

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

**Before Shri George George K., Judicial Member and
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No. 115/Coch/2021
(Assessment Year: 2019-20)

The Parakode Service Co-Op. Bank Ltd. Parakode, Adoor Pathanamthitta 691554	Vs.	The Income Tax Officer Ward 4, Aayakar Bhavan Karbala Junction Kollam 691001
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PAN – AAJT1587B

Appellant

Respondent

Appellant by: None

Respondent by: Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing: 30.06.2022

Date of Pronouncement: 28.07.2022

ORDER

Per: L.P. Sahu, A.M.

This is an appeal filed by the assessee against the DIN & order No. ITBA/NFAC/S/250/2021-22/1035133007(1) of the learned CIT(A), NFAC, Delhi dated 27.08.2021 for AY 2019-20.

2. The assessee has raised the following grounds of appeal: -

- "1. Intimation under Section 143(1) making addition under Section 36(1)(va) and disallowance of deduction under Section 80P of the Income Tax Act is opposed to law and against justice.*
- 2. The appellant made the payment to the provident fund before the due date of filing return of income. Where Hon'ble Uttarakhand High Court and Hon'ble Delhi High Court have*

considered due date under Section 36(1)(va) to be read in sync with the due date mentioned in section 43B.

3. *That may be noted that the statutory laws under the respective contribution schemes have provisions to levy interest, penalty etc. for the delayed payment. Hence, disallowing a genuine business expenditure merely on the ground that it has been paid after relevant due date is not justified.*
4. *The Appellant rely on the judgments in the cases of CIT vs. Vinay Cement Ltd. (2007) 213 CTR (SC) 268, CIT vs. Dharmendra Sharma (2007) 213 CTR (Del) 609 : (2008) 297 ITR 320 (Del) and CIT vs. P.M. Electronics Ltd. (2008) 220 CTR (Del) 635 : (2008) 15 DTR (Del) 258 followed."*
5. *The Act permits deduction under Section 80P to the primary co-operative society which has its primary objective to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities. The appellant's primary objective is to provide financial accommodation to its members for agricultural purposes and is eligible for deduction under Section 80P.*
6. *The amendment to section 80P do not restrict non agricultural service to its members but requires stipulation as the primary objective of the society should be for rendering financial accommodation for agricultural purposes".*

3. The brief facts of the case are that the assessee is a primary agricultural society registered on 13.06.1110 (Malayalam Era) under the Kerala Cooperative Societies Act, 1969. The assessee runs one farmers service centre and a bank and its main object is to serve its primary members. The assessee filed its return of income on 15.01.2020 whereas the due date for filing the return of income was 31.10.2019, claiming deduction under Section 80P of the Income Tax Act, 1961 (the Act). During the course of processing of return under Section 143(1)(a) of the Act the deduction claimed under Section 80P of the Act was disallowed

and there was also addition made by CPC under Section 36(1)(va) of the Act and the total income assessed at Rs.15,16,597/- and raised a demand of Rs.5,09,458/- after giving setoff of loss from the total income. Aggrieved by the order of the CPC assessee filed appeal before the CIT(A) and he also filed detailed written submission which was not accepted by the CIT(A) and the CIT(A) confirmed the disallowance under Section 80P of the Act after discussing in detail and he also observed that Section 80AC of the Act has been amended with effect from AY 2018-19. In case of specific deductions claimed under Section Chapter VI-A will not be available if the assessee filed the return of income beyond the date as prescribed under Section 139(1) of the Act. Accordingly he did not accept the claim of the assessee and further in respect of disallowance regarding delay in payment of employees contribution to PF/ESI after discussing in detail he confirmed the order of the CPC in this regard. Aggrieved by the order of the CIT(A) the assessee preferred appeal before the ITAT.

4. On the scheduled date of hearing none appeared on behalf of the assessee and has filed adjournment application which was rejected and heard the matter ex-parte qua the assessee.

5. The learned D.R. relied on the orders of the lower authorities and submitted that the assessee is not eligible for claiming deduction under Section 80P of the Act because the return of income has been filed beyond the due date as per the amended provisions of Section 80AC(ii) of the Act. She also submitted that the decision of the Hon'ble Jurisdictional High Court in the case of Chirackkal Service Cooperative Bank Ltd. vs. CIT (2016) 384 ITR 490 (Ker) is also not applicable in the present facts of the case because the judgement is related prior to the amendment in Section 80AC(ii) of the Act. She further submitted that in respect of delayed deposit of employees contribution to PF/ESI the assessee has not

complied with the provision of Section 36(1)(va) of the Act. The employees contribution is not covered by Section 43B of the Act and the amendment made is retrospective in nature. She also submitted that the Hon'ble Jurisdictional High Court had decided the issue in favour the Revenue in the case of Mechem Ltd. (2019) 378 ITR 443 (Ker). She further submitted that the case law quoted by the assessee in its grounds of appeal is distinguishable on facts of the case.

6. After hearing the learned D.R. and going through the facts of the case we find that the assessee filed its return of income on 15.01.2020 after claiming deduction under Section 80P of the Act which is beyond the due date of filing of return under Section 139(1) of the Act. The due date prescribed was 31.10.2019. The deduction claimed by the assessee under Section 80P of the Act has been disallowed by the CPC while processing the return of income under Section 143(1)(a) of the Act and also disallowed the delay in depositing of employees contribution of PF. Going through the order of the CIT(A) we find that the CIT(A) has dealt with the issue in detail in regard to the disallowance of deduction under Section 80P of the Act, the relevant portion is as under: -

"5.1 The contention of the appellant is considered. The appellant has made detailed written submission justifying that it is eligible to claim deduction u/s 80P of the I T Act. The CPC has disallowed the claim of deduction because the return has been filed late. Therefore, the submissions of the appellant is not relevant.

