

आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.219/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2017-18)**

The Kunderu Primary Agricultural Co- Vs. Income Tax Officer
operative Credit Society Ltd. Ward-2(4)
D.No.3068, Kunderu, Vijayawada
Kankipadu Mandal
Krishna Dist
[PAN : AABAT0643G]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Ms.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing : 28.12.2023
घोषणा की तारीख/Date of Pronouncement : 29.12.2023

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

Condonation of Delay :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No.ITBA/NFAC/S/250/2023-24/1052422378(1) dated 28.04.2023, arising out of order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 17.12.2019 for the Assessment Year (A.Y.) 2017-18 with the delay

of 44 days. The assessee filed a petition for condonation of delay, submitting that the authorized signatory of the assessee society suffered from severe back pain and was advised bed rest by the doctor for at least two months. As per doctor's advice, the assessee was under treatment and complete bed rest from 15.06.2023 to 01.08.2023. The assessee filed medical certificate as proof and submitted that the authorised signatory was not in a position to attend any affairs and could not file appeal within time. He, further submitted that the delay in filing of the appeal belatedly was on account of the reasons explained above, which was neither intentional nor deliberate and beyond the control of the assessee. He, therefore, pleaded me to condone the delay of 44 days and to pass appropriate orders in the interest of rendering substantial justice.

2. I have gone through the condonation petition filed and medical certificate furnished by the assessee. In the instant case, appeal against the order of the Ld.CIT(A) ought to have been filed on or before 27.06.2023. However, the assessee could file the appeal only on 10.08.2023, resulting in a delay of 44 days, citing medical reasons. I find there is a reasonable cause for filing the appeal belatedly. Hence, I condone the delay and admit the appeal for hearing.

3. Brief facts of the case are that the assessee is a Primary Agricultural Cooperative Society. Notice was issued to the assessee as the assessee had deposited cash of Rs.30,87,100/- in Krishna District Co-Operative Central Bank Ltd., Kankipadu during the demonetization period. As the assessee has not filed return of income before the due date u/s 139(1) of the Act, a notice was issued u/s 142(1) and served on the assessee, calling for return of income. However, the assessee had not complied with the notice and failed to file the return of income before 31.03.2018, however, the assessee had filed the return on 20.11.2019, declaring gross total income of Rs.33,97,250/-. The assessee claimed deduction u/s 80P of Rs.33,97,250/- and admitted total income of Rs.Nil. The Assessing Officer(AO) had completed the assessment u/s 144(1)(b) of the Act and passed order on 17.12.2019 and the claim of deduction u/s 80P was not considered on the reason that the assessee has not filed the return within due date.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee.

5. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

1. *The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*
 2. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.33,97,520/- made by the assessing officer towards disallowance of deduction claimed u/s 80P(2) of the Act.*
 3. *In the alternative, the learned Commissioner of Income Tax (Appeals) ought to have held that the income of the appellant is eligible for deduction on the principle of mutuality.*
 4. *Any other grounds may be urged at the time of hearing.*
6. It was the submission of the Ld.AR that section 80AC was amended from 01.04.2018 and the same is not applicable in this case, as it relates to the A.Y.2017-18. He further submitted that the law that stood as on 01.04.2017 needs to be applied. He further submitted that without considering the amendment both the revenue authorities denied the claim of the assessee. He, therefore, pleaded to set aside the orders passed by the revenue authorities and allow the appeal of the assessee.
7. Per contra, it was the submission of the Ld.DR that the provisions of section 80AC(ii) make it clear that any deduction claimed under Part C of Chapter VIA would be admissible only if the return of income was filed within the prescribed due date. Therefore, no claim under any of the provisions of Part C of Chapter VIA would be admissible in the case of belated return. In this case, it is clear that there is no valid return having

been filed within the stipulated time and the assessee is not entitled to claim any deduction under Part C of Chapter VIA. He, therefore pleaded that the orders passed by the revenue authorities are to be upheld and the appeal of the assessee is to be dismissed.

8. I have heard both the parties and perused the material available on record. It is undisputed fact that amendment to section 80AC came into force w.e.f. 01.04.2018, which is applicable for the A.Y.2018-19 and subsequent assessment years, but the impugned assessment year is 2017-18. On this aspect, the Ld.AR has filed a paper book and submitted a photostat copy of the Finance Bill 2018. The Ld.AR drew my attention to Clause 23 in page No.8 and 9, wherein, it was clearly mentioned that this amendment will take effect from 01.04.2018 and will accordingly apply in relation to the A.Y.2018-19 and subsequent assessment years. Hence, I have no hesitation to come to a conclusion that the amendment is only applicable from the A.Y.2018-19 and subsequent assessment years. Therefore, I am of the view that the Ld.AO as well as the Ld.CIT(A) committed an error while passing the orders. Therefore, I quash the orders passed by the lower authorities and allow the grounds raised by the assessee.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 29th December, 2023.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 29.12.2023

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee– The Kunderu Primary Agricultural Co-operative Credit Society Ltd., D.No.3068, Kunderu, Kankipadu Mandal, Krishna Dist
2. राजस्व/The Revenue – The Income Tax Officer, Income Tax Officer, Ward-2(4), C R Building, 1st Floor, Annex, M.G.Road, Vijayawada
3. The Principal Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam