

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 831/MUM/2022 (A.Y. 2018-19)**

Nabard Employees Co-op Credit Society Ltd., G. Block, 1 <sup>st</sup> Floor, E-Wing Plot No. C-24, Bandra Kurla Complex Bandra (E), Mumbai -400051  <b>PAN: AAATN0326Q</b>	v.	Additional/Joint/Deputy/Assistant CIT/ Income Tax Officer National e-Assessment Centre Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Vishwas V. Mehendale</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Chetan M. Kacha</b>
<b>Date of Hearing</b>	<b>:</b>	<b>15.09.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>11.11.2022</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

1. This appeal is filed by the assessee by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 29.10.2021 for the A.Y.2018-19.

**2.** Brief facts of the case are, assessee is a cooperative society has filed its return of income for the A.Y. 2018-19 on 04.10.2018 declaring total income of ₹.NIL after claiming deduction u/s. 80P of Income-tax Act, 1961 (in short "Act"). The return was processed u/s. 143(1) of the Act by the Centralized Processing Centre (CPC) on 03.09.2019 and determined the total income of the assessee at ₹.62,780/- by disallowing the employees contribution of Provident Fund which the assessee has remitted the same beyond the date specified in the respective Act after two days delay u/s.36 of the Act. Subsequently the case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response AR of the assessee submitted written submissions through ITBA Portal. After considering the submissions of the assessee, Assessing Officer disallowed the deduction claimed by the assessee u/s. 80P of the Act and disallowed certain expenditure as not allowable as the same are in the nature of provisions. However, the disallowance u/s. 80P of the Act was allowed by the Ld.CIT(A).

**3.** Further, the Assessing Officer observed from the Profit and Loss Account that assessee has debited the expenditure towards provision for Special Memento to Members of ₹.17,44,000/- and provision for encashment of staff leave of ₹.50,000/- and the same was not added back

in the computation of income. He observed that the provision is not an allowable expenditure, the said amount of ₹.17,94,000/- is disallowed and added to the income of the assessee. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) sustained the addition made by the Assessing Officer.

**4.** Aggrieved assessee is in appeal before us raising Ground No. 1 and alternative plea in Ground No. 2 before us. At the time of hearing, Ld. AR submitted that the assessee no doubt claimed the expenditure of provision for Special Memento to Members of ₹.17,44,000/-, he submitted that this is a regular annual expenditure of the assessee and assessee claims this expenditure every year. In this regard he filed expenditure extract for the Financial Year 2016-17, 2017-18 and 2018-19 and assessee has claimed Special Memento to Members of ₹.17,69,500/-, ₹.1,744,000/- and ₹.19,91,000/- respectively in the above said Assessment Years. He submitted that assessee claimed this expenditure as provision for Special Memento to Members and records the actual expenditure as soon as assessee receives the actual bills from the suppliers. Therefore, this expenditure is a recurring expenditure for the assessee. Therefore, it should be allowed as regular expenditure and should not be disallowed

merely it is declared as provision. Ld. AR made a similar submissions for disallowance of encashment of staff leave of ₹.50,000/-.

**5.** In the alternate plea, Ld. AR submitted that without prejudice to the above submissions he submitted that the disallowance of any expenditure would increase the total income which is eligible for deduction u/s. 80P(2) of the Act. Therefore, it has no real impact on determining the total income claimed by the assessee or the income determined by the Assessing Officer which will ultimately deductible u/s. 80P of the Act. Ld. AR submitted that the assessee declared net profit of ₹.1,02,96,510/- which is derived after credit of the interest/ dividend of ₹.4,52,84,891/- to the income and expenditure account. The assessee has business loss of ₹.3,49,88,381/- which is setoff against the above said interest/dividend income. Therefore, the profit declared by the assessee is deductible u/s.80P of the Act and the disallowance made by the Assessing Officer will increase the income declared by the assessee to the extent of the disallowance. Therefore, the new net profit is also deductible u/s. 80P of the Act, therefore, this has an effect of revenue neutrality. Ld. AR prayed that in both counts the disallowance made by the Assessing Officer has to be allowed in favour of the assessee.