5.2 The provisions of Section 80AC provides that deduction under sections 80-IA, 80-IAB, 80-TB, 80-IC, 80-10 and 80-IE is not available if return of income is submitted by the assessee after the due date of submission of return of income specified under section 139(1). This burden is not cast upon assessee claiming deductions under several other similar provisions. However, the scope of Section 80AC has been extended with effect from A Y 2018-19, to provide that the benefit of deduction under the entire

class of deductions under the heading "C - Deductions in respect of certain incomes" in Chapter VIA shall not be allowed unless the return of income is filed by the due date. The table given below highlights the provisions of section 80AC before and after amendment -

<i>For assessment years 2006-07 to 2017-18</i>	<i>Deduction under sections 80-IA, 80-IAB, 80- TB, 80-IC, 80-10 and 80-IE is not available if return of income is submitted after due date given in section 139(1)</i>
<i>From the assessment 2018-19</i>	<i>Deduction under sections 80-IA, 80-TAB, 80-IAC, 80-TB, 80-IBA, 80-IC, 80-10, 80-IE, 80JJA, year 80JJAA, 80LA, 80P, 80PA, 80QQB and 80RRB is not available if return of income is submitted after due date given in section 139(1)</i>

5.3 As per the provisions of the I T Act as prevalent from A Y 2018-19, the assessee can claim deduction under chapter VIA if and only if the return of income is submitted by due date specified in 139(1). Therefore, for claiming exemption u/s 80P the assessee is statutorily required to file its return of income by due date given in section 139(1). In the instant case, it is seen that the appellant has filed its return of income on 15.01.2020, which is beyond the due date as per Section 139(1) for AY 2018-19, i.e. 30.09.2019 extended up to 31.10.2019, therefore, statutorily the appellant is not eligible to claim exemption claimed u/s 80P of the Act. In light of these facts the disallowance made by the CPC is confirmed. This ground of appeal is dismissed."

7. We do not find any infirmity in the order of the CIT(A) in regard to the disallowance of deduction under Section 80P of the Act because the assessee filed the return of income belatedly as prescribed under Section 139(1) of the Act. We observe that the questions raised by the assessee as per his grounds of appeal has been very much answered by the Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary

Agricultural Cooperative Credit Society Ltd. Vs DCIT (2022) 138 taxmann.com 571 (Madras) where in it was held as under: -

“7. The scope of an 'intimation' under section 143(1)(a) of the Act, extends to the making of adjustments based upon errors apparent from the return of income and patent from the record. Thus to say that the scope of 'incorrect claim' should be circumscribed and restricted by the Explanation which employs the term 'entry' would, in my view, not be correct and the provision must be given full and unfettered play. The explanation cannot curtail or restrict the main thrust or scope of the provision and due weightage as well as meaning has to be attributed to the purposes of section 143(1)(a) of the Act.

8. The provisions of section 80AC(ii) make it clear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if the return of income in that case were filed within the prescribed due date. Thus no claim under any of the provisions of Part C of Chapter VIA would be admissible in the case of a belated return. There is no dispute on this position. The date of filing of a return of income would be apparent on the face of return and upon a perusal thereof, it would be clear as to whether the return is a valid return, having been filed within the statutory time limit, or a belated one. This is mechanical exercise and one that can be carried out by the CPC, very much within the scope of section 143(1)(a)(ii) of the Act.”

7.1 We observe that in the case of Chirackkal Service Cooperative Bank Ltd. Vs. CIT (2016) 384 ITR 490 (Ker) the Kerala High Court has decided the issue in favour of the assessee. We observe that the judgement of the Hon'ble Jurisdictional High Court is before the amendment took place in Section 80AC(ii) of the Act, therefore, this judgement will not support the assessee's case in regard to the deduction as claimed by the assessee under Section 80P of the Act. We observe from the judgement of the Hon'ble Madras High Court (supra) in para No. 7 the CPC can make adjustment as while processing the return of income as set out in Section 143(1)(a) r.w. explanation thereof. Further the assessee is not eligible for claiming deduction under Section 80P of the Act because of the

amendment in Section 80AC(ii) of the Act as cited supra. Respectfully following the judgement of the Hon'ble High Court of Madras (supra) we are declining the claim of the assessee under Section 80P of the Act. Therefore the issue is dismissed.

8. With regard to delay in deposit of employees contribution to PF/ESI the assessee has challenged that the addition made in regard to the disallowance under Section 36(1)(va) of the Act. This issue is squarely covered against the assessee by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Merchem Ltd. (2019) 378 ITR 443 (Ker). Respectfully following the judgement of the Hon'ble Jurisdictional High Court we dismiss this issue.

9. In the result, the appeal filed by the assessee is dismissed.

Dictated and pronounced in the open Court on 28th July, 2022.

Sd/-
(George George K.)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Cochin, Dated: 28th July, 2022

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -NFAC, Delhi
4. The CIT -
5. The DR, ITAT, Cochin
6. Guard File

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.