IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2025

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The HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.16644 of 2025
and
WMP.Nos.18827 & 18828 of 2025

Karkoodalpatty Primary Agricultural,
Co-op. Credit Society Ltd.,
By its Secretary, Mr.Sekar,
Kamaraj Nagar Post, Rasipuram Taluk,
Namakkal - 632 202, PAN : AAAJK0601K

...Petitioner

Vs.

The Chief Commissioner of Income Tax,
Coimbatore, Race Course Road,
Coimbatore - 641 018. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari calling for the records of the respondent and quash the impugned order passed by the respondent under section 119(2)(b) of the Income Tax Act, 1961 in DIN and Order No.ITBA / COM / F / 17 / 2024-25/1071015524(1) dated 09.12.2024 for the assessment year 2018 - 19.

For Petitioner : Mr.T.Vasudevan

For Respondent : Dr.B.Ramaswamy,
Senior Standing Counsel
assist by Mr.Umesh Rao,
Junior Standing Counsel

ORDER

This Writ Petition has been filed challenging the order passed by the respondent 09.12.2024 under Section 119(2)(b) of the Income Tax Act, 1961 for the Assessment Year 2018-19 and to quash the same.

2. The facts giving rise to the writ petition, in a nutshell are as follows:

(i) The petitioner is an agricultural Co-operative society engaged in providing credit facilities to the farming community for cultivation of crops and allied activities. The entire income of the petitioner is exempted under the provisions of Section 80 P(2) of the Income Tax Act, 1961 (in short 'the Act'). The petitioner obtained the Statutory Audit Report under Tamil Nadu Co-operative Societies Act 1983 for the financial year

2017-18 (Asst.Year 2018-19) on 31.10.2018. Thereafter, the Tax Audit Report in Form 3CA as per Sec.44AB of the Income Tax Act, 1961 was obtained from the auditor on 28.12.2018. The due date for filing the Audit Report and the return of income for the Assessment Year 2018-19 was 31.10.2018. But, the petitioner filed return of income on 28.12.2018 declaring Nil income claiming exemption under Section 80P on an amount of Rs.1,16,97,526/-. Thereafter, the assessing officer completed the assessment u/s.143(3) r.w.s.143(3A), denying the deduction claimed under Sec.80P by the petitioner.

(ii) On 25.09.2023, the petitioner filed an application under Section 119(2) before the respondent seeking to condone the delay in filing return of income for AY 2018-19 and the same was rejected by the respondent vide order dated 09.12.2024. Challenging the same, the petitioner is before this Court by way of this writ petition.

3. The learned counsel for the petitioner would submit that the delay of 54 days in filing the return was only due to the delay in obtaining the

statutory audit report under Section 80 of the Co-operative Societies Act and only after obtaining the same, the petitioner had to appoint an Auditor and obtain the Tax Audit Report as per Section 44AB of the Act. But, the respondent without considering the same has mechanically rejected the application filed by the petitioner. That apart, the respondent ought to have considered the CBDT Circular No.13 of 2023 dated 26.07.2023, which is specifically issued to mitigate the hardship faced by assessees in filing the return of income within due date arising due to delay in furnishing the audit report under the State Laws and condone the delay.

4. Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondent strongly opposed the contentions made by the learned counsel for the petitioner stating that if the petitioner had taken steps to obtain the Statutory Audit Report, he could have filed the return within time, without doing so,the petitioner has filed the return belatedly and invited the order dated 09.12.2024 which is impugned herein. He therefore prays to dismiss this writ petition.

5. Heard both sides. Perused the records.

6. In the case on hand, admittedly the petitioner filed the return of income with a delay of 54 days. The reason assigned by the petitioner is that due to delay in obtaining the Statutory Audit Report, the petitioner had filed the return of income belatedly. The petitioner being the Co-operative Society will not have any intention to file the retun belatedly. The due date for filing the return under Section 139(1) of the Act was 31.10.2018. The Statutory Audit report was received by the Department only on 31.10.2018. Since the petitioner being the Co-operative Society usually will go for only Government Auditor for Income Tax Audit, and after getting audit report from the auditor, the petitioner filed the return of income. It is settled position of law that "genuine hardship" contemplated as per the Section 119 (2)(b) of the Act should be construed liberally.

7. In the present case, the Statutory Audit Report was received on 31.10.2018 and on the same date Auditor was appointed and thereafter the Tax Audit Report was furnished by the Auditor on 28.12.2018. On the very

same day, the petitioner filed return of income. Therefore, there is only 54 days delay from the date of receipt of the Audit Report, in filing the return of income.

8. Considering the same and also considering the submissions made by the learned counsel for the petitioner, this Court is of the view that the reasons assigned by the petitioner for condoning the delay appears to be genuine. In view of the same, this court is inclined to condone the delay and set aside the impugned order. Accordingly, this Court passes the following order:

(i) The delay in filing the return of income is condoned and the order impugned herein is set aside.

(ii) The respondent is directed to take on record the return of income filed by the petitioner and proceed in accordance with law.

This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.06.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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To

The Chief Commissioner of Income Tax,
Coimbatore, Race Course Road,
Coimbatore - 641 018.

KRISHNAN RAMASAMY, J.

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