

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1127/Chny/2023**
निर्धारण वर्ष / Assessment Year: 2022-23

State Bank of India Officers
Cooperative Thrift and credit Society Limited,
34/9, S.C.C. Anthoni Pillai Bhavan, III Floor, Second Line Beach, Parris,
Chennai – 600 001.

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

[PAN: AAIAS-1191-H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.03.2024

घोषणा की तारीख/Date of Pronouncement

: 19.03.2024

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Addl/Joint Commissioner of Income Tax (Appeals)-12, Mumbai, dated 21.09.2023 and pertains to assessment year 2022-23.

2. The assessee has raised the following grounds of appeal:

"1. The Commissioner of Income Tax (Appeals) erred in dismissing the appeal in a summary manner without considering the facts and circumstances of the case in right perspective.

2. The Commissioner of Income Tax (Appeals) went wrong in upholding the action of CPC in rejecting the claim of appellant.

3. The Commissioner of Income Tax (Appeals) has failed to follow various decisions of this Hon'ble Tribunal wherein it had categorically stated that the Department ought to wait for the decision of the CBDT on the condonation petition filed.

4. The Commissioner of Income Tax (Appeals) went wrong in rejecting the claim of appellant when the Appellant had filed a grievance petition before the CBDT and had specifically prayed for awaiting the decision of CBDT before passing the order.

5. The Commissioner of Income Tax (Appeals) went wrong in holding that the "appropriate authority" s as per Circular No.9/2015 which is incorrect.

6. The Commissioner of Income Tax (Appeals) ought to have appreciated the genuine hardship and sufficient cause for delay in filing the Return of income, which is neither willful nor wanton.

7. The Commissioner of Income Tax (Appeals) failed to note that the Appellant was eligible for deduction u/s 80P(2)(a)(i) and failed to adjudicate the same."

3. The brief facts of the case are that, the appellant is a cooperative society engaged in providing credit facility to its members. The appellant had filed its return of income for the assessment year 2022-23 on 21.12.2022, declaring nil income claiming deduction u/s. 80P(2)(a)(i) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The due date for filing return of income u/s. 139(1) of the Act is 31.07.2022,

whereas the appellant has filed its return of income on 21.12.2022. The appellant has filed a petition for condonation of delay in filing return before the CBDT on 11.01.2023. The Assessing Officer, CPC, processed return of income filed by the assessee u/s. 143(1) of the Act and denied deduction claimed u/s. 80P(2)(a)(i) of the Act, since, the appellant has filed return of income beyond due date prescribed u/s. 139(1) of the Act. The assessee has filed appeal against order passed by the Assessing Officer before the Id. CIT(A), on 16.03.2023 and argued that, the appellant has filed a petition before the CBDT for condonation of delay. The petition filed by the appellant before the CBDT has been assigned to the PCIT to decide the issue of condonation of delay for filing of return. The Jurisdictional PCIT has rejected petition filed by the assessee on 22.06.2023. The appellant has filed a grievance petition before the CBDT on 28.08.2023 and said petition is pending for consideration and this fact has been brought to the notice of the Id. CIT(A). The Id. CIT(A), without considering the petition filed by the assessee for condonation of delay before the CBDT, disposed off appeal filed by the assessee on 21.09.2023 and upheld rejection of deduction claimed u/s. 80P(2)(a)(i) of the Act.

4. The Ld. Counsel for the assessee, submitted that the Id. CIT(A) erred in dismissing appeal filed by the assessee, when the petition filed before the CBDT was pending for consideration. He further submitted that, the PCIT has rejected petition filed by the assessee on misconception that the appellant has filed condonation petition for claiming refund, even though the appellant has filed petition for condonation of delay in filing of return of income. The grievance petition filed before CBDT is pending and the assessee is awaiting favorable consideration from the CBDT. Further, the order passed by the Assessing Officer u/s. 143(3) of the Act, dated 26.02.2024 is appealed before the CIT(A) and such appeal is pending for adjudication. Therefore, he submitted that this appeal may be set aside to the file of the Id. CIT(A) with a direction to reconsider the issue after the outcome of petition filed by the assessee before the CBDT and decide the issue in accordance with law.

5. The Id. DR, P. Sajit Kumar, JCIT, on the other hand supporting the order of the Id. CIT(A) submitted that, filing of return of income u/s. 139(1) of the Act is mandatory for claiming deduction u/s. 80P(2)(a)(i) of the Act. Since, the

appellant has filed return beyond the due date and further, the petition filed by the assessee for condonation of delay was rejected by the concerned authorities, the Id. CIT(A) has rightly sustained rejection of deduction u/s. 80P(2)(a)(i) of the Act and thus, their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the appellant has filed its return of income beyond due date prescribed u/s. 139(1) of the Act. It is also not in dispute that, for claiming deduction u/s. 80P(2)(a)(i) of the Act, the return of income should be filed on or before due date prescribed u/s. 139(1) of the Act. But, fact remains that law provides for condonation of delay in filing of return of income and such petition should be filed before the CBDT. In the present case, the appellant has filed petition before the CBDT for condonation of delay, and such petition has been rejected by the PCIT. The appellant claims that the petition filed for condonation of delay was rejected on misconception of facts and thus, the appellant has filed a grievance petition before the CBDT and the same is pending for consideration. In our

considered view, when the petition filed by the appellant is pending for consideration before the CBDT, the Id. CIT(A) ought not to have disposed off appeal filed by the assessee and reject deduction claimed u/s. 80P(2)(a)(i) of the Act. Further, the appeal filed by the assessee against order passed by the Assessing Officer u/s. 143(3) of the Act is also pending before the Id. CIT(A) for adjudication. Therefore, for all these reasons, we set aside the order passed by the Id. CIT(A) and restore the issue back to the file of the Id. CIT(A) and direct the Id. CIT(A) to dispose off this appeal, after the CBDT disposes the petition filed by the assessee for condonation of delay.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 19th March, 2024 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/**Judicial Member**

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 19th March, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT
- 4.. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF