IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.9228 of 2024
and
W.M.P.Nos.10267 & 10268 of 2024

K1776 Sriram Cooperative House Building Society Limited,
Represented by its Secretary Mr.S.Manivannan,
299, Chithamabra Nagar, Shakthi Main Road,
Saravanampatti Post, Coimbatore 641035

... Petitioner

Vs.

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

2.Income Tax Officer,
Ward 1(6), Salem,
No.3, Gandhi Road,
Salem 636 007.

... 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 1st respondent and quash the impugned intimation of the 1st respondent in DIN No.CPC/1920/A5/2006335378 dated 14.09.2020 in PAN AALAS8375G for the assessment year 2019-20 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.

For Petitioner : Mr.N.V.Balaji

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

ORDER

This writ petition has been filed challenging the impugned intimation dated 14.09.2020 passed by the respondent, whereby, they had rejected the deductions claimed by the petitioner under Section 80P of the IT Act.

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. However, the date of completion of Audit was on 30.05.2020 and the same was received by the petitioner on 20.06.2020. Thereafter, they had filed their ITR on 15.07.2020 with a delay of 258 days, due to which, the petitioner was unable to claim the deductions, exemptions, etc., available to them under the provisions of Section 80P of the IT Act.

3. Further, he would submit that the aforesaid delay has occurred due to the delay in completion of audit report and the COVID outbreak. Hence, the petitioner had filed an application to condone the delay in filing the ITR on 15.07.2020, however, the same was rejected by the respondents without considering the reasons assigned by the petitioner. Thereafter, the impugned intimation dated 14.09.2020, under Section 143(1) of the IT Act, came to be issued by the respondent, whereby they disallowed the deduction claimed by the petitioner under Section 80P of

the IT Act.

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 impugned intimation and condone the delay in filing the ITR, so as to enable the petitioner to claim their deductions 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 rejection order in condone delay application filed by the petitioner, the respondent had very well considered the request made by the petitioner and since they did not find any genuine hardship faced by the petitioner in filing their ITR, they had rejected the application filed by the petitioner.

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, however, the audit was completed and the audit report was signed only on 30.05.2020, due to which, the ITR was not filed by the petitioner within time as prescribed under Section 139(1) of the IT Act.

7. He would also contend that it is the duty of the petitioner to file their returns within the prescribed time limit, however, since the audit report was completed only on 30.05.2020, the petitioner had filed their returns with a delay of 258 days. If the said delay is due to the fault on the part of the Auditor, it is for the petitioner to prove the aspect that in spite of the provision of their books of account to the Auditor at the earliest point of time, only the Auditor had failed to complete the audit within the prescribed time limit. However, no such evidences were placed by the petitioner. In the absence of any such material, the respondent had passed the impugned order stating that no genuine hardship was faced by the petitioner in filing their ITR and hence, 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 the Assessees to approach this Court under the pretext of condoning the delay in filing their ITR by providing some reasons or other and claim for deductions, 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.

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 only challenge is against the impugned intimation dated 14.09.2020 issued by the respondent due to the delay of 258 days in filing the ITR of the petitioner.

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 IT Act. Under these 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 the 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"

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. However, the audit

was completed only on 30.05.2020 and the ITR was filed by the petitioner on 15.07.2020 with a delay of 258 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 completion of the audit by the Auditor; and
ii) Due to the COVID outbreak;

16. As far as the 1st reason, viz., delay in completion of Audit report, is concerned, in the case on hand, the due date for filing the ITR was on 31.10.2019. However, the Audit report was made ready by the Auditor only on 30.05.2020 and thereafter, the ITR was filed by the petitioner on 15.07.2020 with a delay of 258 days.

17. It is pertinent to point out here that no documentary evidences were provided by the petitioner either before the respondent or before this Court to substantiate their contention that the delay, in filing of ITR, was occurred only due to the delay in furnishing of audit report, in detailed manner, by the Government Auditor. To consider the 1st reason

assigned by the petitioner for the delay in filing the ITR, this Court expects the petitioner to produce the material evidences to prove the aspect that in spite of production of all the relevant documents and records to the Auditor at the earliest point of time, the Auditor had delayed the completion of audit report within the prescribed time limit. In the absence of such material evidences, it would be construed that the delay in filing of ITR can only be attributable to the petitioner. Therefore, the respondent had rightly came to the conclusion that there was no genuine hardship faced by the petitioner in filing of the ITR in time.

18. That apart, even though the report was made ready as early as on 30.05.2020, the petitioner had failed to file their ITR for almost a period of 2 months, which shows that it is ultimately due to the deliberate omission on the part of the petitioner alone. Therefore, such deliberate omission of the petitioner cannot be considered as a genuine hardship for condoning the delay in filing the ITR. All those aspects have taken into consideration by the respondent while passing the rejection order.

19. As far as the 2nd reason is concerned, the COVID outbreak was occurred only during the month of March 2020, whereas, the due date for filing the ITR was on 30.10.2019, i.e., 4 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 30.05.2020, the ITR was filed by the petitioner only on 15.07.2020. 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 delay of 258 days, this Court will, either wittingly or unwittingly, be a party to the acts of omissions/misdeeds committed by the petitioner. Further, the issue is pertaining to the revenue matters, thus, the present condone delay petition cannot be compared at par with the other applications filed before this Court for condoning the delay in filing, representation, etc. If the delay is condoned and the present petition is entertained in the absence of genuine hardships, it would amount to encouraging 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 that if there is any merits in the present case, so as to consider the request made by the petitioner, it would set a bad precedent and in future, the Assesees 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 aforesaid provision as redundant. However, there is no merits in this case to consider 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 -*
>
> *(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 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, though the audit report was made ready on 30.05.2020, the petitioner had filed their ITR only on 15.07.2020 with a delay of 258 days. In such case, it is clear that even after the receipt of audit report, no steps were taken by the petitioner to file their ITR for almost a period of 2 months, which shows the deliberate omission on the part of the petitioner. When such being the case, at any cost, the said delay cannot be condoned in the absence of valid reasons, so as to enable the petitioner to claim their deductions.

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 the case on hand, 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 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. Hence, the impugned intimation dated 14.09.2020 warrants no interference of this Court. In

such view of the matter, the present writ petition is liable to be dismissed.

27. In the result, this writ petition is dismissed. No cost. Consequently, the connected miscellaneous petitions are also closed.

19.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

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

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Ward 1(6), Salem,
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KRISHNAN RAMASAMY.J.,

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