IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.10081 of 2024
and
W.M.P.Nos.11104 & 11105 of 2024

S289 Manathal Primary Agricultural
Cooperative Credit Society Limited,
289S, Manathal Post, Omalur Taluk,
Salem 636 503, PAN-AAEAS7692F

... 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 (hereinafter referred to as "Act") in DIN and Order No.ITBA/COM/F/17/2023-24/1060124468(1) dated 25.01.2024 for AY 2021-22 and direct the respondent to condone the delay in filing the return of income under Section 139(1) of the Act.

For Petitioner : Mr.T.Vasudevan

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

ORDER

This writ petition has been filed challenging the impugned order dated 25.01.2024 passed by the respondent, whereby, they had rejected the application filed by the petitioner for condoning the delay 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 2021-2022, on or before 15.03.2022. However, the date of completion of Audit was

on 10.01.2023 and the same was received by the petitioner 18.02.2023. Thereafter, the petitioner had filed their application under Section 119(2)(b) of the IT Act, before the respondent on 29.11.2023 and the same was rejected by the respondent vide impugned order dated 25.01.2024.

3. Further, he would submit that the aforesaid delay has occurred due to the delay in completion of audit report. The said aspect was 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 reason assigned by the petitioner was 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 order and condone the delay in filing the ITR, so as to enable the petitioner to file their ITR and claim their deductions available under the provisions 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 impugned order dated 25.01.2024.

6. Further, he would submit that the due date for filing the ITR, for the assessment year 2021-22, was on or before 15.03.2022, however, the audit was completed and the audit report was signed only on 10.01.2023, 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, though the audit report was completed only on 10.01.2023, the petitioner had not yet filed their ITR. If the 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 floodgates 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 rejection of application filed by the petitioner under Section 119(2)(b) of the IT Act to condone the delay 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 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 2021-22. 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 15.03.2022. 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., 15.03.2022. However, though the audit was completed on 10.01.2023, the petitioner had not yet filed

their ITR.

15. The main reason assigned by the petitioner for the exorbitant delay in filing the ITR is due to the delay in completion of the audit by the Auditor. In the case on hand, the due date for filing the ITR was on 15.03.2022. However, though the Audit report was made ready by the Auditor only on 10.01.2023, the petitioner had not at all filed the ITR till date.

16. 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 aforesaid reason assigned by the petitioner for the exorbitant 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.

17. That apart, even though the report was made ready as early as on 10.01.2023, the petitioner had not taken any steps to file their ITR till date, 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 exorbitant delay in filing the ITR. All those aspects have taken into consideration by the respondent while passing the impugned order.

18. In view of the above, by condoning the delay in filing the ITR, this Court will, either wittingly or unwittingly, be a party to the acts of omissions/misdeeds committed by the petitioner. Further, since 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.

19. 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.”*

20. 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.

21. 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.

22. However, in the case on hand, though the audit report was made ready on 10.01.2023, the petitioner had not filed their ITR till date. 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 19 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.

23. 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. However, instead of filing their ITR, the petitioner had filed the application 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.

24. Upon considering the application, which was filed under Section 119(2)(b) of the IT Act, it is clear that, 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 25.01.2024. Hence, the said impugned order dated 25.01.2024 warrants no interference of this Court. In such view of the matter, the present writ petition is liable to be dismissed.

25. 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
nsa

To

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

KRISHNAN RAMASAMY.J.,

nsa

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and W.M.P.Nos.11104 & 11105 of 2024

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