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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.7708 of 2025

In the matter of an Application under Articles 226 and 227
of the Constitution of India, 1950

* * *

The Reserve Bank Employees Co-operative
Credit Society Limited.

(A Society registered under
the Cooperative Society Act, 1962)

Having its Registered Office
At: Unit-3, Reserve Bank of India
P.O./P.S.: Bhubaneswar

District: Khurda – 751 001, Odisha
Represented by Secretary

Sri Susanta Kumar Mohapatra

Aged about 55 years

Son of Subash Chandra Mohapatra
Resident of F-48, RBI Staff Quarter

Bidyut Marg, Unit-IV

Bhubaneswar – 751 001

Odisha.

...

Petitioner

-VERSUS-

1. The Principal Chief Commissioner of Income Tax
Odisha Region, Odisha, Bhubaneswar
Aayakar Bhawan, Rajaswa Vihar
Bhubaneswar – 751 007.



- 2.** Principal Commissioner of Income Tax
Bhubaneswar-1, Aayakar Bhawan
Rajaswa Vihar, Bhubaneswar – 751 007.

- 3.** The Deputy Commissioner of Income Tax
Circle-1(1), Bhubaneswar
Aayakar Bhawan, Rajaswa Vihar
Bhubaneswar – 751 007.

- 4.** The Assessing Officer
Assessment Unit
Income Tax Department
National Faceless Assessment Centre (NFAC)
Delhi. Opposite parties

Counsel appeared for the parties:

For the Petitioner : Mr. Rudra Prasad Kar
Senior Advocate
Assisted by
M/s. Pranaya Kumar Mishra,
Aditya Narayan Ray,
Narahari Swain and
Himansu Bhushan Jena,
Advocates

For the Opposite parties : Mr. Subash Chandra Mohanty,
Senior Standing Counsel
Income Tax Department

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 23.12.2025 :: Date of Judgment : 09.01.2026



JUDGMENT

MURAHARI SRI RAMAN, J.—

Challenging the legality and propriety of Order dated 13.06.2024 (Annexure-3) passed by the Principal Chief Commissioner of Income Tax, Odisha Region, refusing to condone the delay in furnishing return of income pertaining to the Assessment Years 2018-19 to 2022-23, exercising power under Section 119(2)(b) of the Income Tax Act, 1961, the petitioner has approached this Court by filing this writ petition craving to invoke extraordinary jurisdiction under Article 226/227 of the Constitution of India with the following prayer(s):

“Under the above mentioned facts and in the circumstances of the present case, it is most respectfully prayed that this Hon’ble Court may be graciously pleased to admit this petition, call for and peruse the relevant records and after hearing, be pleased to:

- (i) *Issue Rule Nisi calling upon the opposite parties No.1 and 2 to show cause as to why Annexure-3 to the writ petition shall not be quashed and the opposite parties to show cause as to why appropriate directions shall not be issued to condone the delay and to allow the petitioner to file return of income along with audit report and to allow deductions/exemptions available to the petitioner’s society;*
- (ii) *And if the opposite parties fail to show cause or show insufficient cause, then make the rule absolute by quashing Annexure-3;*



(iii) *And further be pleased to pass such other order/orders, direction/directions, as this Hon'ble Court may deem just and proper under the facts and circumstances of the case, in the interest of justice;*

And for this Act of kindness, the petitioner as in duty bound shall ever pray."

Case of the petitioner:

2. The petitioner, a registered Co-operative Society incorporated on 13.08.1974 under the provisions of the Odisha Cooperative Societies Act, 1962 (for brevity, "OCS Act"), for promoting thrift, self-help and co-operation among the members, to raise funds to be lent out or invested for its members or extending thrift benefit, to borrow from members to be utilized for loan to the members for useful purposes and to do such other activities for the common benefit of its members as may be decided from time to time, requires its accounts to be audited by a Chartered Accountant/Firm of Chartered Accountants (Auditor) empanelled in the Directorate of Cooperative Audit, Odisha, Bhubaneswar as required under Section 62 of the OCS Act¹. Since, the books of

¹ Section 62 of the Odisha Cooperative Societies Act, 1962 stands as follows:

"Chapter—VIII

Audit, Enquiry, Inspection and Surcharge

62. *Audit.—*

(1) (i) *The Auditor-General shall audit, or cause to be audited by an Auditor duly authorised by him in that behalf, the accounts of every Society for each Co-operative year, and complete such audit within six months of the closure of the year, at least once or for such number of times as may be directed by the State Government from time to time in respect of any Society or class of Societies:*



Provided that the Auditor-General of the Co-operative Societies, Orissa may engage one or more Chartered Accountants to cause the audit of the accounts of the Co-operative Society and the fees shall be paid by the Society both to the Chartered Accountant and the Government for the audit of its accounts for each Co-operative year at such rate as may be fixed by the Government.

(ii) The Auditor-General may, of his own motion or on a requisition from the Registrar and shall, on a directive from the State Government, arrange for special audit, re-audit or concurrent audit of the accounts of any Society or class of Societies on day-to-day or such other basis as may be directed.

(iii) The Auditor-General shall so arrange the audit that the same Auditor shall not audit the accounts of the same Society for two consecutive Co-operative Years.

(iv) A Society having an annual business turnover of more than twenty-five lakhs, shall arrange for internal audit of its account on a day-to-day basis or on such basis as may be directed by the Auditor-General.

(2) The audit under sub-section (1) shall be conducted according to the rules and shall include—

- (a) a verification of cash balances and securities;
- (b) a verification of the balances at the credit of the depositors and creditors and of the amounts due from the debtors of the Society;
- (c) an examination of overdue debts, if any;
- (d) a valuation of the asset and liabilities of the Society;
- (e) an examination of the transaction, including the monetary transactions of the society within such limits as may be prescribed;
- (f) an examination of the statement of accounts, including the statement of receipts and charges, the balance sheet, the profits and loss account and the statement of net profits available for distribution in accordance with this Act and the Rules for the preceding year, to be prepared by the Committee in such form as may be directed by the Auditor-General;
- (f-1) an examination of the irregularity in terms of this Act, Rules and the Bye-laws discovered, if any, in the constitution, functioning and business of the Society, affecting the financial position or otherwise of the Society;
- (g) any other matter that may be prescribed or directed by the Auditor-General.

(3) The statements of accounts including the balance-sheet, the statement of profit and loss and the statement of net profits thus audited together with the modifications, if any, made therein by the Auditor-General and certified by him shall be final and binding on the Society.

(4) (a) The Auditor-General or the Auditor shall at all times have access to all the books, accounts, documents, papers, securities, cash and other properties belonging to or in the custody of the Society and shall, in so far as is necessary for carrying out any of the purposes of this Act, have power to summon and enforce the attendance of any person and to examine him on oath or affirmation and to compel the production of any books, accounts, documents, securities, cash and other properties at any place at the headquarters of the society or any branch thereof and to issue commission for the examination of witness by the same means



account of the petitioner could not be audited within time-frame because of acute shortage of departmental auditors, as a result of which it could not file its returns of income and audit report(s) within the statutory period allowed under Section 139(1) of the Income Tax Act, 1961 ("IT Act", for short).

2.1. Since there was delay in engagement of auditor by the AGCS for conducting audit concerning Assessment Years 2018-19 to 2022-23, the petitioner, taking cue from Letter F.No. R 11015/01/2023-CD-I, dated 03.08.2023, moved an application on 14.11.2023 before the Principal Commissioner of Income Tax,

and so far as may be, in the same manner as is provided in the case of a civil court under the Code of Civil Procedure, 1908.

- (b) *The Auditor-General or the Auditor may require any person present before him to furnish any information or to produce any documents in his possession or power.*
- (c) *The Auditor-General or the Auditor shall have power to take or to authorise the taking of, such copies of the document or of any entries therein as may be considered necessary. Copies so taken shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document or the entries therein.*
- (5) *Every person who is, or has at any time been an officer or employee of the Society and every member and past member of the Society shall furnish such information in regard to the transactions and working of the Society as the Auditor-General or the Auditor may require.*
- (6) *If the Auditor-General has reason to believe that the continuance in office of any officer or office-bearer of a Society during audit of its accounts will be detrimental either to the ascertainment of facts relevant to the audit, or to the furnishing of compliance to the audit objections or his directives, if any, in that regard, he may, notwithstanding anything to the contrary contained in this Act, Rules and the Bye-laws, by order, assigning reasons therefore, suspend the Officer or office-bearer concerned for the whole or such portion of the period of audit as he may deem proper: Provided that the period of such suspension shall, in no case, exceed six months.*
- (7) *The Auditor-General, or any person authorised by him to conduct audit under this Section shall, during the course of any such audit, have the same powers as the Registrar is competent to exercise under Clause (c) of sub-section (3) and sub-section (5) of Section 65."*



Bhubaneswar-1, the opposite party No.2 (for brevity, “PCIT”) for extending the period in order to facilitate the petitioner to file returns along with audit reports related to said Assessment Years under Section 139 of the IT Act.

2.2. The opposite party No.2 issued notice on 30.05.2024, requiring the petitioner to justify the reasons for the delay with supporting documents. In response to said notice, the petitioner submitted explanation on 30.05.2024 citing the reasons for the delay caused with corroborative evidence that it was prevented to comply with the statutory requirement under the IT Act for the circumstances beyond its control. It was explained that even though the petitioner *vide* Letter dated 10.07.2019 requested for appointment of auditor to conduct audit of the financial statements, because of acute shortage of staff, the Auditor-General of Co-operative Societies (for short, “AGCS”) *vide* Letter No.2AI-01/2019, dated 19.07.2019 instructed to engage Chartered Accountant firm and thereafter, the Directorate of Cooperative Audit, Odisha, Bhubaneswar, issued a Letter No.4777/VI(9)79/2019/Audit-6, dated 07.08.2019 indicating:

*“**** due to acute shortage of departmental auditors and being engaged in conducting audit of priority societies as per the annual programme, it is not possible to divert them from their programmed assignment and approved thereon. ... **However, if you want to get your society***



audited, it can be done through engagement of Chartered Accountant firm. Audit authorization is to be issued accordingly by this Directorate in favour of the concerned audit firm duly resolved by the General Body from out of panel approved/maintained with Auditor General of Cooperative Societies, Odisha.”

- 2.3. The Governing Body passed resolution to get the audit done by a firm of Chartered Accountants from the empanelled auditors selected by the Empanelment Committee duly approved by the Directorate of Cooperative Audit, Odisha. Even though the resolution was informed to proper quarters, no firm of Chartered Accountants could be provided by the AGCS. Persistent requests were made by the petitioner in this regard to conduct audit of the society. Considering such request being made *vide* Letter dated 23rd March, 2020, by virtue of Order dated 30th May, 2020, a Chartered Accountant was authorized to conduct the audit of the Society, who could conclude the audit and prepare final audit report on 24.09.2021 for the Financial Year 2014-15 only.

- 2.4. The AGCS expressed his unwillingness to cause the conduct of audit of the society for subsequent Financial Years, *i.e.*, 2015-16, 2016-17, 2017-18 and 2018-19. Despite repeated discussions and requests, the AGCS failed to appoint any auditor to conduct audit of the society for the remaining Financial Years. However, a firm of Chartered Accountants from the empanelled list



for conducting the audit having given consent *vide* Letter dated 23.02.2022, the Directorate of Cooperative Audit, Odisha appointed the Chartered Accountant who completed the audit on 25.01.2024 after due date of filing of returns for the Assessment Years 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23.

- 2.5. The PCIT, instead of deciding the matter himself, referred the matter to the Principal Chief Commissioner of Income Tax (opposite party No.1) (abbreviated, "PCCIT"), who rejected the application under Section 119(2)(b) of the IT Act *vide* Order dated 14.06.2024 (Annexure-3) and, thereby refused to allow the petitioner to furnish returns along with audit reports treating the petitioner (Association of Persons) as a regular non-filer.
- 2.6. Hence this writ petition challenging said order as arbitrary and tainted with whims and fancies, besides the same being outcome of non-application of judicious mind.

Hearing:

3. The short issue involved in this matter is whether the PCCIT appropriately exercised his discretion by considering germane factors to determine 'genuine hardship' in rejecting the application under Section 119(2)(b) of the IT Act.



- 3.1. At the stage of "Fresh Admission", on 11.12.2025 when the matter was taken on board, Sri Subash Chandra Mohanty, learned Senior Standing Counsel sought for an accommodation to obtain necessary instructions. Accordingly, on the adjourned date of hearing, *i.e.*, 23.12.2025, having received instructions in the matter, on his consent the matter was taken up for final hearing.
- 3.2. Heard Sri Rudra Prasad Kar, learned Senior Advocate assisted by Sri Himansu Bhushan Jena, learned Advocate for the petitioner and Sri Subash Chandra Mohanty, learned Senior Standing Counsel for the opposite parties.
- 3.3. Hearing being concluded, the matter stood reserved for preparation and pronouncement of Judgment.

Arguments:

4. Reiterating the difficulties of the petitioner faced due to non-engagement of auditor(s) for conducting audit as required under Section 62 of the OCS Act by the AGCS, Sri Rudra Prasad Kar, learned Senior Advocate submitted that there has been non-application of mind by the PCCIT in appreciating the facts in proper perspective and, thereby he has failed to exercise judicial discretion appropriately. Elaborating further he strenuously urged that when the Central Board of Direct Taxed *vide* Circular No.13 of 2023, dated 26.07.2023



has conferred wide discretionary power to condone the delay on the factual demonstration of “genuine hardship” on account of sufficient and reasonable cause, non-consideration of such material placed on record would warrant indulgence of this Court.

- 4.1. As a consequence of the PCCIT’s refusal to condone the delay in order to enable the petitioner to file returns along with audit reports, the cooperative society is prevented from claiming deductions as enumerated under Section 80P of the IT Act, which may cause serious prejudice and financial loss, likely to affect the smooth functioning of the cooperative society.
- 4.2. It is further submitted that the correspondence with the AGCS yielded no fruitful result as the audit programme could not be arranged for paucity of auditors. This was the chief cause for the delay in conclusion of audit and preparation of the audit report. Such vital and germane factor having not been considered in its right earnest the PCCIT fell in gross error in exercising his power to condone the delay as conferred under Section 119(2)(b) of the IT Act. Unequivocal provision contained in Section 119(2)(b) makes it abundantly clear that the authority is amply empowered to consider and obviate genuine hardship in any case or class of cases, by general or special order. The delay could not be attributed as the



petitioner was dependent upon the performance of the statutory Authorities, like AGCS.

