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W.P.Nos.7329 & 7333 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.7329 & 7333 of 2024 and
W.M.P.Nos.8206, 8213 & 8214 of 2024

S.1134 Thenkumarai Primary Agricultural
Co-operative Bank Limited,
Represented by its Secretary R.Muthukaruppan,
Thenkumarai PO, Attur Taluk,
Salem District-636 121.

...Petitioner in both WPs.

Vs.

Chief Commissioner of Income Tax,
Coimbatore, No.63,
Race Course Road,
Coimbatore-641 018.

... Respondent in W.P.No.7329 of
2024

1. Assistant Director of Income Tax,
Centralized Processing Centre,
Income Tax Department,
1st floor, Prestige Alpha Nos.48/1,
48/2, Beratenaagrahara Begur,
Hosur Road, Uttarahalli Hobli,
Bengaluru, Karnataka-560 100.

2. Income Tax Officer,
Ward 1(6), Salem,
No.3, Gandhi Road,



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Salem-636 007.

... Respondents in W.P.No.7333 of 2024

Prayer in W.P.No.7329 of 2024: Writ Petition is filed under Article 226

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of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent and quash the impugned order passed by the respondent under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as “Act”) in DIN and Order No.ITBA/COM/F/17/2023-24/1059183368(1) dated 29.12.2023 in PAN-AACAS3223Q for the Assessment Year ('AY') 2019-2020 and direct the respondent to condone the delay in filing return of income under Section 139(1) of the Income Tax Act, 1961 ('Act').

Prayer in W.P.No.7333 of 2024: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent and quash the impugned intimation of the 1st respondent in CPC/1920/A5/2006952405 dated 17.08.2020 for the assessment year 2019-2020 and direct the 2nd respondent to process the return of income filed by the petitioner for the said year, accepting the income returned by the petitioner.

In both WPs.

For Petitioner : Ms.N.V.Lakshmi
for Mr.N.V.Balaji



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For Respondent : Dr.B.Ramaswamy,
Senior Standing Counsel

COMMON ORDER

An order rejecting an application under Section 119(2)(b) of the Income Tax Act, 1961 (the Income Tax Act) is the subject of challenge in W.P.No.7329 of 2024. In W.P.No.7333 of 2024, the consequential intimation under Section 143(1) of the Income Tax Act is challenged.

2. The petitioner is an Agricultural Co-operative Credit Society. As per the Tamil Nadu Co-operative Societies Act, 1983, it is mandatory that the petitioner subjects its books of accounts to a statutory audit. As regards the financial year 2018-2019, which corresponds to the assessment year 2019-2020, such audit was undertaken and completed on 30.09.2019. The petitioner asserts that the audit report was, however, received by the petitioner only in December 2019. The petitioner further asserts that the provisions of Section 80AC of the Income Tax Act were amended under the Finance Act, 2018 and that the petitioner was not aware of the requirement of filing the return of income within the stipulated period. The COVID 19 pandemic intervened thereafter in



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March 2020 and the petitioner filed its return of income on 30.06.2020.

Since the return was belated, an application was filed under Section 119(2)(b). Such application was rejected by order dated 29.12.2023.

3. Learned counsel for the petitioner invited my attention to the application filed by the petitioner and pointed out that the petitioner stated therein that the audit report was received only on 31.12.2019, which is beyond the due date under Section 139(1) of the Income Tax Act. Learned counsel further submitted that the petitioner is a small co-operative credit society with an annual turnover of about Rs. 1.2 lakhs. Therefore, it is submitted that the petitioner would be put to great hardship unless the delay in filing the return of income is condoned.

4. Dr.B.Ramaswamy, learned senior standing counsel, accepts notice for the respondents. He submits that the rule of law is applicable to all and that a person who does not comply with the statutory mandate is not entitled to indulgence. If such indulgence is extended to persons such as the petitioner, he submits that all similarly placed persons would be encouraged to flout statutory requirements and thereafter approach the Court.



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WEB COPY 5. On examining the impugned order, it is clear that the Chief Commissioner of Income Tax was conscious of the fact that the audit was completed only on 30.09.2019. The said date was the original deadline for filing the return of income. Although the petitioner asserted in the application that the return was received only on 31.12.2019, the said aspect was not taken cognizance of in the impugned order. Instead, in the operative portion thereof, it is recorded as under:

“5. A letter dated 21.12.2023 was generated through ITBA portal and duly served on the assessee via e-mail, posting the case for hearing on 26.12.2023. However, the assessee not furnished any documentary evidences to substantiate the delay or any genuine hardship faced by the assessee.

Thus the assessee has not been able to establish that it pursued the matter with any diligence. After all, the responsibility of filing the return in time, vests with the assessee. The assertions made to justify the delay have to be proved and established. In view of the vague assertions, absence of details and adequate proof, the condonation sought lacks merit.”



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6. It is no doubt true that the petitioner had not placed evidence of the date of receipt of the audit report. However, it was asserted both in the application under Section 119(2)(b) of the Income Tax Act and in the affidavit before this Court that such audit report was only received in December 2019. Even after extension, the time limit for filing the return of income for the relevant assessment year expired on 31.10.2019. Therefore, the petitioner was clearly not in a position to file the return of income within time. Although the explanation of the petitioner that the report was received only in December 2019 is not corroborated by evidence, by taking into account the nature of the petitioner's society and the scale of operation, there would be genuine hardship to the members if the delay in filing the return of income is not condoned. In this connection, it should be noticed that Section 119(2)(b) was construed by this Court and the Bombay High Court liberally. In line with such precedents, I am of the view that this is an appropriate case to condone delay in filing the return of income.

7. For reasons set out above, W.P.No.7329 of 2024 is allowed by quashing the order dated 29.12.2023 and holding that the delay in filing



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the return of income is condoned. As a consequence, the impugned intimation in W.P.No.7333 of 2024 is quashed and the matter is remanded for assessment based on the return of income filed by the petitioner. W.P.No.7333 of 2024 is disposed of on the said terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.03.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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To

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Race Course Road,
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SENTHILKUMAR RAMAMOORTHY,J.

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