

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.33/Chny/2023

(निर्धारणवर्ष / Assessment Year: 2018-19)

The Chennai Corporation Officials Co-operative Society Ltd. No.5125, 5125, Ripon Buildings, EVR Periyar Salai, Park Town, Chennai-600 003.	Vs	The ADIT., Centralized Processing Center Bengaluru-560 500.
PAN:AAABT 2688P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Suresh, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	29.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	29.03.2023

आदेश / ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2022-23 / 1047328409(1) dated 15.11.2022. The assessment was completed by the National Faceless Appeal Centre (NFAC), Delhi for relevant assessment year 2018-19 u/s. 143(3) r.w.s 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 17.02.2021.

2. At the outset, learned counsel for the assessee stated that the CIT(A) has simply dismissed appeal of the assessee without considering issues on merits and giving reason that return of income filed by the assessee is belated return. The learned counsel for the assessee stated that the assessee has filed petition u/s.119(2)(b) of the Act, before the Commissioner of Income Tax-8, Chennai for condonation of delay in filing of appeal. The learned counsel for the assessee particularly took us through relevant ground no.4, which reads as under:-

“Ld.CIT(A) erred in denying the deduction claimed u/s.80P in spite of the fact of condonation petition was brought to his notice with a specific request to wait till the disposal by CIT(A).”

3. The learned counsel for the assessee stated that though petition for condonation of delay in filing of appeal is to be filed u/s.119(2)(b) of the Act is to be addressed to Central Board of Direct Taxes (CBDT) and not to CIT, but, in any case, the CIT can refer the matter or petition to CBDT, qua, this Bench can give direction. To this proposition, the Ld. Senior DR also supported that petition can be sent to CBDT by the Commissioner of Income Tax.

4. After hearing both the sides and going through facts of the case, we noted that the assessee is a co-operative society claiming deduction u/s.80P(2)(a)(i), 80P(2)(d) & 80P(2)(c) of the Act. The Assessing Officer disallowed claim of deduction and added to returned income an amount of Rs.5,17,66,960/- for the reason that return filed by the assessee is belated return and for this, he observed in para 6 of his order as under:-

“6. After considering submissions made by the assessee and other supporting details the gross total deduction claimed by the assessee to the tune of Rs.5,17,66,960/- is income of the assessee for the year under consideration by the virtue of section 80AC(II) of the Income Tax Act, 1961. Accordingly, Rs.5,17,66,950/- is disallowed under chapter VIA of the Income Tax Act, 1961 as claimed by the assessee for late filing of ITR for the A.Y 2018-19. Since the assessee has under reported his income, therefore penalty u/s.270A of the Income Tax Act, 1961 is initiated separately.”

Aggrieved, the assessee preferred appeal before the CIT(A).

5. The CIT(A) also confirmed action of the Assessing Officer by stating that there is statutory and mandatory requirement of filing of return of income before due date as prescribed u/s.139(1) of the Act for the purpose of claiming any deduction

u/s.80P of the Act. Since, the assessee had not fulfilled criteria laid down u/s.80AC of the Act, the Assessing Officer has rightly disallowed claim of deduction and the CIT(A) accordingly, dismissed appeal of the assessee. Aggrieved, now the assessee is in appeal before the Tribunal.

6. The assessee now before us filed a copy of condonation of delay petition filed before Commissioner of Income Tax-8, Chennai dated 01.01.2021. The facts are that for the relevant assessment year 2018-19, the assessee filed return of income on 30.03.2019, whereas due date for filing of return u/s.139(1) was 31.10.2018. Admittedly, return of income was not filed by the assessee within due date as prescribed under the provisions of section 139(1) of the Act. The assessee moved petition before the Commissioner of Income Tax-8, Chennai for condonation of delay u/s.119(2)(b) of the Act, for condoning delay in filing of return of income. Now, as argued by the Ld.Sr. DR that condonation petition has to be filed before the CBDT and not before CIT. We think, let this condonation of delay petition be treated as condonation petition filed and the CIT-8, Chennai is directed to refer this petition to CBDT, who

will consider the same as per law. The matter is being restored back to the file of the Assessing Officer, who will also pursue with CBDT and the assessee will also pursue for early disposal of condonation petition before the CBDT.

7. In term of above, the matter is restored back to the file of the Assessing Officer. In case, the CBDT condones delay, the Assessing Officer shall reconsider the issues on merits, after allowing reasonable opportunity of being heard to the assessee. In term of above, appeal of the assessee is allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29th March, 2023

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member
चेन्नई/Chennai,
दिनांक/Date: 29.03.2023
DS

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.