- 4.3. Not condoning the delay in exercise of power under Section 119(2)(b) entails denial of claim of deductions under Section 80P. It is fact on record that belated appointment of auditors by an authority (the Auditor-General of Co-operative Societies), which is beyond the control of the petitioner, caused hardship. It is, therefore, arduously argued by the learned Senior Counsel that the Order dated 13.06.2024 does require interdiction by setting it aside, being tainted with arbitrary exercise of power by the PCCIT.
5. Sri Subash Chandra Mohanty, learned Senior Standing Counsel for the Income Tax Department on instruction submitted that the petitioner has been in the habit of not filing returns within the specified period stipulated under the IT Act. To buttress his argument the finding of the PCCIT in the impugned Order (Annexure-3) has been emphasised and it is contended that for the period earlier to Assessment Year 2020-21, the petitioner having never prayed for any condonation of delay, the claim of the petitioner has rightly been rejected by the said Authority.
 - 5.1. Under the IT Act it is incumbent upon the assessee (the petitioner) to comply with the statutory requirement



within the period stipulated therein. It was the assessee who was required to get its accounts audited and failure to do so invites rigours of provisions of the IT Act. Having delayed in approaching the AGCS, the reason for the delay ascribed by the petitioner in the application under Section 119(2)(b) of the IT Act is not palatable.

5.2. The past record is a relevant factor that weighed on the mind of the PCCIT while rejecting the application for condonation of delay. It is submitted by Sri Subash Chandra Mohanty, learned Senior Standing Counsel that the petitioner activated the process to get the accounts audited only after it was served with notice under Section 148 for the Assessment Years 2018-19 and 2019-20.

Analysis and discussions:

6. Diligently considered the arguments of the Senior Counsel for the petitioner and reply of learned Senior Standing Counsel appearing for opposite parties.

6.1. A cooperative society is entitled to claim deductions *inter alia* in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members under Section 80P of the IT Act from the gross total income, in computing the total income of the assessee. Section 139 specifies period within which returns accompanied by the audit report



disclosing the audited profit and loss account and balance sheet is to be filed.

- 6.2. For getting accounts of the cooperative society audited the OCS Act has entrusted the Auditor-General of Cooperative Societies to audit or cause to be audited by an auditor or auditing firm with certain qualifications laid down by the Government. It is specified that such audit is required to be completed each year within six months of the closure of the year. It is, thus, evident from said provision that the audit of a registered cooperative society is required to be completed by an Auditor duly authorised by the Auditor-General of Cooperative Societies from the panel approved.
- 6.3. Steps in the past were also taken by the petitioner requesting the AGCS for taking up statutory audit for the Assessment Years 2014-15 to 2018-19 *vide* Letter dated 23.03.2020. However, for only one Year, 2014-15, the statutory audit could be completed (Annexure-2 series). Since the Departmental Auditors were not available due to paucity, in view of concession being accorded in Letter dated 07.08.2019 of the Directorate of Cooperative Audit, Odisha, Bhubaneswar to engage Chartered Accountant from the panel approved/maintained with the AGCS, Odisha with the resolution of Governing Body, *vide* Letter dated 22.02.2022, consent



was sought for from a Chartered Accountant to conduct audit for the Financial Years 2015-16 to 2020-21.

- 6.4. The petitioner has made averment that the audit was completed for Assessment Years 2019-20 to 2022-23 on 25.01.2024 and delay in appointment of auditor by the AGCS under the OCS Act led to non-compliance of the statutory requirement under the IT Act. Such fact remained uncontroverted by the opposite parties.
- 6.5. On a reading of the impugned Order dated 13.06.2024 of the PCCIT, it emanates that the past factors weighed heavily in rejecting the application under Section 119(2)(b) of the IT Act. While considering the application for condonation of delay, it is firm opinion of this Court that the *quasi* judicial Authority is required to confine enquiry or investigation into the facts relevant to Assessment Years in question, *i.e.*, 2018-19 to 2022-23. The learned Senior Standing Counsel did not put forth any evidence to show that the delay could be attributed to the petitioner and it was within the control of the petitioner to avoid the delay. It is manifestation of fact on record that the auditors as envisaged under Section 62 of the OCS Act were not available and/or the AGCS could not entrust the audit to any of the panel auditors at the relevant point of time.



6.6. Realizing the plight of cooperative societies in claiming deductions to which they are entitled under Section 80P of the IT Act, and acknowledging the delay in the completion of the audit process for the Assessment Years 2018-19 to 2022-23 under Section 62 of the OCS Act, the Central Board of Direct Taxes issued the following circular:

*"F.No. 173/21/2023-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

Circular No. 13 of 2023 New Delhi the 26th July, 2023

Sub.: Condonation of delay under clause (b) of sub-section (2) of Section 119 of the Income-tax Act, 1961 for returns of income claiming deduction under Section 80P of the Act for various assessment years from Assessment Year 2018-19 to Assessment Year 2022-23—Reg.

Section 80P of the Income-tax Act, 1961 (hereafter referred to as 'Act') provides for deduction in respect of income of cooperative societies under Chapter VIA-Part-C ('Deductions in respect of certain incomes') of the Act.

2. *In so far as Section 80P of the Act is concerned, Finance Act, 2018 substituted Section 80AC of the Act with effect from 01.04.2018 which provides as under:*



80AC. *Deduction not to be allowed unless return furnished.—*

Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after—

(i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under Section 80-IA or Section 80-IAB or Section 80-IB or Section 80-IC or Section 80-ID or Section 80-IE;

(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading ‘C.—Deductions in respect of certain incomes’,

no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of Section 139.

3. *Applications have been received in the Central Board of Direct Taxes (hereafter referred to as ‘the Board’) from cooperative societies claiming deduction under Section 80P of the Act for various assessment years from A.Y. 2018-19 to A.Y. 2022-23, regarding condonation of delay in furnishing return of income and to treat such returns as ‘returns furnished within the due date under sub-section (1) of Section 139 of the Act stating that delay in furnishing return of income was caused due to delay in getting the accounts audited under respective State Laws.*



4. *In order to mitigate genuine hardship in cases referred to in para 3, the Board, in exercise of the powers conferred under Section 119 of the Act, hereby directs that the Chief Commissioners of Income tax (CCsIT)/ Directors General of Income-tax (DGsIT) are authorised to deal with such applications of condonation of delay pending before the Board, upon transfer of such applications by the Board, and decide such applications on merits, in accordance with the law.*
5. *The Board hereby further directs that the CCsIT/DGsIT, henceforth, shall admit all pending as well as new applications for condonation of delay in furnishing returns of income claiming deduction u/s 80P of the Act, filed either in the Board or in field formation for the Assessment Years 2018-19 to 2022-23 and decide such applications on merits in accordance with the law where such person is required to get his accounts audited under respective State Laws.*
6. *In the context of para-5 above, the CCsIT/DGsIT while deciding such applications for condonation of delay in furnishing return of income, shall satisfy themselves that the applicant's case is a fit case for condonation under the existing provisions of the Act. The CCsIT/DGsIT shall examine the following while deciding such applications:*
 - (i) *the delay in furnishing the return of income within the due date under sub-section (1) of Section 139 of the Act was*



caused due to circumstances beyond the control of the assessee with appropriate documentary evidence/s;

- (ii) where delay in furnishing return of income was caused due to delay in getting the accounts audited by statutory auditors appointed under the respective State Law under which such person is required to get his accounts audited, the date of completion of audit vis-a-vis the due date of furnishing the return of income under sub-section (1) of Section 139 of the Act; and*
- (iii) any other issue indicating towards tax avoidance or tax evasion specific to the case, which comes into the light in the course of verification and having bearing either in the relevant assessment year or establishing connection of relevant assessment year with other assessment year/s.*

- 6.1 The cases falling under para 6(iii) above, would require further necessary action as per law.*
- 7. The CCsIT/DGsIT shall preferably dispose the application within three months from the end of the month in which such application is received from the applicant or transferred by the Board. No order rejecting the application under Section 119(2)(b) of the Act shall be passed without providing the applicant an opportunity of being heard.*
- 8. Hindi version to follow."*



(Vikas Singh)
Director (ITA-I)

6.7. The Ministry of Cooperation realising the difficulties faced by cooperative societies in complying with the statutory requirement, it issued following letter addressing to all cooperative societies:

"F.No.R 11015/01/2023-CD-I

*Government of India
Ministry of Cooperation
Atal Akshay Urja Bhawan,
CGO Complex, New Delhi
Dated the 3rd August, 2023*

To

*The Chairman and Secretary of
all Cooperative Societies*

Subject: Condonation of delay under clause (b) of sub-section (2) of Section 119 of the Income Tax Act, 1961 (IT Act) for returns of Income claiming deduction under Section 80P of the Act for various assessment years from A.Y. 2018-19 to A.Y. 2022-23-Regarding

Sir,

In order to realize the Hon'ble PM's vision of 'Sahakar-se-Samriddhi' and under the guidance of Hon'ble Home & Cooperation Minister Shri Amit Shah, several initiatives have been taken to resolve the difficulties faced by cooperative societies in Income Tax related issues.



2. *With reference to the subject above and it is stated that Section 80P of the IT Act provides for deduction in respect of income of cooperative societies. However, no such deduction shall be allowed to them unless they furnish returns of their income for such assessment year on or before the due date specified under sub-section (1) of Section 139 of the IT Act.*
3. *Co-operative societies claiming deduction under Section 80P of the Act for various assessment years from AY 2018-19 to AY 2022-23, have made application before CBDT regarding condonation of delay in furnishing return of income and to treat such returns as 'returns furnished within the due date under sub-section (1) of Section 139 of the Act stating that delay in furnishing return of income was caused due to delay in getting the accounts audited under respective State Laws.*
4. *In line with above and in order to mitigate genuine hardship of cooperative societies with reference to Para-3 above, CBDT vide Circular No. 13/2021 dated 26 July 2023 has authorized Chief Commissioners of Income-tax (CCsIT)/Directors General of Income-tax (DGsIT) to deal with such applications of condonation of delay (copy enclosed).*
5. *In case your cooperative society was not able to avail the benefit of deduction available under Section 80P of the IT Act on account of delay in furnishing the return of income within the due date under sub-section (1) of Section 139 of the Act and the delay was caused due to circumstances beyond your control or due to delay in getting the accounts audited by statutory auditors appointed under the*



respective State Law; you are requested to make an application before CCIT/DGIT along with appropriate documentary evidence/s for passing appropriate order in the matter.

6. *You are further requested to ensure that the accounts of your society are audited by statutory auditors appointed under the respective State Law before the due date of furnishing the return of income under sub-section (1) of Section 139 of the IT Act and file returns of income in time so that your society is eligible for the benefits of deductions available to cooperative societies under IT Act.*

*Yours faithfully,
(Avnish Rastogi)
Under Secretary to
the Government of India."*

- 6.8. Unambiguously the above circulars suggest that in order to avail the benefit of deductions under Section 80P, though returns are required to be furnished under Section 139, due to certain difficulties in completion of audit pertaining to Assessment Years 2018-19 to 2022-23 within specified period, an application for condonation of delay is instructed to be made before the Chief Commissioners of Income-tax (CCsIT)/Directors General of Income-tax (DGsIT).

- 6.9. This Court finds force in the submission of Sri Rudra Prasad Kar, learned Senior Advocate that when the Central Government admits of delay in conduct of audit of cooperative societies with respect to the Assessment



Years 2018-19 to 2022-23 in terms of the OCS Act, the PCCIT could not have taken pedantic view.

6.10. It is trite to say that ordinarily an assessee does not stand to benefit by not taking recourse to requirements of statute within period stipulated in the statute. Hence, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. If delay tactics is resorted to, the assessee would run a serious risk. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.²

6.11. In order to mitigate hardship of the cooperative society in claiming benefit under Section 80P of IT Act on account of delay in appointment of auditors in view of Section 62 of the OCS Act, the Circular dated 03.08.2023 of Ministry of Cooperation in tune with Central Board of Direct Taxes Circular dated 26.07.2023 has been issued requesting the Chairman and the Secretary of all the Cooperative Societies to ensure that

² *Vide, Collector, Land Acquisition, Anantnag Vrs. Mst. Katiji, (1987) 2 SCR 387.*



the accounts of society are audited by statutory auditors appointed under the respective State Law before the due date of furnishing the return of income under sub-section (1) of Section 139 of the IT Act and file returns of income in time so that the cooperative society would be eligible for the benefits of deductions as per Section 80P of the IT Act. This apart, it is impressed upon all the concerned that if there is delay caused due to circumstances beyond control of the cooperative society or due to delay in getting the accounts audited by statutory auditors appointed under the OCS Act, an application could be moved before the CCIT/DGIT along with documentary evidences for passing appropriate order in the matter.

6.12. On scrutiny of the documents forming part of pleading of the instant writ petition, it is found that the petitioner has stated to have disclosed the reason for the delay in getting its accounts audited. Nonetheless, it is found from the Order of PCCIT that the fact is candidly admitted by recording "Subsequently, the audit was completed on 25.01.2024" with respect to Assessment Years from 2018-19 to 2022-23. This aspect has not been objected to by the learned Senior Standing Counsel. The PCIT, while referring the matter to the PCCIT, the hardship faced regarding non-completion of audit of accounts for the said periods by the petitioner



on account of non-engagement of auditor(s) in terms of Section 62 of the OCS Act has been clarified with the following noting:

*“The PCIT has reported that in response to the request of the assessee-society, the Directorate of Cooperative Audit vide Letter dated 07.08.2019 has communicated to the assessee society to choose auditor from the panel of Auditor-General of Cooperative Societies. The assessee-Cooperative Society vide Letter dated 22.02.2022 has communicated to M/s. Panigrahi and Co. to accord consent. After obtaining consent from M/s. Panigrahi and Co on 23.02.2022, the Directorate of Cooperative Audit, Odisha appointed the M/s. Panigrahi and Co. vide Order No. 1652, dated 22.03.2022. **Subsequently, the audit was completed on 25.01.2024 which was after the due date for filing of return for the A.Y. 2019-20 to A.Y.2022-23.**”*

6.13. Instead of confining his enquiry as to the delay in conduct of audit with respect to Assessment Years from 2018-19 to 2022-23, as prayed for in the application under Section 119(2)(b), the past events earlier to Assessment Year 2018-19 could not have weighed much while passing impugned order. The hardship has been acknowledged by the Central Board of Direct Taxes and the Ministry of Cooperation in the year 2023.

6.14. Of course, the IT Act specifying period of limitation is meant to attach finality; nevertheless, wherever the Legislature intends to grant relief in the circumstance where hardship is experienced by the citizens, the



concerned authority is required to construe the provisions in a reasonable and rational manner.

6.15. In *B.M. Malani Vrs. Commissioner of Income Tax, (2008) 14 SCR 43*, the Hon'ble Supreme Court in unequivocal terms recognized the term “genuine hardship” and enunciated that:

“8. The term ‘genuine’ as per the New Collins Concise English Dictionary is defined as under:

‘Genuine’ means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)’

For interpretation of the aforementioned provision³, the principle of purposive construction should be resorted to. Levy of interest although is statutory in nature, *inter alia* for re-compensating the revenue from loss suffered by non-deposit of tax by the assessee within the time specified therefor. The said principle should also be applied for the purpose of determining as to whether any hardship had been caused or not. **A genuine hardship would, inter alia, mean a genuine difficulty.** That per se would not lead to a conclusion that a person having large assets would never be in difficulty as he can sell those assets and pay the amount of interest levied.

The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well-known principle,

³ Section 220(2A) of the Income Tax Act.



namely, a person cannot take advantage of his own wrong, may also have to be borne in mind. The said principle, it is conceded, has not been applied by the courts below in this case, but we may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. [See *Priyanka Overseas Pvt. Ltd. Vrs. Union of India*, 1991 Suppl. (1) SCC 102, para 39, *Union of India Vrs. Major General Madan Lal Yadav (Retd.)*, (1996) 4 SCC 127 at 142, paras 28 and 29, *Ashok Kapil Vrs. Sana Ullah (dead)*, (1996) 6 SCC 342 at 345, para 7, *Sushil Kumar Vrs. Rakesh Kumar* (2003) 8 SCC 673 at 692, para 65, first sentence, *Kusheshwar Prasad Singh Vrs. State of Bihar*, (2007) 11 SCC 447, paras 13, 14 and 16].

Thus, the said principle, in our opinion, should be applied even in a case of this nature. A statutory authority despite receipt of such a request could not have kept mum. It should have taken some action. It should have responded to the prayer of the appellant.

However, another principle should also be borne in mind, namely, that a statutory authority must act within the four corners of the statute. **Indisputably, the Commissioner has the discretion not to accede to the request of the assessee, but that discretion must be judiciously exercised.** He has to arrive at a satisfaction that the three conditions laid down therein have been fulfilled before passing an order waiving interest. Compulsion to pay any unjust dues *per se* would cause hardship. But a question, however, would further arise as to whether



the default in payment of the amount was due to circumstances beyond the control of the assessee.”

6.16. In *Sitaldas K. Motwani Vrs. Director-General of Income Tax, 2009 SCC OnLine Bom 2195 = (2010) 323 ITR 223 (Bom)* the following has been observed recognizing “genuine hardship”:

“13. *Having heard both the parties, we must observe that while considering the genuine hardship, respondent No.1 was not expected to consider a solitary ground so as to whether the petitioner was prevented by any substantial cause from filing return within due time. Other factors detailed hereinbelow ought to have been taken into account.*

14. **** The Gujarat High Court in the case of Gujarat Electric Co. Ltd. Vrs. CIT, (2002) 255 ITR 396 (Guj), was pleased to hold as under (headnote):*

‘The Board was not justified in rejecting the claim for refund on the ground that a case of genuine hardship was not made out by the petitioner and delay in claiming the relief was not satisfactorily explained, more particularly when the returns could not be filed in time due to the ill health of the officer who was looking after the taxation matters of the petitioner.’

The Madras High Court in the case of R. Seshammal Vrs. ITO, (1999) 237 ITR 185, was pleased to observe as under (page 187) :

‘This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the



Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and thereafter seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. **The State is not entitled to plead the hypertechnical plea of limitation in such a situation to avoid return of the amounts.** Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund.'

15. The phrase "genuine hardship" used in Section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated October 12, 1993. **The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on the merits. The expression "genuine" has received a liberal meaning in view of the law laid down by the apex court referred to hereinabove and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late.** Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on the merits after hearing the parties. **When substantial justice and technical**



considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance the cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.

16. *Whether the refund claim is correct and genuine, the authority must satisfy itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a conclusion that the applicant's claim is bound to succeed. This would amount to prejudging the case on merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect.* At this stage, the authority is not expected to go deep into the niceties of law. While determining whether refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.



17. Having said so, turning to the facts of the matter giving rise to the present petition, we are satisfied that respondent No.1 did not consider the prayer for condonation of delay in its proper perspective. As such, it needs consideration afresh.”

6.17. In *Pankaj Kailash Agarwal Vrs. CIT, (2024) 464 ITR 65 (Bom)* = 2024 SCC OnLine Bom 1025 following pertinent discussions are made:

“12. We would agree with Mr. Sarda that no assessee would stand to benefit by lodging its claim late. More so, in the case of the nature at hand, where the assessee would get tax advantage/benefit by way of deduction under Section 80-IC of the Act. Of course, there cannot be a straitjacket formula to determine what is “genuine hardship”. In our view, certainly the fact that an assessee feels that he would be paying more tax if he does not get the advantage of deduction under Section 80-IC of the Act, that will be certainly a “genuine hardship”.

It would be apposite to reproduce paragraph 4 of the judgment in K.S. Bilawala Vrs. Pr. CIT, (2024) 463 ITR 766 (Bom), which reads as under:

‘4. **There cannot be a straitjacket formula to determine what is genuine hardship.** In our view, certainly the fact that an assessee feels he has paid more tax than what he was liable to pay will certainly cause hardship and that will be certainly a ‘genuine hardship’.

This court in Optra Health Pvt. Ltd. Vrs. Addl. CIT, (2024) 462 ITR 238 (Bom); 2023 SCC



OnLine Bom 2843 = Writ Petition No. 15544 of 2023 dated December 19, 2023. In paragraph Nos. 9 and 10 held as under (page 241 of 462 ITR):

'9. While considering the genuine hardship, the Principal Chief Commissioner of Income-tax was not expected to consider a solitary ground as to whether the assessee was prevented by any substantial cause from filing the corrections within a due time. Other factors also ought to have been taken into account. The phrase "genuine hardship" used in Section 119(2)(b) of the Act should have been construed liberally. The Legislature has conferred the power to condone the delay to enable the authorities to do substantial justice to the parties by disposing of the matters on merits. The expression "genuine" has received a liberal meaning in view of the law laid down by the apex court and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay, does not stand to benefit by lodging erroneous returns. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. As against this, when delay is condoned, the highest that can



happen is that a cause would be decided on merits after hearing the parties. **When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate action.** There is no presumption that a delay in correcting an error or responding to a notice of invalid return received under Section 139(9) of the Act is occasioned deliberately or on account of culpable negligence or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. The approach of the authority should be justice-oriented so as to advance cause of justice. If the case of an applicant is genuine, mere delay should not defeat the claim. ***

10. This was followed by this court in *Artist Tree (P.) Ltd. Vrs. CBDT*, (2014) 369 ITR 691 (Bom) relied upon by Mr. Walve, where paragraph Nos. 19, 21 and 23 read as under:

‘19. The circumstance that the accounts were duly audited way back on September 14, 1997, is not a circumstance that can be held against the petitioner. This circumstance, on the contrary adds



force to the explanation furnished by the petitioner that the delay in filing of returns was only on account of misplacement or the TDS certificates, which the petitioner was advised, has to be necessarily filed along with the return of income in view of the provisions contained in Section 139 of the said Act read along with the Income-tax Rules, 1962 and in particular the report in the prescribed forms of return of income then in vogue which required an assessee to attach the TDS certificates for the refund being claimed. The explanation furnished is that on account of shifting of registered office, it is possible that TDS certificates which may have been addressed to the earlier office, got misplaced. There is nothing counterfeit or bogus in the explanation offered. It cannot be said that the petitioner has obtained any undue advantage out of delay in filing of Income-tax returns. As observed in the case of *Sitaldas K. Motwani Vrs. Director General of Income-tax*, (2010) 323 ITR 223 (Bom) = 2009 SCC OnLine Bom 2195, there is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. It cannot be said that in this case the



*petitioner has benefited by resorting to delay. In any case when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to prevail without in any manner doing violence to the language of the Act.' ***"*

6.18. As it appears the PCCIT proceeded with closed mind and his approach to the issue at hand has been misdirected. The PCCIT should have exercised his conscientious discretion to the fact-situation of the case.

6.19. In *State of NCT of Delhi Vrs. Sanjeev @ Bittoo, (2005) 3 SCR 151*, it is said that:

"That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories:

- (i) failure to exercise a discretion, and*
- (ii) excess or abuse of discretionary power.*



The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.”

