.04.2019. The writ petitioners have not questioned the validity of the provision. The provision employs the expression "Previous year". With reference to the assessment year 2020-2021, the previous year would obviously mean the period commencing from 01.04.2019 to 31.03.2020. A taxing provision has to be understood in a plain manner. Such an application of the provision will not amount to retrospective operation. If TDS was levied even on transactions that had taken place prior to 01.09.2019, then, that would definitely be illegal, but that is

not the case here. Therefore, I sustain the stand of the learned standing counsel that to calculate the threshold limit of One Crore rupees, the transactions that had taken place with effect from 01.04.2019 will have to be taken into account, but actual levy of tax will be on the cash withdrawals that had taken place with effect from 01.09.2019.

21.I also sustain the stand of the learned Standing counsel that the department need not wait till the time limit for the assessees to file their returns for the assessment year gets over. It is open to the department to initiate action against the deductors, who have failed to act as per the requirements under Section 194N of the Act, as they are also deemed assessees. But then, when the enquiry is conducted, it is open to the noticees, who are to be treated as assessees in default to place materials before the Assessing Officer that the amounts received by the recipients do not represent income at their hands. If by then, the assessees had also filed their

returns and the case falls under the proviso to Section 201(1) of the Act, the writ petitioners who have failed to deduct cannot be fastened with any liability.

22.Since the Assessing Officers have not taken into account the entire scheme of the Act and had proceeded at breakneck speed, I am constrained to interfere with the impugned proceedings and they are accordingly quashed. The matters are remitted to the file of the respective jurisdictional Assessing Officers. The Assessing Officers will issue fresh hearing notices to the writ petitioners. The writ petitioners are at liberty to bring on record the returns filed by the member-Societies who had withdrawn cash beyond the ceiling limit of Rupees One Crore. The Assessing Officers will exclude Pongal cash gift distributed by the petitioner-Banks at the instance of the Government of Tamil Nadu from the entire computation. This is because as already held the member-Societies have merely acted as business correspondents of the writ

petitioners herein. As regards the remaining amounts, it is open to the writ petitioners to establish before the Assessing Officers that the sums withdrawn by the member-Societies do not represent income at their hands. As evidence the annual income tax returns filed by the member-Societies can be produced. If the second respondent is satisfied that the amounts withdrawn by the member-Societies did not in fact represent income at their hands, the jurisdictional Assessing Officers will drop further action. If they are not so satisfied, of course, it is open to the Assessing Officers to pass further orders in accordance with law.

23.With this liberty, the Writ Petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

27.07.2020

tsg
Index : Yes/No
Internet : Yes/No

Note: 1.Issue order copy within one day after the same received by the Court Officers Section.

2.In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The joint commissioner of Income Tax(TDS)
   Income Tax Department,
   Nellai City Centre, Thiruchendur Road,
   Rahmat Nagar, Maharajanagar Post,
   Tirunelveli.

2. The Income Tax Officer,
   Income Tax Department,
   TDS Ward , Nellai City Centre ,
   Thiruchendur Road, Rahmat Nagar,
   Maharajanagar Post, Tirunelveli.

G.R.SWAMINATHAN, J.

tsg

Common Order made in

W.P.(MD)Nos.6102 to 6125, 6140, 6147, 6148 to 6161, 6163 to 6165, 6167, 6168, 6169 to 6188, 6225 to 6228, 6235 to 6239, 6241 to 6254, 6259, 6261 to 6263, 6265, 6267, 6269 to 6272, 6275, 6283, 6291, 6304, 6329 & 7336 of 2020

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