# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

**THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.Nos.5145 & 5155 of 2024 and**
**W.M.P.Nos.5657, 5667 & 5668 of 2024**

S 878 Kalvadangam Primary Agricultural
Co-operative Credit Society Limited,
Represented by its Secretary Mr.I.Venkiduasamy,
S Kalvadangam PAACCS Ltd.
Koneripatti Agraharam, Mettangadu
PO Thevoor VI Sankari,
Salem-637 104. ...Petitioner in both WPs.

Vs.

Chief Commissioner of Income Tax,
Coimbatore, No.63, Race Course Road,
Coimbatore-641 018. ...Respondent in W.P.No.5145 of 2024

1.Assistant Director of Income Tax,
Centralized Processing Centre,
Income Tax Department,
1st floor, Prestige Alpha No.48/1,
48/2, Beratenaagrahara Begur, Hosur Road,
Uttarahalli Hobli,
Bengaluru, Karnataka 560 100.

2.Income Tax Officer,
Ward 1(6), Salem,
No.3, Gandhi Road,
Salem-636 007. ...Respondents in W.P.No.5155 of 2024

**Prayer in W.P.No.5145 of 2024:** Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent and quash the impugned order passed by the respondent under Section 119(2)(b) of the Income Tax Act, 1961 in DIN and Order No.ITBA/COM/F/17/2023-24/1058771200(1) dated 14.12.2023 in PAN – AAFAS0056G and direct the respondent to condone the delay in filing return of income under Section 139(1) of the Income Tax Act, 1961 ('Act').

**Prayer in W.P.No.5155 of 2024:** Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent and quash the impugned intimation of the 1st respondent in CPC/1920/A5/2003137787 dated 19.10.2020 for the assessment year 2019-2020 and direct the 1st respondent to process the return of income filed by the petitioner for the said year, accepting the income returned by the petitioner.

**In both WPs.**

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.S.Premalatha,
Junior Standing Counsel

**COMMON ORDER**

An order under Section 119(2)(b) of the Income Tax Act, 1961 (the Income Tax Act) is the subject of challenge in W.P.No.5145 of 2024.

W.P.No.5155 of 2024 is consequential thereto in as much as the challenge therein is to an intimation dated 19.10.2020 for assessment year 2019-2020, and such intimation was issued on the basis that the petitioner is not entitled to deduction on account of non filing of the returns of the relevant years.

2. The petitioner is an agricultural co-operative credit society. The due date for filing the return of income for assessment year 2019-2020 was 30.09.2019. As a co-operative society functioning under the Tamil Nadu Co-operative Societies Act, 1983, the petitioner is required to get its accounts audited by a statutory auditor. Such statutory audit was completed on 30.12.2019. The petitioner asserts that the audit report was received only on 15.02.2020. On account of not filing the return of income, the petitioner was not entitled to deductions as per amended 80B of the Income Tax Act. This resulted in the intimation impugned in W.P.No.5155 of 2024.

3. In these circumstances, the petitioner filed its return of income belatedly on 26.06.2020 and also submitted an application under Section 119(2)(b) requesting the Central Board of Direct Taxes to condone the

delay in filing the return of income. Such application was rejected by the order impugned in W.P.No.5145 of 2024.

4. Learned counsel for the petitioner referred to the impugned order and pointed out that the Commissioner of Income Tax recognised that the petitioner could not file its return of income until the statutory audit was completed. By pointing out that the statutory audit was not conducted by an auditor engaged by the petitioner and such report was received only in February 2020, he submits that there is sufficient justification to condone delay. He also highlights that the petitioner would be put to genuine hardship if the delay is not condoned.

5. Mrs.S.Premalatha, learned junior standing counsel, accepts notice on behalf of the respondents. By drawing reference to the impugned order, she points out that the application was rejected because the petitioner did not provide any reasons for the delay of 180 days between 30.12.2019 and 26.06.2020.

6. In the impugned order, at paragraph 4.1, it is recorded as under:

> *"4.1 Hence, the delay in filing the return of income on or before the due date in this case is*

> *attributable to the delay in getting the accounts audited by the statutory auditors appointed under the State Law i.e. the delay is due to the circumstances beyond the control of the assessee."*

Thus, the Commissioner of Income Tax was acutely conscious of the fact that the return of income could not be filed until the accounts were audited by the statutory auditor appointed under the Tamil Nadu State Co-operative Societies Act. Such statutory audit was admittedly completed only on 30.12.2019. Although the petitioner has not placed evidence of the date of receipt of the audit report, it is asserted in the writ petition that such audit report was received on 15.02.2020. The onset of the COVID-19 pandemic was on or about 15.03.2020. The petitioner is a co-operative credit society and undoubtedly if such society is unable to avail of statutory deductions, there would be genuine hardship to its members. By taking all these facts and circumstances into account, I am of the view that it is a fit case to condone delay on the ground of genuine hardship.

7. For reasons set out above,

(i) W.P.No.5145 of 2024 is allowed by quashing the order impugned therein and holding that the delay in filing the return of income is condoned.

(ii) As a consequence, the impugned intimation in W.P.No.5155 of 2024 is quashed and the matter is remanded for assessment based on the return of income filed by the petitioner. W.P.No.5155 of 2024 is disposed of on the above terms.

(iii) There will be no order as to costs in both petitions. Consequently, connected miscellaneous petitions are closed.

**01.03.2024**

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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To

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2.Assistant Director of Income Tax,
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**SENTHILKUMAR RAMAMOORTHY,J.**

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