6.20. In the exercise of discretion, the authority vested with power must take into account wide variety of circumstances. It must consider the facts of the case, the exigency which calls for the exercise of discretion, the consequences of granting or refusing the claim made in the application, the nature and extent of injury likely to ensue by the grant. Discretion must be governed by considerations of public policy, public interest and public good. Discretion is governed by a maxim '*discretio est discernere per legem quid sit justum*' (discretion consists in knowing what is just in law). Discretion in general is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution, to discern between falsity and truth, between shadow and substance, between equity and colourable glosses and pretences and not to do according to the will and private affections or ill-will. It has to be done according to the rules of reasons and justice, not according to private opinion. It has to be done according to law and not humour. It is not to be arbitrary, vague and fanciful, but



legal and regular. [See, *Vijay Power Generators Ltd. Vrs. CST, (2000) 120 STC 377 (Del)*].

6.21. In *K.K. Gopalan & Co. Vrs. Assistant Commissioner (Assessment) II, Sales Tax Office, Special Circle, Thrissur, (2000) 118 STC 111 (Ker)*, the Court observed as follows:

*“Penalty can be imposed where there has been deliberate defiance of any statutory provision or contumacious or dishonest conduct and wilful disregard of the statutory obligations. Whether penalty should be imposed for failure to perform statutory obligations has to be adjudged by exercise of judicious discretion. It may be noted here that discretion means use of private and independent thought. When anything is left to be done according to one’s discretion, the law intends it to be done with sound discretion and according to law. **Discretion is discerning between right and wrong and one who has power to act at discretion is bound by rule of reason. Discretion must not be arbitrary. The very term itself stands unsupported by circumstances, imports the exercise of judgment, wisdom and skill as contra distinguished from unthinking folly, heady violence or rash injustice. When applied to a Court of Justice or Tribunal or quasi-judicial body, it means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful but legal and regular. Discretion must be exercised honestly and in the spirit of the statute. It is the power given by a statute to make choice among competing considerations. It implies power to choose between alternative courses of action. It is not unconfined***



and vagrant. It is canalised within banks that keep it from overflowing.”

6.22. Another aspect which needs to be highlighted here is the expression “reasonable cause”. Said term has been clarified by the Hon’ble Supreme Court in *Abdul Hakim Quraishi Vrs. State of Bihar*, AIR 1961 SC 448 by stating that ‘reasonable’ implies intelligent care and deliberation, that is, the choice of a course which reason dictates. In *State of Madhya Pradesh Vrs. Ramswarup*, (1977) 40 STC 613 (MP) it has been observed that:

*“Reasonable cause has not been defined under the Act. Dictionary meaning of “reasonable” is that which is agreeable to reason, not absurd, within the limits of reason. The expression “reasonable” therefore means rational, according to the dictates of reason and not excessive or immoderate. **An act is reasonable when it is confirmable or agreeable to reason having regard to the facts of the particular case.”***

6.23. The expression ‘reasonable grounds’ means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the fact exists. The reasonable belief contemplates existence of such facts and circumstances as are sufficient in themselves to justify satisfaction of the authority. [Vide, *Collector of Customs Vrs. Ahmadalieva Nodira*, (2004) 3 SCC 549].



6.24. As the period under consideration is Assessment Years 2018-19 to 2022-23, which involves pandemic period, this Court, taking into consideration circumstances during *force majeure* at that point of time during 2020 to 2022, in the case of *Action Research for Health and Socio-economic Development Vrs. Central Board of Direct Taxes*, *MANU/OR/0478/2025* in the context of Section 119(2)(b) of the IT Act posited that leniency is required to be shown by the authorities as the assessee did undergo genuine hardship and such fact constitutes sufficient cause for consideration of application for condonation of delay.

6.25. With the aforesaid legal perspective, when Section 119(2)(b) of the IT Act⁴ is construed, it is unambiguous that said provision has vested in the authority with the discretion to consider “genuine hardship” as a ground to condone the delay and to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified by or under the Act for making such application or claim

⁴ Section 119(2)(b) of the IT Act reads thus:
“Without prejudice to the generality of the foregoing power,—
(a) ***
(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.”



and deal with the same on merits in accordance with law. If in a given case discretion is not exercised, where exercisable, then, the omission or failure to exercise the discretion will be construed as bad in law.

6.26. The petitioner being a Co-operative Society registered under the OCS Act is required to have its accounts audited by the Statutory Auditor. Fact on record demonstrates that the default in getting the audit of the books of account cannot be attributed to the petitioner. In the light of the aforesaid discussion on facts and law, an acceptable explanation was offered by the petitioner and a case of “genuine hardship” was made out. The refusal to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

6.27. It needs to be highlighted that the impugned Order dated 13.06.2024 of the PCCIT shows that the petitioner could not satisfy the conditions laid in clause (i) and clause (iii) of paragraph 6 of the Circular No.13 of 2023, dated 26.07.2023 issued by the Central Board of Direct Taxes. Examining both the clauses in the aforementioned fact-situation, this Court finds that the PCCIT did not delve deep into the merit of contention of the petitioner. In the first place, said Clause (i) requires the petitioner-assessee to demonstrate with appropriate documentary evidence that the delay was caused due to



circumstances beyond his control leading to non-furnishing of the return of income within the due date under sub-section (1) of Section 139 of the IT Act. The documents enclosed to writ petition depict that the petitioner has been persistently approaching the authority concerned (AGCS) for appointment of statutory auditor/Chartered Accountant for audit with respect to Assessment Years 2018-19 to 2022-23. At the relevant period, *i.e.*, during 2020 to 2022, the pandemic engulfed entire world. That apart, what has been conspicuously overlooked by the PCCIT is that the Letter dated 03.08.2023 of the Ministry of Cooperation referring to Circular No.13 of 2023, dated 26.07.2023 of the Central Board of Direct Taxes, which instructed the cooperative societies to approach the authorities concerned of the Income Tax Department. Furthermore, Clause (iii) specifies that the authority is required to examine the circumstances of tax avoidance or tax evasion, which comes into the light in the course of verification and having bearing either in the relevant Assessment Year or establishing connection of relevant Assessment Year with other Assessment Year(s). Paragraph 6.1 of the Circular dated 26.07.2023 clarifies said clause (iii) of paragraph 6 to the effect that it "would require further necessary action as per law".



6.28. In this regard, Sri Rudra Prasad Kar, learned Senior Advocate, has called upon this Court to ponder paragraph 5 of the application under Section 119(2)(b) of the IT Act for condonation of delay. This is to demonstrate that the petitioner, a registered society, had no intention to evade tax nor did it ever show laxity in approaching the appropriate authority for engaging a Chartered Accountant. For better comprehension, said paragraph of the application (Annexure-2) is reproduced hereunder:

“Based on the aforesaid facts, the sequence of events are as flows:

- (i) *RBI Letter dated 10th July, 2019 to do the audit for the F.Y. 2014-15 to 2018-19. Copy enclosed as Annexure-1.*
- (ii) *AGCS vide Letter No. 2AI-01/2019, dated 19th July, 2019 instructed to engage Departmental Auditor to conduct the statutory audit of the society. Copy enclosed as Annexure-2.*
- (iii) *Directorate of Cooperative Audit, Odisha, Bhubaneswar issued vide Letter No.4777/VI(9)79/2019/Audit-6, dated 07th August, 2019 expressed its inability to do the audit. Copy enclosed as Annexure-3.*
- (iv) *RBI again requested AGCS vide Letter dated 23rd March, 2020 to conduct the Audit of the Society for the F.Y. 2014-15 to 2018-19. Copy enclosed as Annexure-4.*



- (v) AGCS *vide Order dated 30th May, 2020 authorised Sri Harish Chandra Das, SAAGCS to conduct the audit of the society. Copy enclosed as Annexure-5.*
- (vi) AGCS *vide Final Audit Report dated 24th September, 2021 completed the audit for the F.Y. 2014-15 only. Copy enclosed as Annexure-6.*
- (vii) *Society requested the empaneled Chartered Accountant to give its consent vide Letter dated 22nd February, 2022. Copy enclosed as Annexure-7.”*

6.29. The documents furnished with the explanation provided in the application undoubtedly lead to the perception that the circumstances prevailing at the relevant period were beyond the control of the petitioner to have its accounts audited. It is discernible from the Order impugned that the PCCIT has not taken cognizance of the documents and sequential events while exercising his discretion. It is pertinent to notice that the PCCIT, instead of being pedantic in his approach, should have acted pragmatically by taking into consideration that due to impossibility to make the auditors available for the audit of the petitioner-cooperative society by the AGCS, there was delay in conduct of audit; nevertheless for the Assessment Years in question the audit could be completed on 25.01.2024. Hence, having taken note of such fact, the PCCIT should have considered the application under Section 119(2)(b) appropriately by



allowing the petitioner to avail the benefit of Section 80P of the IT Act.

6.30. Heavy reliance is placed on *Bombay Mercantile Co-op. Bank Ltd. Vrs. CBDT, 2010 SCC OnLine Bom 1387* by the learned Senior Advocate to contend that not making available Chartered Accountant for audit by the AGCS alone is a sufficient ground to condone the delay. Regard may be had to following paragraph contained therein:

“7. As can be seen from the reading of the said provision the Board is vested with the power to admit any application after the expiry of the period specified by or under this Act if sufficient grounds are made out. To effectuate such power, that the Central Board of Direct Taxes had issued the Circular No. 8 of 2001 [(2001) 249 ITR (St.) 112]. It is in the context of the said statutory provision as well as the circular that the reasons mentioned by the petitioner in the application for condonation of delay have to be considered. As indicated above, the principal reason cited by the petitioner is that the statutory auditors were appointed by the Central Registrar on September 3, 2001, and that the said statutory auditors completed the audit on November 15, 2001 and the tax auditors completed the audit on November 28, 2001 and, therefore, there was a delay in filing the return. It would have to be noted that, the petitioner is a Multi-State Co-operative Bank operating under the Multi-State Co-operative Societies Act 1984. The power to appoint the statutory auditors is that of the Central Registrar, who is the Registrar of Co-operative Societies,



Maharashtra State. The said authority had appointed the statutory auditors on September 3, 2001. It appears that the said authority appointed chartered accountants to be statutory auditors in place of the Departmental auditors. This change was made in respect of all the societies. Therefore, the petitioner, in our view, cannot be blamed for the delay in carrying out its audit, as the same was beyond its control. The contention of the learned counsel for the respondents that the Departmental auditors, in fact, had started the audit in the year 2000 and it was for the petitioner to get the audit expedited, cannot be accepted. **Though the departmental auditors might have started the audit, it appears that pursuant to the said policy decision that was taken, the departmental auditors were replaced by the Chartered Accountants to be the statutory auditors, which was by letter dated September 3, 2001. In our view, therefore, the said reason mentioned by the petitioner in its application, deserves to be accepted. The other reasons cited for condonation of delay, therefore, need not be gone into as the petitioner in our view, would be entitled to condonation of delay on the said ground alone.** The other grounds raised in the petition to assail the impugned order also need not be gone into. It is further required to be noted that the Assessing Officer imposed a penalty of Rs.1,00,000 under Section 271B of the said Act. However, Commissioner of Income-tax (Appeals)-I in the appeal filed by the petitioner has set aside the penalty holding that there was reasonable delay in filing the return late by one month. Therefore, the Commissioner of Income-tax (Appeals) accepted the



very same facts as were mentioned by the petitioner in the application under section 119(2)(b) of the said Act.”

6.31. The petitioner, who substantially satisfied the condition of audit under Section 62 of the OCS Act, the claim of deductions under Section 80P of the IT Act should not be denied on the specious plea of limitation, especially, when the Legislature has conferred wide discretionary power to condone such delay on the highest authority.

6.32. In *Dr. Sujatha Ramesh Vrs. CBDT, (2018) 401 ITR 242 (Kar)* it was observed as follows:

“The general and wide powers given to the Board in this regard, ‘if it considers it desirable or expedient so to do for avoiding genuine hardship in any case.’, not only gives wide powers to the Board, but confers upon it an obligation to consider facts relevant for condonation of delay as well as the merit of the claim simultaneously. If the claim of exemption or other claim on merits is eminently a fit case for making such claim, it should not normally be defeated on the bar of limitation, particularly, when the delay or the time period for which condonation is sought is not abnormally large. It will of course depend upon the facts of the each case, where such a time period or the merit of the claim deserves such exercise of discretion in favour of the assessee under section 119(2)(b) of the Act or not and therefore, no straitjacket formula or guidelines can be laid down in this regard. However, such orders passed by the Central Board of Direct Taxes being a quasi judicial order is always open to judicial review by the higher constitutional courts. If the



*good conscience of the courts is pricked, even though such orders rejecting the claims on the bar of limitation may appear to be *prima facie* tenable, the courts may exercise their jurisdiction to set aside such orders and allow the claims on merits, setting aside the bar of limitation.”*

6.33. Another facet of the matter can be taken into consideration is that the provision relating furnishing of audit report with the return is to be treated as procedural and the same could be filed even before the assessment. This Court may notice the following paragraph reflected in *Sarvodaya Charitable Trust Vrs. ITO (Exemption)*, 2020 SCC OnLine Guj 3597:

*“We may also refer to the decision of this court in CIT Vrs. Gujarat Oil and Allied Industries, (1993) 201 ITR 325 (Guj), **wherein it is held that the provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. It is directory in nature and its substantial compliance would suffice.** In that case, the assessee had not produced the audit report along with the return of income but produced the same before the completion of the assessment. **This court took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income-tax Officer or before the appellate authority by assigning sufficient cause.”***

6.34. Regard may be had to the following observations of this Court in *Joharimal High School, Cuttack Vrs. The*



Principal Commissioner of Income Tax (Exemptions),
W.P.(C) No. 3183 of 2025, vide Order dated 05.04.2025:

- “3. We are not unmindful of the proposition of law that the purpose of incorporating the provision relating to a limitation is to avoid any delayed application and to bring certainty into an adjudicatory process. It is to give quietest to an issue in relation to a dormant and lethargic litigant/assessee who should not approach the authorities at their sweet will, that too, after an inordinate delay having caused. Equally, we cannot overlook that the statute bestowed power upon the authority to condone the delay provided the person approaching such authority provides a satisfactory explanation resulted into filing of the delayed application or in this case, Form-10B. It is no doubt that unless there is such satisfactory explanation offered by the assessee, the authority cannot condone the delay simpliciter on the *ipse dixit* of the prayer made in the said application.
4. The assessee must give a sufficient explanation which is reasonable, plausible and constitute a sufficient cause to exercise the powers conferred under the statue. It is not necessary that the day-to-day explanation is required, but there must be a continuity of the events which on a meaningful reading thereof would complete the chain of the events, provided it comes within the ambit of “sufficient cause” appearing in the statutory provisions.
5. Neither the Court nor the authority should take up pedantic approach in finding out the fault in an application for condonation of delay with an intent to



achieve the dismissal thereof, but must adopt a liberal and justice oriented approach so that the justice may be imparted and the issue raised is decided on merit."

6.35. As an analogy, reference may be had to the decision of this Court rendered in the case of *Sahu Trading Co. Vrs. State of Orissa, (1983) 54 STC 122 (Ori)* for the proposition that the evidence to avail benefit entitled to be availed under the statute can be adduced even before the Appellate Authority. Relevant portion of the said Judgment is quoted hereunder:

"The decision of this Court has been upheld in appeal by the Supreme Court in the case of State of Orissa Vrs. Babu Lal Chappolia, (1966) 18 STC 17 (SC). The court held that the Assistant Commissioner while exercising his powers under Section 23(2) of the Odisha Sales Tax Act, 1947, was virtually in the same position as the Sales Tax Officer and the Act and the Rules thereunder did not contemplate notice to issue to the Sales Tax Officer if fresh evidence is to be adduced and utilised for setting aside the order of the Sales Tax Officer.

Undoubtedly, Rule 27 requires that the declarations should be furnished before assessment is made. In the scheme of the procedure for assessment, the declarations are bound to be produced before the assessment is completed in case the assessee is to be given the deductions he claimed. There is however no provision in the Act or the Rules to the effect that declarations not furnished at the original stage could not be produced later. There may be cases where for some good reason deductions though claimed could not be supported by



production of declarations at the assessment stage. In the absence of any prohibition they can be certainly produced as evidence before the first appellate authority and in view of what has been said by the Supreme Court in the case reported in State of Orissa Vrs. Babu Lal Chappolia (1966) 18 STC 17 (SC), such additional evidence could be received by the first appellate authority. In a suitable case, such declarations can even be produced as additional evidence before the Tribunal in second appeal after complying with the requirements of Rule 61 of the Rules. It is in the discretion of the appellate authority to accept the evidence produced in support of the claim in appeal. The Member, Additional Sales Tax Tribunal, may be right in saying that in view of Rule 27, the assessee would not be entitled as of law to ask the declarations to be received and acted upon. But if the Assistant Commissioner in exercise of his discretion accepts the declarations, the same cannot be thrown out as having been filed after the assessment was over. It is true that there have been some observations in the case of Madura Mills Company Limited Vrs. Government of Madras, (1970) 25 STC 407, that unless the declarations are filed within a reasonable time, the same cannot be accepted. The facts of that case were very different and in view of the setting in which these observations have been made they should not have been relied upon by the Member, Additional Sales Tax Tribunal, for his conclusion, particularly when the law has been so clearly stated in the two cases referred to above."

6.36. On the similar note, in the present case, the petitioner has made out a case disclosing "genuine hardship" constituting "sufficient cause" for condonation of delay. So far as the merits of the claim of the petitioner for



condonation of delay in concerned, this Court finds that though the petitioner is bound to get its accounts audited under Section 62 of the OCS Act, the delay in completion of audit by the auditor appointed under the Act is not attributable to the petitioner. The argument of the learned Senior Standing Counsel that the delay being inordinate could not be condoned cannot be found favour with inasmuch as the documents enclosed to the application under Section 119(2)(b) of the IT Act read with the Central Board of Direct Taxes Circular followed by the Letter of the Ministry of Cooperation make it clear that there was default on the part of the AGCS in providing for auditors at the relevant period. Besides showing sufficient cause for delay in preparing the audit reports for the Assessment Years in question, which are now ready for filing along with returns, the assessee could establish "genuine hardship". If the discretion conferred under Section 119(2)(b) of the IT Act is not exercised in favour the petitioner, it would lead to depriving an assessee to claim deductions as is entitled to under Section 80P of the IT Act. Of course, such claim is subject to verification and/or scrutiny by the appropriate authority.

Conclusion:

7. It is consistent view that the power conferred under Section 119(2)(b) of the IT Act is a benevolent provision



intended to mitigate “genuine hardship” of assessee. It should be exercised liberally so as to facilitate the assessee to avail the legitimate benefit as entitled to, but not in a pedantic or hyper-technical manner.

- 7.1. It deserves to be stated that the Authorities under the IT Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception, not being properly instructed or due to certain intervening circumstances beyond its control, is over-assessed, the Authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected.
- 7.2. In this respect the words of Gujarat High Court found place in *S.R. Koshti Vrs. Commissioner of Income Tax, (2005) 276 ITR 165 (Guj)* are reproduced hereunder:

“This court, in an unreported decision in the case of Vinay Chandulal Satia Vrs. N.O. Parekh, CIT, Special Civil Application No. 622 of 1981, rendered on August 20, 1981, has laid down the approach that the Authorities must adopt in such matters in the following terms:

‘The Supreme Court has observed in numerous decisions, including Ramlal Vrs. Rewa Coalfields Ltd., AIR 1962 SC 361; State of West Bengal Vrs. Administrator, Howrah Municipality, AIR 1972 SC 749, and Babhutmal Raichand Oswal Vrs. Laxmibal R. Tarte, AIR 1975 SC 1297, that the State Authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State



*authorities cannot adopt the attitude which private litigants might adopt.' ***"*

7.3. This Court is reminded of a view expressed by a Coordinate Bench in the case of *Kiran Stone Crusher Vrs. State of Odisha, (2010) 31 VST 45 (Ori) = 109 (2010) CLT 291*, which is to the following effect:

"In so far as the objection raised by the Revenue is concerned, in view of the judgments in the case of Giridharlal Parasmal, (1967) 20 STC 64 and in the case of Commissioner of Income-tax, Delhi, (1986) 160 ITR 920 (SC) = AIR 1986 SC 2111, it is well-settled that the statutory authorities are required under law to apply relevant provisions of the Odisha Sales Tax Act for the purpose of determining the true figure of the assessee's taxable income and thereafter, the tax liability. Merely because the assessee failed to disclose any particular part of turnover does not amount to relieving the statutory authority from such an obligation. In course of 12(8) assessment, the assessing authority was required to re-determine the gross turnover as well as taxable turnover and in course of such determination, he was statutorily bound to give deduction as admissible in law to the assessee. The assessing authority cannot justify such omission on the ground of the assessee having suppressed any part of his turnover."

7.4. Considering the aforementioned views favouring the assessee, and in light of the legal discussions concerning the exercise of discretionary power, this Court finds it expedient to hold that the petitioner, in the present case, is not in default for not being able to furnish its returns



along with the audit report(s) within the period specified in the IT Act, because the statutory authority failed to assist the petitioner in getting its accounts audited as required under the OCS Act.

8. On the facts and in the circumstances discussed above, this Court finds that the petitioner has rendered explanation which is sufficient and reasonable warranting consideration of application for condonation of delay by the PCCIT invoking Section 119(2)(b) by application of judicious discretion. Having taken cognizance of the fact that the audit has now been completed for the Assessment Years from 2018-19 to 2022-23 on or before 25.01.2024, the said authority should have exercised conscientious discretion, and should not have rejected the application on hyper-technical ground or by adhering to pedantic approach.
9. Under the above premises, the Order dated 13.06.2024 passed by the Principal Chief Commissioner of Income Tax, Odisha Region, refusing to condone the delay in exercise of power under Section 119(2)(b) of the Income Tax Act, 1961, cannot withstand judicial scrutiny. Consequently, this Court sets aside said Order (Annexure-3) and exercising power under Article 226 of the Constitution of India issues writ of *mandamus* to the authority concerned to allow the petitioner to file return(s) of income along with audit report(s).



9.1. Liberty is granted to the opposite parties to examine the veracity of the claim of the petitioner by initiating appropriate proceeding in accordance with law as available under the Income Tax Act, 1961.

10. With the aforesaid observation and directions, the writ petition stands disposed of. As a result of disposal of the writ petition, pending Interlocutory Application(s), if any, shall stand disposed of, but in the circumstances there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE