

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 673/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2018-19)

Sri Kodandaramaswamy Income Tax Officer,
Primary Agricultural Vs. Ward-2,
Co-operative Society Nellore
Limited,
Nellore
[PAN No. AAHAS4574M]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri VMV Subba Rao, AR

राजस्व द्वारा / Revenue by: Ms. R. Helen Ruby Jesindha, DR

सुनवाई की तारीख/Date of hearing: 09/01/2023

घोषणा की तारीख/Pronouncement on: 09/01/2023

आदेश / ORDER

Aggrieved by the order dated 14/10/2022 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Sri Kodandaramaswamy Primary Agricultural Co-operative Society Limited ("the assessee") for the assessment year 2018-19, assessee preferred this appeal.

2. Relevant facts for disposal of this appeal are that the due date for filing the return of income by the assessee under section 139(1) of the Income Tax Act, 1961 (for short "the Act") for the assessment year 2018-19 was 30/09/2018, whereas the assessee filed its return of income on

31/03/2019 on the last date to file it under section 139(4) of the Act. By way of order under section 143(1) of the Act, learned Assessing Officer-CPC made an adjustment under section 143(1)(a)(v) by not allowing the deduction under section 80P of the Act to the tune of Rs. 17,83,232/-.

3. Assessee preferred appeal before the learned CIT(A) and argued that the amendment to Section 143(1)(a)(v) came into force with effect from 01/04/2021 and, therefore, no *prima facie* adjustment could be made under that section, without seeking the explanation of the assessee on any point not covered by such provision. He also argued that the claim under section 80P of the Act does not fall under section 143(1)(a)(ii) of the Act also inasmuch as the explanation referring to the incorrect claim is not covering this particular contingency.

4. Learned CIT(A), however, did not agree with the assessee but went on the premise that under the provisions of Section 80AC(ii) of the Act, any claim falling under the heading 'C. – Deductions in respect of certain incomes' after the first date of April, 2018 is not to be allowed if the return of income was not furnished within the time to file the same under section 139(1) of the Act. Consequently, learned CIT(A) dismissed the appeal.

5. Aggrieved by such an order of the learned CIT(A), assessee preferred this appeal arguing on the same lines as were advanced before the learned CIT(A). Learned AR placed reliance on the decisions in the cases of Hon'ble Kerala High Court in the case of Chirakkal Service Co-Operative Bank Ltd., Vs. CIT (2016) 68 taxmann.com 298(Kerala) and ASR Engg. & Projects Ltd., (2019) 111 taxmann.com 49 (Hyderabad – Trib.) in support of their contentions. Learned AR further submitted that what is not to be adjusted under section 143(1)(a)(ii) or (v) of the Act cannot be done in *limine* without affording an opportunity to the assessee to explain their case, because, consideration of Section 80AC clause (ii) does come not at the stage of 143(1)(a)(ii) and (v) of the Act, but it is only after issuing notice seeking explanation of the assessee. His grievance is that principles

of natural justice are violated in this case. Learned AR also placed reliance on the decision of Rajkot Bench of the Tribunal in the case of Shri Nava Ujala Seva Sahakari Mandali Ltd. Vs. DCIT/ACIT(CPC) [2022] (11) TMI 128.

6. Per contra, learned DR vehemently opposed the claim of assessee, stating that let alone under section 143(1) of the Act, the assessee has no good case even under section 143(3) assessment and, therefore, merely because the amendment to Section 143(1)(a)(v) of the Act has come into force with effect from 01/04/2021, the violation of provisions under section 80AC clause (ii) of the Act cannot be permitted and on that score, learned CIT(A) is right in his approach. The sum and substance of the learned DR is that even without amendment to Section 143(1)(a)(v) of the Act, the provisions under section 80AC clause (ii) of the Act are enough for the authorities to consider the claim of the assessee under section 80P of the Act.

7. I have gone through the record in the light of the submissions made on either side. It is a fact that amendment to section 143(1)(a)(v) of the Act, covering the deductions in respect of any of the provisions under chapter VIA of the Act has come into force with effect from 01/04/2021 and, therefore, there cannot be any *prima facie* adjustment there under at the stage of 143(1) of the Act itself. Further, the Co-ordinate Bench in the case of Shri Nava Ujala Seva Sahakari Mandali Ltd. (supra), referred to the aspect of 143(1)(a)(ii) of the Act also and gave a finding that late filing of return does not come under the heading 'incorrect claim', under section 143(1)(a)(ii) of the Act. It is, therefore, clear that the disallowance of deduction under section 80P of the Act does not come up for consideration at the stage of 143(1) of the Act and it could be a relevant fact at the time of 143(3) of the Act.

8. Insofar as the grievance of assessee that the principles of natural justice are not extended to the assessee inasmuch as without seeking and considering any explanation of the assessee, the deduction under section

80P is denied to the assessee at the stage of 143(1) of the Act itself is concerned, his prayer is that ends of justice would be met, if the matter is restored to the file of learned Assessing Officer for verification of such a claim, after giving an opportunity to the assessee.

9. The very same course is adopted by the Co-ordinate Bench in the case of Shri Nava Ujala Seva Sahakari Mandali Ltd. (supra), wherein the Bench thought it fit to restore the issue for fresh adjudication on merits to the learned CIT(A). However, I am of the considered opinion that since the learned Assessing Officer did not consider the merits of this issue, I deem it just and proper to restore it to the file of learned Assessing Officer instead of learned CIT(A). With this view of the matter, I set aside the orders of the authorities below and restore the issue to the file of learned Assessing Officer for considering the allowability of section 80P of the Act on merits. I make it clear that I did not pronounce any finding in respect of applicability or otherwise of Section 80AC clause (ii) of the Act.

10. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 9th day of January, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 09/01/2023

TNMM

Copy forwarded to:

1. Sri Kodandaramaswamy Primary Agricultural Co-Operative Society Limited, Kodurupadu Village, Nellore Rural Mandal, Nellore.
2. Income Tax Officer, Ward-2, Nellore.
3. NFAC-Delhi.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD