

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Chandra Poojari, Accountant Member
&
Shri Soundararajan K, Judicial Member**

ITA No.299/Coch/2023: Asst.Year : 2018-2019
&
SA No.62/Coch/2023

Ummannoor Rural Co-operative Society, Ummannoor Valakom, Kollam – 691 532. PAN: AAAAU8839L.	vs.	The Income Tax Officer Ward 4 Kollam.
(Appellant/Applicant)		(Respondent)

Appellant /Applicant by: Sri.Sabu C.S., CA
Respondent by: Sri.Ilaiyaraja K.S., Senior DR

Date of Hearing : 03.07.2024	Date of Pronouncement: 25.07.2024
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ORDER

Per Soundararajan K, JM :

The present appeal filed by the assessee challenging the order of the CIT(A)/NFAC dated 28.02.2023 vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1050230621(1) in respect of assessment year 2018-2019. The assessee has also filed a stay petition for stay the outstanding demand.

2. Originally the assessee filed its return of income claiming deduction u/s.80P of the Income-tax Act, 1961 (the Act), but the learned Assessing Officer (AO) passed the intimation u/s.143(1) of the Act by disallowing the deduction claimed u/s.80P of the Act on the ground that the return was filed belatedly. Challenging the said intimation, the assessee filed an appeal before the CIT(A) and contended that the assessee filed the return of income on

07.11.2018, which is in time, and therefore, the intimation passed u/s.143(1) of the Act on the ground that the return of income was filed beyond the due date for filing the return of income, is not correct. The CIT(A) was also of the view that the return of income was filed beyond the due date, and therefore, dismissed the appeal. The assessee filed the present appeal before this Tribunal with the following grounds of appeal and also raised a new legal issue as per ground No.3 and contended that the return of income was filed in time, i.e., within the extended period of time granted by the CBDT, and therefore, prayed to allow the appeal.

"1. The order of the Honorable CIT (A) is erroneous on the facts and in the law. That the appellant denies his liability to be assessed for the addition and accordingly denies his liability to pay tax demanded.

2. The CIT appeals has erred in not considering the fact that delay in filing ITR was due to the reasons beyond the control of the appellant.

The audit of accounts for the financial year by the co-operative department was completed in October 2018 and the audit report was dated 17.10.2018. The audit report along with the audited statement was received by the society only on 3rd November 2018. The due date of filing the return of income u/s 139(1) was 31.10.2018. As the report is received only on 3rd November 2018 the appellant could not file the Income Tax Return within the due date u/s 139(1). The Intimation sent on 31.05.2019, the CPC has mentioned the due date for filing ITR was 15.09.2018, which was wrong.

As per section 139(1), "In a case where the accounts of the assessee are required under this Act or any other law to be audited or where the report of an accountant is required to be furnished under section 80HHC or section 80 HHD or where the prescribed certificate is required to be furnished under section 80 R or 80 RRR or sub section (1) of section 80 RRA, or in the case of a co-operative society or in the case of a working partner of a firm whose accounts are required under this Act or any other law to be audited, 31st day of October of the assessment year".

Since the accounts of the appellant was required to be audited under Kerala co-operative societies act by the co-operative auditor, the due date before extension was 31.10.2018. There happened to be a delay of 7 days in filing the return for the A.Y 2018-19, which was due to the reasons beyond the control of the appellant.

3. The CIT (A) has not considered the circular issued by CBDT on 27.02.2019 (F. No. 225/15/2019/ITA.II). As per the Circular due to flood in Kerala "all returns of income and reports of audit which are filed till 28.02.19 shall be deemed to have been filed by 31.10. 18".

The appellant or his consultant has not raised this issue before the assessing officer or the CIT (A), due to ignorance of the circular. The Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. -Vs- CIT, 229 ITR 383 (SC), while deciding the issue of jurisdiction of the tribunal to deal with ground not raised before lower authorities, held "The purpose of the assessment proceeding before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law". The Hon. Apex Court held that the tribunal could entertain a legitimate claim raised for the first time before it.

More over the CBDT circular No.14 (XL-35)/1995, dated 11th April, 1955 specifically says that the department should not take advantage of the ignorance of the assessee.

Quoted in Parekh Bros. vs. CIT &Ors (1983) 36 CTR (Ker) 372: (1984) 150ITR 105 (Ker).

Based on the above ruling the appellant respectfully pray before the Honourable ITAT, Cochin bench, to consider the additional ground raised for the first time by the appellant due to ignorance.

4. For the above grounds, the additions under appeal may kindly be deleted."

Additional Ground:

"In the aforesaid appeal, the appellant and his consultant has ignored to raise the applicability of below mentioned circular which was very relevant to substantiate their claim, that the return has filed within time and the appellant is eligible for 80P deduction. This ground is based on the circular issued by CBDT on 27.02.2019 (F. No.225/15/2019/ITA.II), which is very relevant to the appeal filed. No new facts are to be investigated.

1. The Circular issued by CBDT on 27.02.2019 (F.No.225/15/2019/ITA.II) says that due to flood in Kerala "all returns of income and reports of audit which are filed till 28.02.19 shall be deemed to have been filed by 31.10.18".

