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W.P.No.8744 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.8744 of 2024

and

W.M.P.No.9758 of 2024

SS75 Salem District Public Health
Department Employees Cooperative Thrift
and Credit Society Limited,
Represented by its Secretary Mr.V.Anbalagan,
No.66 & 68, Venkataswamy Street, Fort,
Salem 636 001, Tamil Nadu, India.

... Petitioner

Vs.

Chief Commissioner of Income Tax,
Coimbatore,
No.63, Race Course Road,
Coimbatore 641 018.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for the
records in 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



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(hereinafter referred to as “Act”) in DIN and order No.ITBA/COM/F/17/2023-24/1059103100(1) dated 27.12.2023 for the assessment year 2019-20 in PAN-AASAS1127P and direct the respondent to condone the delay in filing return of income under Section 139(1) of the Act.

For Petitioner : Ms.N.V.Lakshmi

For Respondents : Dr.B.Ramaswamy,
Senior Standing counsel

ORDER

This writ petition has been filed challenging the impugned order dated 27.12.2023 passed by the respondent, whereby, they had rejected the application filed by the petitioner for condoning the delay of 1255 days in filing their Income Tax Returns (ITR).

2. The learned counsel for the petitioner would submit that the petitioner is a Co-operative Society. As per the provisions of Section 139(1) of the Income Tax Act, 1961 (hereinafter called as “IT Act”), they were supposed to file their ITR, for the assessment year 2019-2020, on or before 31.10.2019. Though the date of completion of Audit was on



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29.08.2019, the petitioner had received the said audit report only on 14.02.2020 and thereafter, filed their ITR on 08.04.2023 with a delay of 1255 days, due to which, the petitioner was unable to claim the deductions, exemptions, etc., available to them under the provisions of the IT Act.

3. Further, he would submit that the aforesaid delay was occurred due to the delay in receipt of audit report and the COVID outbreak and the said aspects were explained by the petitioner in their application, which was filed under Section 119(2)(b) of the IT Act, to condone the delay in filing the ITR. However, the said application was rejected by the respondent, vide the impugned order, citing the reason that the petitioner has not provided sufficient reasons to justify their genuine hardships.

4. He would also contend that while rejecting the condone delay application, the reasons assigned by the petitioner were not at all considered by the respondent in a proper perspective, due to which, the petitioner, being co-operative society, is facing irreparable hardships. Hence, he requests this Court to pass appropriate orders to set aside the



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impugned order and condone the delay in filing the ITR, so as to enable the petitioner to claim their deduction available under the provisions of Section 80P of the IT Act.

5. Per contra, Dr.B.Ramaswamy, learned Senior Standing counsel, appearing for the respondent had strongly opposed for condonation of delay in filing the ITR and would submit that while passing the impugned order, the respondent had very well considered the request made by the petitioner and since the respondent did not find any genuine hardship faced by the petitioner in filing their ITR, the condone delay application was rejected by the respondent vide the impugned order dated 27.12.2023.

6. Further, he would submit that the due date for filing the ITR, for the assessment year 2019-20, was on or before 31.10.2019. Accordingly, in the present case, the audit was completed and the audit report was signed on 29.08.2019, i.e., around two months prior to the due date. In spite of the completion of audit at the earliest point of time, the ITR was not filed by the petitioner within time as prescribed under Section 139(1)



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of the IT Act, which is nothing but deliberate omission on the part of the petitioner.

7. He would also contend that though the audit report was completed as early as on 29.08.2019, no steps were taken by the petitioner to receive the said report till 14.02.2020. Even after the receipt of audit report, the petitioner had not filed their ITR for nearly a period of 37 months, which shows the carelessness of the petitioner in filing the ITR. While passing the impugned order, all these aspects were well considered by the respondent.

8. That apart, he would submit that if the request made by the petitioner is considered and entertained by this Court, it will open the flood gates and it will pave way for Assesseees to approach this Court to condone the delay in filing the ITR by providing some reasons or other and claim for deduction, which would set a bad precedent and also the provisions of Section 80AC of the IT Act will become redundant. Therefore, he requests this Court to dismiss the present petition with costs.

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9. I have given due consideration to the submissions made by the learned counsel for the petitioner and the learned Senior Standing counsel for the respondent and also perused the materials available on records.

10. In the case on hand, the challenge is against the rejection of application filed by the petitioner under Section 119(2)(b) of the IT Act, to condone the delay of 1255 days in filing their ITR.

11. The petitioner, being a Co-operative Society, the income received by them are exempted under Section 80P of the IT Act, provided that they are supposed to file their ITR on or before the due date as prescribed under Section 139(1) of the IT Act. In terms of Section 80AC of the IT Act, if an Assessee failed to file their ITR on or before the due date, they will not be entitled to get any deductions. In the present case, it is an admitted fact that the ITR was not filed by the petitioner within the time limit, due to which, they were unable to claim their deductions under Section 80P of the IT Act. Under these



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circumstances, the petitioner had filed an application, under Section 119(2)(b) of the IT Act, before the respondent only with an intention to avail the ultimate benefits, which are available to them under Section 80P of the IT Act.

12. The subject matter of this case is pertaining to the assessment year 2019-20. As per the provisions of Section 139(1) of the IT Act, the due date for filing ITR for the said assessment year was on 31.10.2019. At this juncture, it would be apposite to extract the provisions of said Section 139(1) of the IT Act, which reads as follows:

139.- Return of Income.-(1)Every person,—

(a)being a company or a firm; or

(b)being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribe form and verified in the prescribed manner and setting forth such other particulars as may be prescribed”



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13. A reading of the above provision would make it clear that every person, if their total income or the total income of any other person, in respect of which he is assessable under this Act, exceeded the maximum amount, which is not chargeable to income tax, shall file their ITR on or before the due date.

14. In the case on hand, it is mandatory for the petitioner to file their ITR on or before the due date, i.e., 31.10.2019. The audit was completed as early as on 29.08.2019, i.e., nearly two months prior to the due date. However, the ITR was filed by the petitioner only on 08.04.2023 with a exorbitant delay of 1255 days.

15. The two main reasons assigned by the petitioner for the aforesaid delay in filing the ITR are as follows:

- i) Due to the delay in receipt of the audit report; and
- ii) Due to the COVID outbreak;

16. As far as the 1st reason, i.e., delay in receipt of Audit report, is



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concerned, a perusal of the Audit Certificate dated 29.08.2019 issued by the Auditor would show that the Audit was completed on 29.08.2019 and the statements of (i) Receipts and Disbursements, (ii) Profit and Loss Accounts and Trading Account & (iii) Balance Sheet were also appended along with the said Audit certificate. At this juncture, it would be appropriate to extract the relevant portions, particularly paragraph Nos.1 and 12, of the said Audit Certificate dated 29.08.2019, which reads as follows:

AUDIT CERTIFICATE
PROCEEDINGS OF THE ASSISTANT DIRECTOR OF
CO-OPERATIVE AUDIT, SALEM.

PRESENT: Thiru N.Devaraju,
The Assistant Director of Co-op. Audit,
Salem

FAM 181/2018-19

Dated: 29.08.2019

Sub: Audit Certificate – On the accounts of The Salem District Public Health Department Employees Co-operative Thrift and Credit Society Ltd., SS75 for the year ended 31st March, 2019 as per Section 80 of the Tamil Nadu Co-operative Societies Act, 1983 and Rules 102(8) of the Tamil Nadu Co-operative Societies Rules, 1988 – Issued.

ORDER:

The Accounts of the The Salem District Public Health Department Employees Co-operative Thrift and Credit



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Society Ltd., SS75 for the year ended 31st March 2019 as audited by Tmt.B.Bhuvaneswari, Junior Co-operative Auditor and finalised by Thiru N.Shanmuga Sundaram, Co-operative Audit Officer, Salem I Circle are passed

1. The Statements of (i) Receipt and Disbursement, (ii) Profit and Loss Accounts (iii) Balance Sheet as furnished by her are appended.

- 2*
- 3*
- 4*
- 5*
- 6*
- 7*
- 8*
- 9*
- 10*
- 11*

12. GENERAL:

A copy of the schedule of defects on the final audit of the Society for the year ended 31st March 2019 as furnished by the Auditor is communicated herewith. The Society will keep (i) The Audit Certificate, (ii) The Receipts and Disbursement statement (iii) Profit and Loss Accounts and Trading Accounts (iv) Balance Sheets open for inspection by any member of the Society. The summary of Audit Memorandum shall also be read out at the forth coming General Body Meeting of the Society. The Society is also requested to take steps to remedy the defects within a period of three months and reported to the authority concerned.”

17. A perusal of the 1st paragraph would show that the account of the petitioner was audited by Thiru.N.Shunmuga Sundaram, Co-operative Audit Officer and the aforesaid Audit certificate was passed



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along with the Statements of (i) Receipts and Disbursements, (ii) Profit and Loss Accounts and Trading Account (iii) Balance Sheet. That apart, in the 12th paragraph, it has been indicated that a copy of the Audit certificate was communicated to the Society and the same along with the aforesaid documents are open for inspection by any member of the Society. Therefore, it is crystal clear that the Audit report was made available on 29.08.2019 itself and in such case, there is no substances in the reason assigned by the petitioner on the aspect of delay in receipt of the Audit report.

18. Further, in the application filed by the petitioner under Section 119(2)(b) of the IT Act, nothing has been stated with regard to the delay in receipt of Audit report on 14.02.2020. Even if such statement was made in the said application, the same cannot be considered as a reason for the exorbitant delay in filing the ITR since the Audit certificate was issued to the petitioner as early as on 29.08.2019. Therefore, the respondent had rightly rejected the application filed by the petitioner.

