IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.18543 of 2021
and
W.M.P.Nos.19783 & 19784 of 2021

M/s.Pudupet Co-operative Society Limited,
Represented by its President
T.Nithyanandham ... Petitioners

vs.

The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax,
Income Tax Officer,
National E-Assessment Centre,
Delhi. .. Respondent

Prayer : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the Respondent in ITBA/AST/S/143(3)/2021-22/1033007805(1) in passing the impugned order under Section 143(3) read with Section 144B of the Income Tax Act, 1961 dated 21.05.2021 and quash the same as illegal, arbitrary and devoid of merit.

For Petitioner : Mr.Raghav Rajeev Menon

For Respondent : Mr.D.Prabhu Mukunth Arun Kumar
Standing Counsel

ORDER

The petitioner appears to be a Co-operative Society registered under the Provisions of the Tamil Nadu Co-operative Societies Act, 1983. It appears that for the Assessment Year 2018-2019, the petitioner delayed and belatedly filed return of income. The reasons forthcoming were that there was a delay on the part of the Government in auditing the account.

2. Consequently, a report contemplated under Section 44A of the Income Tax Act, 1961 could not be prepared and therefore return was filed belatedly. Therefore, the petitioner approached the Chief Commissioner of Income Tax (OSD) under Section 119(2)(b) of the Income Tax Act, 1961 r/w Circular No.1013/2023 dated 26.07.2023 for condonation of delay.

3. Earlier request was rejected by the Chief Commissioner of Income Tax (OSD) vide order dated 23.02.2021 bearing Reference.No.ITBA/COM/F/17/2020-21/1030883278(1). Consequent to the order of rejection, the impugned order came to be passed, which is

now subject matter of the present writ petition.

4. The petitioner challenged the same in W.P.No.18538 of 2021. The writ petition was answered in favour of the petitioner by this Court vide order dated 16.11.2023 with the following observations :-

> "5. As a matter of fact, paragraph 5 of the said circular also contemplates provides for filing a fresh application for the period / assessment years 2018-19 to 2020-23. Considering the fact that the petitioner had filed the Original Application before an incompetent authority and the prayer being limited to grant leave to file an application under Section 119 of the Act before the appropriate authority, this Court is inclined to grant the petitioner liberty to approach the appropriate authority in terms of the provisions and the relevant Circulars, in particular, Circular No.13 of 2023 dated 26.07.2023 within a period of 4 weeks from the date of receipt of copy of this order. If such application is filed, the appropriate authority shall dispose of the application within a period of 6 weeks from the date of receipt of such application".

5. Today when the case was taken up for hearing, the learned counsel for the petitioner would submit that the Competent Authority in terms of Circular No.13 of 2023 dated 26.07.2023 of the Chief Commissioner of Income Tax, Chennai has condoned the delay in filing

Return of Income for claiming deduction under Section 80P of the Income Tax Act,1961 vide order dated 23.08.2024 in DIN & Order No.ITBA/COM/F/17/2024-25/1067915012(1) reads as under :-

> 3.1. The provisions of Sec.80AC of the Income tax Act provides that for any Assessment Year commencing from the Assessment Year 2018-19, n? deduction in respect of certain incomes' under the heading 'C' of Chapter VI-A of the Income tax Act, shall be allowed unless the assessee furnishes a return of income for such Assessment Year on or before the due date specified u/s.139(1) of the Income tax Act.
>
> 3.2 It is seen that the Assessment Year 2018-19 is the first year of operation of Sec. 80AC of the Act.
>
> 3.3.It is seen that the assessee could not furnish the return of income within the due date specified u/s. 139(1) of the Income tax Act due to delay in completion of audit under State Law, which was beyond the control of the assessee. The Audit was completed on 31/01/2019 1.e. beyond the due date specified uls. 139(1) of the Income tax Act.
>
> 3.4. In view of the above, the petition of the assessee requesting for condoning the delay for filing the Return of Income for the Assessment Year 2018-19 is hereby allowed".

6. Considering the above development, the impugned order has to be set aside. Therefore, the case is remitted back to the respondent to pass a fresh orders after taking note of the aforesaid order dated

23.08.2024 passed by the Commissioner of Income Tax, condoning the delay in filing the return under Section 139 of the Income Tax Act, 1961. The Officer shall re-examine the issue as to whether the petitioner would be entitled to the benefit of Section 80B of the Income Tax Act, 1961. The respondent shall pass orders on merits in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard, if the petitioner so desires.

7. This writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

13.09.2024

Index : Yes/ No
Internet : Yes/No
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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To

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

W.P.No.18543 of 2021

13.09.2024