In view of the aforesaid Circular issued by CBDT the due date for filing the return of income for the AY 2018-19 has been extended till 28.02.2019. The petitioner has filed its return of income on 07.11.2018, which was within the due date and is eligible for Sec. 80P deduction.

We request the Honourable ITAT, Cochin bench to consider the above and allow us justice."

3. At the time of hearing, the learned AR filed and relied on the Circular issued by the CBDT and prayed to accept the additional ground which is a legal one and goes to the root of the issue and prayed to allow the appeal.

4. The learned Departmental Representative relied upon the orders of the authorities below.

5. We have heard the arguments of both the sides and perused the material on record including the Circular issued by the CBDT, which is reproduced as under:-

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F.No. 225/15/2019/ITA.II
Government of India
Ministry of Finance
Department of Revenue (CBDT)

North-Block, New Delhi, dated the 27th of February, 2019

Order under section 119(2) of the Income-tax Act, 1961

In the aftermath of order of the Hon'ble Kerala High Court in WP Nos. 35382, 32954, 33135 & 37052 dated 19.12.18, the taxpayers of Kerala have filed condonation petitions before the Central Board of Direct Taxes (the Board) under section 119(2) of the Income-tax Act, 1961 (Act). In these petitions, it has been submitted that general extension of one month for filing returns and audit reports till 31.10.18 requires further relaxation in case of taxpayers of Kerala since during the devastating floods of August, 2018 many traders and businessmen had lost the documents/accounts leading to delay in finalization of accounts and consequential difficulties in filing of income-tax return and tax-audit report by 31.10.18.

2. On due consideration of the matter, the Board, to mitigate the genuine difficulties faced by the taxpayers in Kerala, in exercise of its powers under section 119(2) of the Act, hereby directs that in case of taxpayers of Kerala for whom the due date for filing return of income and report of audit pertaining to assessment year 2018-19 was 31.10.18, **all returns of income and reports of audit which are filed till 28.02.19 shall be deemed to have been filed by 31.10.18.**

3. Further, in partial modification of orders of the Board dated 24.09.18 & 08.10.18 in F.No. 225/358/2018/ITA.II. in accordance with relaxation in para 2 above, all returns of income filed between 01.10.18 to 31.10.18 by the taxpayers of Kerala for whom the due date for filing of return of income was 31.10.18, shall not be liable to levy of interest as per provisions of section 234A of the Act.

4. The returns by taxpayers of Kerala covered in this order, if not processed till now, shall be processed in accordance with the directions contained in paras above. If the return has already been processed, the same would be rectified by the CIT-CPC, Bengaluru or the concerned jurisdictional income-tax authority, as the case may be, in exercise of statutory powers under section 154 of the Act in accordance with the directions in paras above.

5. This order is applicable only to those taxpayers of Kerala who were required to file their income-tax return and report of audit for assessment year 2018-19 by 31.10.18.

-Sd-

(Rajarajeswari R.)

Under Secretary to Government of India

6. As seen from the above Circular in respect of the assessment year 2018-2019, the CBDT had issued an order u/s.119(2) of the Act by extending the due date for filing of ITRs / Audit Reports in respect of the Kerala region upto 28.02.2019 on the reason that there was devastating floods in August 2018. In the present case the assessee

filed their return of income on 07.11.2018 and therefore the return filed by the assessee was within the extended period of limitation. The said plea, even though, was not raised before the lower authorities, it is a legal plea and therefore we allow the said plea raised by the assessee. Moreover, the reliance on the Circular by the assessee would go deep into the root of the issue and if the authorities have considered the Circular issued by the CBDT, they could have processed the return in accordance with law.

7. We found that in the various judgements of the various Hon'ble High Courts, they had permitted the assessee to raise legal issues at any point of time and, therefore, we are also accepting the new plea raised by the assessee in the grounds of appeal as legally sustainable. If we consider the new plea and the Circular issued by the CBDT, admittedly, the return is well within the time, and therefore, the order passed by the lower authorities are not correct. Even though the Circular issued by the CBDT was available at the time of passing intimation u/s.143(1) of the Act on 31.05.2019, neither the assessee produced the same before the authorities nor the authorities had considered the same voluntarily.

8. In view of the above discussion, we find that the assessee has made out a case that the orders of the authorities below are not correct and against the provisions of the Act. We, therefore, set aside the impugned order of the CIT(A).

9. Even though we find that the assessee is having a good case on merits and if we remit the issue to the file of the ld.CIT(A), he has to call for the remand report from the ld.AO, which would certainly a

time taking exercise. In order to render substantial and speedy justice, we are inclined to set aside the orders of the lower authorities and restore the issue to the file of the AO for fresh adjudication as per the provisions of the law and also by considering the Circular issued by the CBDT.

11. Since we have decided the appeal, the stay application becomes infructuous and the same is accordingly dismissed.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay application is dismissed.

Order pronounced in the open court on 25th July, 2024.

**Sd/-
(Chandra Poojari)
Accountant Member**

**Sd/-
(Soundararajan K)
Judicial Member**

Bangalore; Dated: 25th July, 2024
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar
ITAT, Cochin