19. As far as the 2nd reason is concerned, the COVID outbreak was



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occurred only during the month of March 2020, whereas, the Audit report was made ready, along with the statement of (i) Receipts and Disbursements, (ii) Profit and Loss Accounts and Trading Account (iii) Balance Sheet, as early as on 29.08.2019 itself, i.e., 6 months prior to the COVID outbreak. In such case, this Court is of the view that nothing prevented the petitioner to file their ITR before the said COVID outbreak period. However, in the case on hand, though the Audit certificate was issued on 29.08.2019, the ITR was filed by the petitioner only on 08.04.2023. Therefore, the reason of COVID outbreak cannot be accepted as a genuine hardship faced by the petitioner and considering all these aspects, the respondent had rightly rejected the petitioner's application.

20. In view of the above, by condoning the exorbitant delay of 1255 days, this Court will, either wittingly or unwittingly, be a party to all the acts of omission/misdeeds committed by the petitioner. Since the issue is pertaining to the revenue matters, the present condone delay petition cannot be compared at par with the other applications filed for condoning the delay in filing, representation, etc. If the delay is condoned



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and the present petition is entertained in the absence of genuine hardships, it would amount to further encourage the misdeeds of the petitioner. In such case, this Court is not inclined to entertain this petition.

21. That apart, as contended by the learned Senior Standing counsel appearing for the respondent, even assuming if there is any merit in the case on hand, so as to consider the request made by the petitioner, it would set a bad precedent and in future, the Assessee will approach this Court to condone the delay in filing the ITR by referring the present case as a precedent, which would ultimately defeat the object of Section 80AC of the IT Act and makes the said provision as redundant. However, there is no merits in this case even to consider on such request. The provisions of Section 80AC of the IT Act, which was introduced with effect from 01.04.2018, states as follows:

“80AC.-Deduction not to be allowed unless return furnished.

- Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after -



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(i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;

(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.-Deductions in respect of certain incomes", no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139."

22. A reading of the above provision would make it clear that no deduction under the heading "*C.-Deductions in respect of certain incomes*" shall be allowed, unless the Assessee furnishes their ITR for the relevant assessment year on or before the due date as specified under Section 139(1) of the IT Act.

23. Therefore, if a person fails to furnish the ITR within the time limit as prescribed under Section 139(1) of the IT Act, he will not be entitled to avail any deductions or exemptions available to him under the



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heading "*C.-Deductions in respect of certain incomes*". Under these circumstances, the concerned Assessee shall file the condone delay application under Section 119(2)(b) of the IT Act, by providing sufficient reasons for the delay and explaining the genuine hardships faced by him in filing the ITR within the prescribed time limit. Thereafter, the said application will be considered and entertained by the respondent-Department on its own merits and in accordance with law.

24. However, in the case on hand, even though the audit report was very much available to the petitioner prior to the due date, the petitioner had failed to file the ITR within the prescribed time limit, which is nothing but the deliberate omission on the part of the petitioner. Thus, the delay was occurred only due to the fault on the part of the petitioner.

25. It is pertinent to mention here that as per the provisions of Section 234F of the IT Act, even after the expiry of due date, an Assessee can file its ITR upon payment of penalty as stated therein. In this case, after making the payment of penalty as provided under Section 234F of the IT Act, the petitioner had already filed their ITR and thereafter, they



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had filed an application before the respondent to condone the delay in filing their ITR. When such being the case, the aforesaid application is not maintainable since the ITR was already filed by the petitioner and the same was taken on record, in which case, the issue of condone delay in filing the ITR would not arise. The application was filed before the respondent, under the pretext of condoning the delay in filing the ITR, to get the benefits, viz., deductions, available under Section 80P of the IT Act. In the event if the petitioner intend to file an application to claim the deductions under Section 80P of the IT Act, they should have moved such application and prayed accordingly.

26. Even assuming that the application, which was filed under Section 119(2)(b) of the IT Act, is maintainable, as discussed above, the reasons assigned by the petitioner had not at all justified any genuine hardships faced by them in filing their ITR within prescribed time limit. Taking into consideration of all these aspects, the respondent had rightly rejected the application filed by the petitioner vide the impugned order dated 27.12.2023. Hence, the said impugned order dated 27.12.2023 warrants no interference of this Court. In such view of the matter, the



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present writ petition is liable to be dismissed.

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27. In the result, this writ petition is dismissed. No cost.

Consequently, the connected miscellaneous petition is also closed.

19.10.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

The Chief Commissioner of Income Tax,
Coimbatore,
No.63, Race Course Road,
Coimbatore 641 018



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KRISHNAN RAMASAMY.J.,

nsa

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