

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.964/Chny/2024
निर्धारण वर्ष /Assessment Year: 2018-19

The Pallipalayam Farmers Service
Co-operative Society Ltd.,
S N 208, Pallipalayam Farmers Co-
op. Society Ltd., Pallipalayam,
Tiruchengode, Namakkal – 638006.
[PAN AAAT 1678G]
(अपीलार्थी/**Appellant**)

Vs. The Income Tax Officer,
Circle-1,
Erode.

(प्रत्यर्थी/**Respondent**)

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

: Ms. G. Vardhini Karthik, Advocate
: Ms. R. Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 13.08.2024

घोषणा की तारीख /Date of Pronouncement

: 21.08.2024

आदेश / ORDER

PER JAGADISH, A.M:

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2018-19 arises out of the order of Learned Commissioner of Income Tax (Appeals), [NFAC], Delhi [hereinafter "CIT(A)"] dated 29.02.2024.

2. The only effective ground of appeal is against confirming the disallowances u/s 80P of the Act made by AO invoking the provisions of section 80AC of the Act, even though the application for

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condonation of delay u/s 119(2)(b) as per CBDT Circular No.13/2023 dated 26.07.2023 is pending with CBDT .

3. The brief facts of the case are that the appellant society filed return of income for AY 2018-19 on 30.03.2019 offering a gross total income of Rs.2,66,78, 1 91/- and total income of Rs. Nil after claiming deduction of Rs. 2,66.78.191/- under section 80P of the Act. The AO in the order u/s 143(3) has disallowance of claim for deduction u/s 80P of the Act invoking the provisions of section 80AC that assessee is not eligible for deduction u/s 80P as return has been filed beyond the due date specified u/s 139(1) of the Act. The AO has also held on merit that interest income is neither allowable u/s 80P(2) (a) () or 80P(2) (d) of the Act. Being aggrieved, the assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) has dismissed the appeal of assessee observing as under:

"In this respect, it is mentioned that in the present matter also there is NO DISPUTE that the return of income for the year under Consideration corresponding to A Y 2018-19 was filed by ne assessee on 30.03.2019 as against the due date of 31.10.2018 as per the provisions of Section 139(1) of the Act. Under such circumstances, respectfully following the above referred m binding decision of the Hon'ble Jurisdictional High Court, Madras as well as [il the decision of the Hon'ble High Court, Kerala-no interference is called for in the action of the Ld. AO in denying the deduction of Rs. 2,66,78,191/-during the year under consideration as per the provisions of section 80AC of the Act, Accordingly, the appeal is, thus, DISMISSED.

Before parting, it is mentioned that as per above discussion the action of the Ld. AO in denying the deduction of Rs. 26678191/- during the year under consideration as per the provisions of section

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80AC of the Act has been upheld. Hence, the issues w.r.t. (examining) merits of claim of deduction u/s 80P now evidently partake academic nature -NOT requiring adjudication, thus, DISMISSED. Reliance is placed on the decision of the Hon'ble Jurisdictional High Court, Madras in the Case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Lid. [supra] as well in the case of Shree Datta Prasad Sahakari Patsanstha Ltd. V. JTO J20221 134 taxmann.com 324 (Mumbai - Trib.) wherein it has been held that-where assessee had not claimed deduction under section 80P(2) in its return of income, it could not be allowed such deduction in view of condition imposed under section 80A(5) even though it was otherwise eligible for such deduction [emphasis supplied]"

4. Before us, the Ld. Counsel submitted that CBDT has issued circular no 13/2023 dated 26.07.2023 allowing cooperative society to claim deduction u/s 80P by filing condonation of delay petition u/s 119(2)(b) to treat the return filed u/s 139(1). The Ld AR submitted that a petition u/s 119(2)(b) dated 26.12.2023 for condonation of delay in filing claim of deduction u/s 80P has been filed and still pending before the Central Board of Direct Taxes (CBDT in short), therefore Ld CIT(A) should have awaited before dismissing appeal solely on ground that claim u/s 80P is not allowable as return was not filled within due date. The Ld AR prayed for set aside the matter before Ld.CIT(A) for fresh adjudication only after receipt of order of CBDT on petition u/s 119(2) (b) dated 26.12.2023 for condonation of delay in filing claim of deduction u/s 80P of the Act.

5. The Ld. D.R has not objected to the prayer of the Id. Counsel for the assessee.

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6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The Ld CIT(A) has dismissed the appeal for claim of deduction u/s 80P , merely for the reason that assessee has not filled return within the prescribed due date and as per section 80AC such deduction are not allowable. The Ld CIT(A) has not adjudicated on merit . The Co-ordinate bench in the case of *The Erode City Municipal Corporation Emp. Co-op. T & C Limited K831 vs. Assessing Officer, Ward1-(1), Erode* in ITA Nos.509 & 510/Chny/2024 vide order dated 22.07.2024 on similar facts has held as under:

“We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is admitted fact that a petition u/s 119(2)(b) dated 26.12.2023 for condonation of delay in filing claim of deduction u/s 80P is still pending adjudication before the CBDT hence the same has a direct bearing on the issue in hand. Therefore, we deem it fit to restore back the appeal to the Id. CIT(A) for denovo adjudication only after receipt of order of CBDT on petition u/s 119(2)(b) dated 26.12.2023 for condonation of delay in filing claim of deduction u/s 80P. The Id.CIT(A) will proceed with the appeal after affording reasonable opportunity of hearing to the assessee. That on receipt of order of CBDT on petition u/s 119(2)(b) dated 26.12.2023 for condonation of delay in filing claim of deduction u/s 80P, the assessee is also directed to substantiate its case forthwith failing which Ld. CIT(A) shall be at liberty to proceed with disposal of appeal on merits.”

7. Respectfully following the order of this Tribunal, supra, we set aside the order Ld. CIT(A) and remit the matter back to the file of Ld.

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CIT(A) for *denovo* adjudication only after receipt of order of CBDT on petition u/s 119(2)(b) dated 26.12.2023 for condonation of delay in filing claim of deduction u/s 80P of the Act. In view of the above, the appeal filed by the assessee is allowed for statistical purposes.

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

Order pronounced on 21st August, 2024.

Sd/-
(यस यस विश्वनेत्र रवि)
(SS Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 21st August, 2024.
EDN/-

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य /Accountant Member

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

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