

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष**  
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.662/Kol/2022  
Assessment year: 2018-19

**The Junior Engineers (Telecom) Cooperatives Credit Society Ltd.....Appellant**  
Telephone Bhavan,  
Room No.610, 6<sup>th</sup> Floor,  
34 BBD Bag(South),  
Kolkata-1.  
[PAN: AADAT1109K]

vs.

**ITO, Ward-11(1), Kolkata.....Respondent**

**Appearances by:**

Shri Subhabrata Dutta, CA, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 16, 2023

Date of pronouncing the order : February 06, 2023

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 20.09.2022 of the National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

*"1. For that Hon'ble CIT(A) erred in law as well as on facts in confirming the disallowance of the benefit of deduction u/s 80P for alleged late filing of return for no fault on the part of the assessee, which is not sustainable in the eye of law and needs to be deleted.*

2. *The assessee craves leave for addition, deletion, alteration or modification any of the grounds before or at the time of hearing.”*

3. The sole issue involved, in this issue, is relating to the denial of deduction u/s 80P of the Act to the assessee cooperative-society on the ground of delay in filing return of income.

4. At the outset, the ld. counsel for the assessee has submitted that the return was filed within the extended prescribed period as per provision of section 139(4) of the Act. However, the lower authorities have denied the deduction u/s 80P of the Act on the ground that as per section 80AC of the Act, the condition stipulated is that an assessee should have furnished his return of income on or before the due date as specified under sub-section (1) to section 139. The ld. counsel, in this respect, has submitted that the above condition of filing of the return on or before the specified date under sub-section (1) to section 139 has been introduced for the first time i.e. from 1<sup>st</sup> April 2018 relevant to assessment year under consideration. It has been further submitted that the assessee cooperative-society under the laws is required to get its accounts audited from a Government auditor. That the Government Auditor, despite of repeated reminders, made inordinate delay in completing the audit under the Cooperative Societies Act, which finally concluded on 17.12.2018 and was handed over to cooperative-society in a few days thereafter. The assessee cooperative-society immediately filed the return of income on 31.12.2018. That the delay, if any, occurred in non-filing of the return within the stipulated period as provided u/s 139(1) of the Act was due to circumstances which was beyond the control of the assessee cooperative-society. That the delay, if any, have occurred on the part of Government Auditor in completing the audit who was not under control of the assessee-society.

5. Considering the above submissions of the ld. counsel for the assessee and after going through the impugned orders of the lower authorities, we find that the assessee has genuine cause for not filing the return by the stipulated date as provided u/s 139(1) of the Act. However, the assessee has filed the return within the extended period as prescribed u/s 139(4) of the Act. The delay occurred in filing the return was not on account of any fault on the part of the assessee, rather, it was because of the delay in finalising the audit of the assessee by the Government Auditor, which was not under the control of the assessee-society. The assessee-society, therefore, should not be penalised for an act which was beyond its control. In view of this, a lenient view is required to be taken. Considering the facts and circumstances of the case, we accordingly direct the Assessing Officer to grant deduction to the assessee u/s 80P of the Act.

6. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 6<sup>th</sup> February, 2023.***

Sd/-  
**[डॉक्टर मनीष बोराड /Dr. Manish Borad]**  
**लेखा सदस्य /Accountant Member**

Sd/-  
**[संजय गर्ग /Sanjay Garg]**  
**न्यायिक सदस्य /Judicial Member**

Dated: 06.02.2023.

RS

*Copy of the order forwarded to:*

1. The Junior Engineers (Telecom) Cooperatives Credit Society Ltd
2. ITO, Ward-11(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

*I.T.A No.662/Kol/2022*  
*Assessment year: 2018-19*  
*The Junior Engineers (Telecom) Cooperatives Credit Society Ltd*

//True copy//

By order

Assistant Registrar, Kolkata Benches