

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

S.A. Nos. 76 & 77/Coch/2024 (Arising out of ITA Nos. 570 & 571/Coch/2024) & ITA Nos. 570 & 571/Coch/2024 Assessment Years : 2018-19 & 2019-20
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M/s. Alakode Coconut and Agricultural Marketing Cooperative Society Ltd., AP-VIII-6211 A-23, Alakode, Kannur – 670 571. Kerala. PAN: AABAA5743Q	Vs.	The Income Tax Officer, Ward – 4, Kannur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Jai Krishnan, Advocate
Revenue by	:	Smt. Girly Albert, Snr. DR

Date of Hearing	:	01-10-2024
Date of Pronouncement	:	18-12-2024

ORDER

PER BENCH

These appeals are filed by the assessee challenging the orders of the NFAC, Delhi both dated 18/04/2024 in respect of the A.Ys. 2018-19 and 2019-20. Both the appeals are related to the same assessee and the issue

involved in both the appeals are similar. We decided to take up both the appeals together and pass a common order for the sake of convenience.

2. The brief facts of the case are that the assessee is a co-operative society and filed their return of income on 31/03/2019 and 28/09/2020 and claimed the deduction u/s. 80P of the Act. The return was processed and intimation u/s. 143(1) of the Act was issued wherein the deduction claimed by the assessee was disallowed. The said intimation was sent on 05/03/2020 and thereafter because of the Covid19, the assessee was not able to file the appeal in time but filed the same with a delay of 500 days i.e. on 22/11/2021. The Ld.CIT(A) had not condoned the delay and dismissed the appeal and also observed that the return of income was filed belatedly and therefore the assessee is not entitled for deduction u/s. 80P of the Act. As against the said orders, the assessee is in appeals before this Tribunal.

3. At the time of hearing, the Ld.AR submitted that the assessee had explained the reasons for the delay and relied on the Hon'ble Supreme Court order in which the limitation has been extended due to the Covid19 and the lockdown announced by the Government. The Ld.AR further submitted that the Covid19 infection affected their staff and members and the President who is a diabetic patient had not attended the office regularly and therefore there is a delay in filing the appeal before the Ld.CIT(A). The Ld.AR further submitted that insofar as belated filing of the return, it is the case of the assessee that they are contemplating to approach the authority u/s. 119(2) of the Act for getting proper relaxation in filing the return of income belatedly. The Ld.AR further submitted that the issue is fully covered by the judgment of the Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd Vs. CIT reported in 431 ITR 1 (SC) and prayed to set aside the issue to the file of the Ld.AO for considering the issue afresh.

The Ld.DR relied on the orders of the Ld.CIT(A) and contended that unless and until the belated filing of the return has been condoned, the assessee is not entitled to claim deduction u/s. 80P of the Act.

4. We have heard the arguments of both sides and perused the materials available on record.

5. We have perused the order of the Ld.CIT(A) and the Ld.CIT(A) had rejected the appeal mainly on the ground that there was an inordinate delay of 500 days in filing the appeals and thereafter the Ld.CIT(A) has also observed that the assessee is not entitled for deduction since the return of income was filed beyond the period prescribed.

6. We have perused the affidavit filed in support of the delay in which the assessee had explained that in view of the Covid19 pandemic, the appeal could not be filed in time and in view of the order of the Hon'ble Supreme Court in the suo moto cases, the appeal filed by the assessee on 22/11/2021 is within the extended period granted by the Hon'ble Supreme Court. The reasoning given by the assessee seems to be a genuine one and the said delay is also covered by the judgment of the Hon'ble Supreme Court and in such circumstances, we find that the order of the Ld.CIT(A) in dismissing the appeal by not condoning the delay is not correct. Therefore we are condoning the delay of 500 days in filing the appeal before the Ld.CIT(A).

7. The next argument advanced by the Ld.AR is that the assessee being a co-operative society, their accounts were audited by the statutory auditors appointed by the Registrar of Co-operative Societies and in any event, the accounts were properly audited but because of the delay in getting their accounts audited, the assessee, consequently, filed the return with a delay. The contention of the assessee that they are also approaching the

authorities for getting necessary relief and in such circumstances, the order of the lower authorities subjecting the income derived by the assessee is against section 80P of the Act. We are in agreement with the argument advanced by the Ld.AR and if the assessee is able to get any favourable orders u/s. 119(2) of the Act from the Authorities by condoning the said delay in filing the returns, it is open for the assessee to canvass the issue on merits before the AO. Therefore we are remitting this issue to the file of AO for considering the issue afresh on the basis of any orders to be produced by the assessee from the Authorities, otherwise it is open to the AO to make the assessment u/s. 56 of the Act by treating the income as income received from other sources. We are also making it clear that in these circumstances, if the AO is of the opinion that the income should be assessed u/s. 56 of the Act, the necessary cost of funds etc. should be granted while arriving the income u/s. 56 of the Act. With the above directions, we set aside the issue to the file of AO to pass fresh order after granting reasonable opportunity of being heard to the assessee.

8. In view of the disposal of the main appeals, the stay petitions becomes infructuous and the same are dismissed.

9. In the result, both the appeals are allowed for statistical purposes and both the stay petitions are dismissed.

Order pronounced in the open court on 18th December, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 18th December, 2024.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin