

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No.: **705/Chny/2024**

निर्धारणवर्ष / Assessment Year: 2022-23

The Coimbatore Cooperative
House Construction Society
Limited -K 1426,
15-A, Rathinasabapathy
Mudaliar Street, K.K. Pudur,
Coimbatore - 641 038.

[PAN: AAFAT-6040-F]

(अपीलार्थी/Appellant)

Income Tax Officer,
v. Non Corporate Ward -3(1),
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/Appellant by

: Shri. Abhishek Murali, FCA

प्रत्यर्थी की ओरसे/Respondent by

: Shri. N. Sanjay Gandhi, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.06.2024

घोषणा की तारीख/Date of Pronouncement

: 07.08.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), Addl/JCIT(A)-1, Pune, for the assessment year 2022-23 dated 28.02.2024.

2. The only ground raised by the Assessee is the Id.CIT(A) erred in dismissing the appeal by upholding the action of the

CPC in rejecting the claim of deduction U/s.80P of the Act due to delay in filing the return of Income.

3. The brief facts of the case are that, the assessee is a co-operative house construction society and has filed its original return of Income for the A.Y. 2022-23 belatedly on 31/12/2022 (Extended due date for filing return U/s.139(1) was 07/11/2022) declaring total Income at Rs.NIL, after claiming deduction U/s.80P of the Act, of Rs.89,99,250/-. The assessee has also filed petition U/s.119 of the Act, before the Id.PCIT for condonation of delay in filing the return of Income.

4. The return was processed by the CPC, Bengaluru U/s.143(1) of the Act on 02/03/2023 denying the claim of deduction U/s.80P of the Act of Rs.89,99,250/- for the reason that the assessee has not filed return of income within the due date as per section 139(1) of the Act. Aggrieved by the action of the CPC, the assessee preferred an appeal before the Ld.Addl.CIT(A). The Ld.Addl.CIT(A) considering the grounds of appeal and submissions of the assessee dismissed the appeal by holding as under:

"5. DECISION:

5.1 The Statement of Facts, Grounds of appeal and the material on record have been considered. The facts of the case have been examined and it is ascertained that the return for the relevant AY was uploaded beyond the due date u/s.139(4) of the IT Act . The return of income was filed on 31/12/2022 while the time limit u/s.139(1) of the IT Act for the AY 2022-23 was 07/11/2022 and hence having failed to comply to the provisions of section 80AC of the IT Act , deduction u/s.80P of the IT Act was denied. It is apprised to the Appellant that the undersigned is empowered to condone the delay in filing of appeal and not the delay in filing the ITR.

5.2 However, an avenue for relief is available by seeking condonation in filing the ITR expressing the special circumstances which was beyond the control of the Appellant, through a separate petition u/s. 119(2)(b)of the IT Act before the competent authority as specified in the Circular No.13/2023 of CBDT in F.No.173/21/2023-ITA-1 dated 26/07/2023 in respect of AYS 2018-19 to 2022-23. The Appellant is requested to seek condonation of delay before the CCIT/DGIT having jurisdiction over the case through an appropriate application u/s.119(2)(b) of the IT Act for the AY 2022-23.

5.3 However at present, since the provisions of section 80ACof the IT Act gets attracted, till the condonation of delay by the appropriate authority, the adjustment made by CPC denying the claim of deduction u/s.80Pof the IT Act is thus found to be in order and hence the adjustment made is upheld. The Jurisdictional Assessing Officer is directed to treat the Appellant as not in default of taxes till the petition for condonation u/s.119(2){b) of the IT Act is disposed by the competent authority.

6. **Conclusion:** The grounds of appeal of the Appellant is therefore **DISMISSED."**

Aggrieved by the order of the Ld.Addl.CIT(A), the assessee filed an appeal before us.

5. The Ld. AR of the assessee argued that the Ld.Addl. CIT(A) has erred in dismissing the appeal without considering the facts and circumstances of the assessee. The Ld.AR stated that assessee's application dated 31/12/2022 for condonation of delay in filing the return of Income before the Id.PCIT, is pending for disposal and the Ld.Addl.CIT(A) has dismissed the appeal in hurried manner. The Ld.AR stated that the assessee could not file the return of income within the prescribed time limit U/s.139(1) i.e. 07/11/2022, since the accounts were audited and audit report was issued only on 03/12/2022 by the Assistant Director Co-operative Societies, Government of Tamilnadu and reported on 22/12/2022. Later the society took steps to file the return of income and filed the return of Income on 31/12/2022.

6. Per contra, the Ld.DR stated that the return was processed by the CPC, Bengaluru U/s.143(1) of the Act on 02/03/2023 denying the claim of exemption U/s.80P of the Act for the reason that the assessee has not filed the return of income within the due date as prescribed U/s.139(1) of the Act. The same has been rightly confirmed by the Ld.Addl. CIT(A), as the assessee has claimed the deduction U/s.80P

without filing the return of income within the due date U/s.139(1) of the Act, which is a precondition specified in Section 80AC of the Act. Hence, prayed before us to dismiss the appeal of the assessee.

7. We have heard the rival contentions and gone through the intimation U/s.143(1) and order of the Ld. Addl. CIT(A). The Assessee is a co-operative society and filed its return of income for the assessment year 2022-23 belatedly on 31/12/2022 against the extended due date u/s.139(1) was 07/11/2022 and claimed a deduction under Chapter VIA - U/s.80P to tune of Rs.89,99,250/-. It is noted that, the assessee has also filed a petition for condonation of delay before the Id.PCIT U/s.119 of the Act on 31/12/2022, before processing the return of Income by the CPC, Bengaluru.

8. It is observed that, the assessee had filed a response to proposed adjustment U/s.143(1), stating that The DD of I.T. CPC, Bengaluru has denied deduction claimed u/s. 80P of the Act in respect of return of income was filed by our co-operative society belatedly and passed assessment u/s. 143(1) of the Act without providing any opportunity/ without verifying application for condonation of delay transmitted by

electronically. This action of the CPC, Bengaluru is confirmed by the Ld.addl.CIT(A), without waiting for the decision of the Id.PCIT of the condonation petition dated 31/12/2022 filed by the assessee. Considering the facts and circumstances of the case, we are inclined to set aside the impugned order of the Ld.addl. CIT(A) and remit the file back to the JAO to decide the issue in accordance to the decision of the Id.PCIT on condonation petition filed by the assessee.

9. In the result the appeal of the assessee is allowed for the statistical purposes.

Order pronounced in the Open court on 07th August, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/Vice President

Sd/-
(एस. आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 07th August, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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