

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 552/Mum/2022 (A.Y. 2015-16)

Poonam Property CHS Ltd.

B-2, Poonam Properties CHS Ltd.

Dr. Annie Besant Road,

Worli, Mumbai-400018

PAN: AAAAP2735Q

..... Appellant

Vs.

CPC/ITO-22(2)(1),

3rd Floor, Piramal Chambers,

Lalbaug, Mumbai-400020.

..... Respondent

Appellant by	:	Sh. N.R. Agarwal
Respondent by	:	Sh. Ashish Kumar, Sr. DR
Date of hearing	:	07/07/2022
Date of pronouncement	:	19/09/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as ('CIT(A)] dated 05.11.20218 for the Assessment Year (AY) 2015-16. The assessee has raised the following grounds of appeal:

"1. The Ld. CIT(A) erred in confirming the addition of Rs. 20,85,481/- for which deduction was claimed u/s. 80P(2)(d) for interest earned from Co-op. Bank."

2. Brief facts of the case are that the assessee has filed its return of income on 02-01-2017 u/s 139(4) i.e. belated return. The due date of filing of return in this case was 07-09-2015. Assessee declare gross total income of Rs 27,10,261/- out of this assessee claimed deduction under chapter VIA sec 80P amounting to Rs. 20,85,481/-. CPC Banglore while processing the return u/s 143(1)(a) disallowed the deduction claimed by the assessee u/s 80P without assigning any reason. Against this disallowance assessee filed rectification application u/s 154 on 06-11-2018, 19-02-2019, 31-01-2020 and 27-02-2020. In the mean time assessee filed an appeal before the Ld. CIT(A) also on 01-07-2017. In response to assessee's application u/s 154 CPC Banglore rejected the same vide their order 27-05-2020. In the mean time assessee received order of Ld. CIT(A) also dated 05-11-2018, Ld. CIT(A) also rejected the appeal of the assessee on the ground that assessee has neither filed copy of return nor demonstrated that all the relevant information related to deduction u/s 80P were correctly entered into the return .

3. We have gone through the intimation issued u/s 143(1)(a) and order of rejection u/s 154 of the Act. We are agreed with the contention of the assessee that no reason whatsoever has been assigned or communicated to the assessee for this disallowance. For us the order of Ld. CIT(A) is also astonishing where he expressed his inability to find out exact reasons of disallowance. Whereas he himself allowed assessee's appeal on the similar issue for the 3 previous A.Y allowing assessee's claim for deduction u/s 80P.

4. Now for sake of clarity we are reproducing herein below the relevant extract of sec 143(1)(a) as under:

“43. [(1) Where a return has been made under [section 139](#), or in response to a notice under sub-section (1) of [section 142](#), such return shall be processed in the following manner, namely:—

- (a) the total income or loss shall be computed after making the following adjustments, namely:—
- (i) any arithmetical error in the return;
 - (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
 - [(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of [section 139](#);
 - (iv) disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;
 - (v) **disallowance of deduction claimed under [[section 10AA](#) or under any of the provisions of Chapter VI-A under the heading "*C.—Deductions in respect of certain incomes*", if] the return is furnished beyond the due date specified under sub-section (1) of [section 139](#); or**
 - (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:]

[**Provided also** that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;]

- (b) the tax [, interest and fee], if any, shall be computed on the basis of the total income computed under clause (a);
- (c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax [, interest and fee], if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, [any relief allowable under [section 89](#),] any relief allowable under an agreement under [section 90](#) or [section 90A](#), or any relief allowable under [section 91](#), any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax [, interest or fee];
- (d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and
- (e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax [, interest or fee] is payable by, or no refund is due to, him:

Provided further that no intimation under this sub-section shall be sent after the expiry of [nine months] from the end of the financial year in which the return is made.

Explanation.—For the purposes of this sub-section,—

- (a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—
- (i) of an item, which is inconsistent with another entry of the same or some other item in such return;
 - (ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or
 - (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;
- (b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under the said sub-section."

5. We have gone through the provisions of sec 143(1)(a)(v). The provisions embedded therein mandated CPC, Bangalore that if the return is furnished beyond the due date specified under sub sec (1) of sec 139, disallowances to be made of deductions claimed u/s 10AA or under any of the provision of chapter VI A under the heading C-deductions in respect of certain incomes.

6. Provisions of chap 143(1)(a) are procedural in nature. The same can't override the main section making assessee entitled to deduction. Until unless the same condition is incorporated in sec 80P to claim deduction, no disallowance u/s 143(1)(a)(v) can be done.

7. Sec 143(1)(a)(v) generalised the whole sections whereas few of the sections falling under heading C chap VIA has similar provision whereas in other sections

falling under the same heading do not have any condition similar to sec 143(1)(a)(v) to claim deduction. Assessee's claim was disallowed by virtue of sec143(1)(a)(v), as the return was filed u/s 139(4).

8. We found the intimation u/s. 143(1)(a), order rejecting application u/s. 154 and order of Ld. CIT(A) are erroneous in nature hence set aside as not sustainable. It is also observed that CPC, Bangalore processed the return of the assessee in contravention of sec 80P and i.e. to without assigning any reason to the assessee for doing so. Its a violation of principle of natural justice which is embedded in sec 143(1)(a) itself. So on both the grounds intimation u/s.143 (1)(a) and order of rejection u/s 154 are bad in law and not sustainable. We would like to comment on the order of Ld. CIT(A) also wherein the appeal order was passed in haste without bothering to properly probe in the matter.

9. In the result, appeal filed by the assessee is allowed with a direction to A.O to allow the claim of assessee u/s. 80P.

Order pronounced in the open court on 19th day of September, 2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 19/09/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai