IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No.16446 of 2021
and
WMP.Nos.17415 and 17414 of 2021

K.1755 Goundampalayam Primary Agricultural
Co-operative Credit Society Ltd.,
Represented by its Secretary,
A.Govindasamy. ... Petitioner

Versus

1. The Principal Commissioner of Income Tax - 1,
   Income Tax Department,
   Race Course Road, Coimbatore - 18.

2. The Additional / Joint / Deputy /
   Assistant Commissioner of Income Tax /
   Income Tax Officer,
   National e-Assessment Centre,
   Delhi. ... Respondents

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the first respondent in his proceedings DIN & Order No.ITBA/COM/F/17/2020-21/1028995357(1), dated 14.12.2020 and quash the same.

For Petitioner : Mr. C. Prakasam

For Respondents : Mrs. S. Premalatha
Standing Counsel

ORDER

Today, when the matter was taken up for consideration, the learned counsel for the petitioner/assessee as well as respondent/Revenue jointly submitted that the issue raised in this writ petition has already been considered and decided by this court vide order dated 01.03.2024 in Writ Petition Nos.5145 & 5155 of 2024, the relevant passage of which, is usefully extracted hereunder:

> "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 . "

2. The aforesaid judgment squarely applies to the facts of the present case.

3. In view of the above, this writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

07.03.2024

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Internet : Yes / No
Index : Yes / No

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MOHAMMED SHAFFIQ, J

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