**6.** With regard to Ground No. 3, Ld. AR submitted that CPC while processing the return of income u/s. 143(1) they have disallowed the Employee Contribution of Provident Fund which the assessee has remitted the same in a delay of one or two days as per the date specified in the respective Act. He prayed that nothing was outstanding at the end of the Financial Year and all the payments were made by the assessee before closing of the Financial Year. Therefore, he prayed that this ground also be decided in favour of the assessee by dismissing the disallowance made by the CPC.

**7.** On the other hand, Ld. DR relied on the order of the lower authorities.

**8.** Considered the rival submissions and material placed on record, with regard to Ground No. 1 we observe that assessee has declared and claimed expenditure on special memento payable to the members and provision for encashment of staff leave. We observe from the record that the assessee claimed the expenditure which assessee has debited to the income and expenditure as provision for special memento to the members. However, it is brought to our notice that this is a regular expenditure claimed by the assessee in every Financial Year. In this

regard assessee has filed copy of the expenditure for three years i.e. for the F.Y. 2016-17, 2017-18 and 2018-19. Therefore, it clearly indicates that this expenditure is a recurring expenditure incurred by the assessee in this assessment year also. Therefore, merely observing that assessee has declared as a provision it cannot be disallowed. However, what is relevant is the nature of expenditure which assessee claims every year and Assessing Officer has not expressed his view on the nature of expenditure which can be disallowed or which assessee is not allowed to claim. Therefore, the expenditure claimed by the assessee is an expenditure for the operation of the society allowable under the Act. Therefore, we direct the Assessing Officer to allow this expenditure as a regular expenditure allowable for this assessment year.

**9.** With regard to provision for encashment of staff leave which assessee has claimed as the expenditure, we observe that the assessee claims certain expenditure as a period expenditure relevant for the current assessment year and whenever the employee claims the same in the subsequent month or subsequent year it is adjusted against the above said provision. The expenditure claimed by the assessee is an ascertainable liability. Therefore, this expenditure also has to be allowed

as the period cost. Accordingly, the Ground No. 1 raised by the assessee is allowed.

**10.** With regard to Ground No. 2 which is an alternative plea raised by the assessee, on a careful consideration we are in agreement with submissions of the assessee that the deduction claimed u/s. 80P of the Act is after determining the net taxable income and if any disallowance made in determining the above said net taxable income will increase the above said net taxable income which is clearly allowable as the deduction under Chapter VIA. Therefore, there is a merit in claim of the assessee. Since we have already allowed Ground No. 1 of the assessee it leads to only discussion on academic purpose. Therefore, we are inclined to keep the Ground No. 2 as open.

**11.** With regard to Ground No. 3 we observe that CPC has disallowed the Employee Contribution claimed by the assessee as a deduction and it is fact on record that assessee has remitted the Employee Contribution two days' delay in the month of October 2017 and one-day delay in the month of March 2018. No doubt it Shows that the disallowance made leads to harsh on the assessee. However, the legislation and the Hon'ble Supreme Court is of the view that the assessee has to follow the due date

in the respective Act of PF and ESC to deposit the Employee Contribution in order to safeguard the interest of the employees. Any delay in depositing the contribution received by them is chargeable to tax u/s.28 of the Act. Therefore, the collections/recoveries from the employees are first treated as income of the assessee u/s. 28 of the Act and any payment within the due date of the respective Act is treated as application and however, when the assessee fails to deposits within due dates, the same is not allowable deduction u/s.36 of the Act. Therefore, the recovery from the employees are remain as income of the assessee. Therefore, we are not inclined to allow the ground raised by the assessee in this regard. Moreover, this ground raised by the assessee is not borne out of the order passed u/s.143(3) of the Act.

**12.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 11<sup>th</sup> November, 2022.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 11.11.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**