

आयकर अपीलीय अधिकरण, "सी" न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.473/Chny/2023
निर्धारण वर्ष /Assessment Year: 2018-19

The Tamilnadu Secretariat Staff
Co-operative Society Ltd.,
Secretariate Society,
Fort St. George,
Chennai – 600 009.
[PAN: AAEAT-7101-N]
(अपीलार्थी/**Appellant**)

The Income Tax Officer,
Vs. Non Corporate Ward-12(1),
Chennai.

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri Reddy Prakash, CA – Ld. AR
: Shri P. Sajit Kumar, JCIT – Ld. Sr.
DR

सुनवाई की तारीख/Date of Hearing

: 22.08.2023

घोषणा की तारीख /Date of Pronouncement

: 30.08.2023

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 14-11-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) of the Act on 12-04-2021. The subject matter of the appeal is the denial of deduction u/s 80P of the

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Act for late filing of return of income beyond due date u/s 139(1) invoking the provisions of Sec.80AC.

2. The Registry has noted delay of 87 days in the appeal. The assessee prayed for condonation of delay. An Affidavit for condonation of delay is filed by the assessee. Though Ld. Sr. DR opposed condonation of delay, the bench formed an opinion that the delay was to be condoned and accordingly, the appeal is admitted for adjudication on merits.

3. Heard the representatives of the both the parties and perused the materials available on record. The Ld. AR submitted that the audit report could not be filed by the assessee in time as the audit report from the auditor of the Co-operative Department received with a delay. The Ld. AR submitted that the audit of the assessee cooperative society has been done by the auditor of the cooperative society as per the provision of the Tamilnadu Cooperative Society Act and due to administrative reasons, delay takes place in auditing the accounts of the assessee. There was no fault on the part of the assessee as the assessee cannot file the return of income without receiving the audit report. Hence, there was a delay in filing of the return of income due to late receiving of the audit report. The Ld. Sr. DR, on the other hand, submitted a copy of the CBDT Circular No. 13/2023 dated 26th July,

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2023 for our consideration on the issue and submitted that the assessee may approach appropriate authority to seek condonation of delay. The Id. DR also submitted that the assessee has to strictly comply the provisions of the IT Act as held by Hon'ble Supreme Court in the case of Commissioner of Customs (Import) v. M/s Dilip Kumar and Company (2018) 95 Taxmann.com 327 (SC) wherein it was held that tax exemption provision of an Act should be interpreted strictly.

4. We carefully considered the submissions of the parties and materials on record. There is no dispute that the assessee filed return of income after the due date of filing of return u/s. 139(1) of the Act. It is also a fact that, the auditor of the Cooperative Department conducts the audit of the cooperative societies as provided under the respective State Cooperative Act. Therefore, the assessee cooperative society is dependent for auditing its accounts on such auditor of the Co-operative Department and delay in making auditing as well as receiving audit report takes time. On the other hand, section 80AC of the Act says that unless the return of income is filed as per section 139(1) of the Act, no deduction under section 80P would be granted to the assessee. We further observe that, vide the aforesaid CBDT Circular No. 13 /2023 dated 26th July, 2023, the Chief Commissioner of Income Tax / Director General of Income Tax has been authorized to

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examine and decide application for condonation of delay in furnishing return of income. The period for examination of condonation of delay in furnishing return of income has been stated in the said circular as assessment years 2018-19 to 2022-23.

5. Considering the same, we restore the appeal back to the file of Ld. CIT(A) with a direction to the assessee to approach prescribed authority to seek condonation of delay in filing the return of income and substantiate his claim before the CCIT/DGIT as the case may be. The CCIT/DGIT as the case may be, shall consider the matter of the assessee as per the aforesaid Circular No.13/2023 dated 26th July, 2023. The Ld. CIT(A) shall pass fresh order considering the same.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on 30th August, 2023.

Sd/-

**(मनोज कुमार अग्रवाल)
(Manoj Kumar Aggarwal)**

लेखा सदस्य /Accountant Member

Sd/-

**(मनोमोहन दास)
(Manomohan Das)**

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 30th August, 2023.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF