

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
**Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. Nos.429 & 430/Chny/2023
निर्धारण वर्ष/Assessment Years: 2018-19 & 2019-2020

ED281 Kuttaithairpalayam Milk
Producers Co-operative Society,
Vadakkuthairpalayam Post, Chithode
via, Erode Taluk, Tamil Nadu 638 102.

Vs. The Income Tax Officer,
Ward 1(1),
Erode.

[PAN:AAAAE6749D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 29.05.2023
घोषणा की तारीख /Date of Pronouncement : 29.05.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against the different orders of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi both dated 03.02.2023 relevant to the assessment years 2018-19 and 2019-20.

2. Brief facts of the case are that the assessee has filed the return of income for the assessment year 2018-19 on 30.03.2019 admitting Nil income after claiming deduction under section 80P of the Income Tax Act,

1961 [“Act” in short] of ₹.5,89,693/-. The ADIT CPC, Bengaluru, while processing the return of income disallowed the claim of the assessee under section 80P of the Act and passed intimation under section 143(1) of the Act dated 31.12.2020. Similarly, disallowance under section 80P of the Act was also made for the assessment year 2019-2020.

3. The assessee carried the matter in appeal before the Id. CIT(A) for both the assessment years under consideration. Since the assessee has not filed the return of income within the due date of filing as specified under section 139(1) of the Act and the assessee has not explained the reasons for the delay in filing the belated return, the Id. CIT(A) confirmed the assessment and dismissed the ground raised by the assessee for both the assessment years.

4. On being aggrieved, the assessee is in appeal before the Tribunal for both the assessment years. When the appeals were taken up for hearing, none appeared on behalf of the assessee, despite hearing notice has been issued. Hence, we proceed to decide the appeals on merits after hearing the Id. DR.

5. We have heard the Id. DR, perused the materials available on record and gone through the orders of authorities below. In this case,

since the return of income for both the assessment years were not filed within the due date of filing as specified under section 139(1) of the Act, the ADIT, CPC disallowed the claim of deduction under section 80P of the Act. Since the assessee has not explained the reasons for the belated filing of return of income for both the assessment years, the Id. CIT(A) confirmed the disallowance made under section 80P(2) of the Act by the Assessing Officer.

6. Before the Tribunal, the assessee has raised a specific ground that the Id. CIT(A) erred in not considering the fact that ADIT-CPC, Bengaluru erred in hurriedly processing the return of income under section 143(1) of the Act without waiting for the outcome of the condonation petition filed before the CBDT. In view of the fact that the assessee has filed petition for condonation of delay filed before the CBDT under section 119(2)(b) of the Act, we are of the considered opinion that once the delay condonation is pending before the CBDT, the Department ought to have waited for the decision of the CBDT, for the reason that, if the CBDT condone the delay, the claim of the assessee has to be considered in accordance with law. Therefore, we set aside the order passed by the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to wait for the decision on the condonation petition filed by the assessee before the CBDT and

thereafter pass order in accordance with law. Moreover, the assessee is also directed to furnish copy of the condonation petition filed before the CBDT.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 29th May, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 29.05.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.