

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU (SMC) “C” BENCH, BENGALURU**

Before Shri Chandra Poojari, Accountant Member

ITA No. 1090/Bang/2022 (Assessment Year: 2018-19)		
M/s. CSI Credit Co-Operative Society CSIVC Campus, CSIVC B.H. Road, Tumkur Karnataka 572102 PAN – AABAC9629F	vs	The Income Tax Officer Ward 1 and TPS Tumkur
(Appellant)		(Respondent)

Assessee by:	Shri R.E. Balasubramaniyan, CA
Revenue by:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing:	16.01.2023
Date of pronouncement:	16.01.2023

ORDER

Per: Chandra Poojari, A.M.

This is an appeal filed by the assessee against the order of the learned CIT(A), NFAC, Delhi dated 14.10.2022 for AY 2018-19.

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

“2. The order of the Ld. CIT(A) is erroneous and bad in law inasmuch as

- a. *Ld CIT(A) failed to appreciate that the assessee society, being registered under The Karnataka Co-Operative Societies Act, 1959 is a body corporate within the meaning of section 9 of the said Act and is also liable to get its books audited by an auditor u/s 63 of the said Act.*
- b. *He failed to appreciate that the due date for the filing of the annual return of income u/s 139(1) for the appellant was September 30th, 2019 which was extended to October 31st, 2019, vide the order F.No. 225/157/2019-ITA.II dated 27/09/2019 and the appellant had filed its return within the due dates making it eligible for deduction u/s 80P.”*

3. The facts of the case are that the assessee is a co-operative society and is assessed to Income Tax by Centralized Processing Centre, Bangalore. The assessee is a Credit Cooperative Society registered under the provisions of the Karnataka State Cooperative Society's Act 1959 and is engaged in the business of providing credit facilities to its members, as per the bylaws approved by the Registrar of Cooperative societies. The assessee filed a return of Income on 31.10.2018 with gross total income of Rs.639649/- and claiming deduction u/s. 80P(2) of the Act of Rs.546661/- and disclosed total income of Rs.92990/-. The assessee received intimation u/s. 143(1) of the IT Act through mail. The Assessing Officer (AO) denied the deduction u/s. 80P(2)(a)(i) of the Income Tax Act, 1961 (the Act) by observing that the credit co-operative society is eligible for availing the exemption under Section 80P(2)(a)(i) of the Act only if the return of income is filed with the due date. In the present case the assessee filed the return of income after due date for filing he return.

4. On appeal the learned CIT(A) observed as under: -

“The Appellant has claimed deduction u/s. 80P (2)(a)(i) of the Act, in respect of income from co-operative society engaged in carrying business of banking by providing credit facilities to its members.

The Appellant has filed its Return of income on 31.10.2018, whereas the due date for filing original Return was 31.08.2018. The AO denied the exemption claimed u/s. 80P(2)(a)(i) of the Act, due to late filing of Return of Income.

The Appellant has submitted that the Appellant presumed that its case is covered under tax audit cases, hence, the delay in filing Return of income.

In the 2018 Budget amendment, to have one principle in respect of certain incomes, it was proposed that the scope of Sec. 80AC shall be extended to all similar deductions which are covered in heading "C — Deduction in respect of certain incomes" in Chapter VIA. After this amendment, deduction will be available only if return is filed on or before the due date. Deduction u/s. 80P is also covered under the heading "C — Deduction in respect of certain incomes"

Thus, in respect of deduction u/s. 80P of the Act, the same is not allowable, if the Income Tax Return is not filed within the time permitted u/s. 139(1) of the Act, for A.Y. 2018-19 and onwards.

Accordingly, the order of the AO u/s. 143(1) of the Act, disallowing deduction u/s. 80P of the Act is confirmed and the ground of appeal of the Appellant is dismissed.”

Against this order the assessee is in appeal before the Tribunal by way of the above grounds.

5. The learned A.R. submitted that the AO denied the deduction claimed by the assessee under Section 80P(2)(a)(i) of the Act on the reason that the assessee filed the return of income not within the due date mentioned in Section 139(1) of the Act r.w.s. 80AC of the Act. Accordingly the learned A.R. the assessee filed the return of income on 31.10.2018. As per the notification issued by the CBDT on 8th October, 2018 the assessee can file the return of income before the extended time limit upto 31.10.2018 and as such the assessee should be granted deduction under Section 80P(2)(a)(i) of the Act. Further he drew our attention that the assessee is liable to audit under Section 63 of the Karnataka Co-Operative Societies Act, 1959 and as per Explanation 2(ii) to Section 139(1) of the Act the extended time limit to file the return of income is 31.10.2018. Hence, the denial of deduction under Section 80P(2)(a)(i) of the Act is not justified and it is to be granted to the assessee.

6. On the other hand, the learned D.R. submitted that Explanation 2(ii) in Section 139(1) of the Act is not applicable to the assessee, since the assessee is not liable to audit under Section 44AB of the Act. Being so, extended time limit to file the return of income is not available to the assessee and in view of the restriction imposed in Section 80-AC of the Act the assessee is not entitled for deduction under Section 80P(2)(a)(i) of the Act.

7. I have heard the rival contentions and perused the material on record. In this case the assessment year involved is 2018-19. The regular time limit to

file the return of income for the assessee is 31.08.2018. However, the said limit has been extended by CBDT vide circular dated 08.10.2018, which reads as follows: -

"SECTION 139, READ WITH SECTION 119, OF THE INCOME-TAX ACT, 1961 INCOME - RETURN OF - EXTENSION OF DUE DATE FOR FILING OF INCOME-TAX RETURNS AS WELL AS REPORTS OF AUDIT ORDER IENO.225/358/2018/ITA.11]. DATED 24-9-2018

On due consideration of representations from various stakeholders for extending the due date, being 30th September, 2018, for filing of income-tax returns and various reports of audit pertaining to assessment-year 2018-19 for assesseees covered under clause (a) of Explanation 2 to section 139(1) of the Income-tax Act, 1961 (Act) read with relevant provisions of the Act and Income-tax Rules, the CBDT, hereby extends the due date for filing of income-tax returns as well as all reports of audit (which were required to be filed by the said specified date), from 30th September, 2018 to 15th October, 2018. However, there shall be no extension of the due date for purpose of Explanation 1 to section 234A (Interest for defaults in furnishing return) of the Act and the assessee shall remain liable for payment of interest as per provisions of section 234A of the Act.

F.No. 225/358/2018/17AM
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North-Block, ITA.II Division
New Delhi, the 8th of October, 2018

Order under Section 119 of the income -tax Act,1961

On consideration of representations from various stakeholders for further extension of due date being 30th September, 2018 for purpose of filing return of income as well as various reports of audit pertaining to Assessment Year 2018-2019 for assesseees covered under clause (a) of Explanation 2 of section 139(1) of the Income-tax Act, 1961 (Act), the Board, in partial modification of its order dated 24.09.2018 in file of even number, hereby, further extends the due date for filing of return of income and reports of audit pertaining to Assessment Year 2018-2019 from 15th October, 2018 to 31st October, 2018. However, as specified in earlier order dated 21.09.2018, assesseees filing their return of income within the extended due date shall be liable for levy of interest as per provisions of section 234A of the Act.

(Rajarajeswar R.)
Under Secretary to Government of India

Copy to:-

1. PS to f M /MO to ;M/PS to MoS(R)/OSD to MoSi(R)
2. PPS to Secretary (Revenue)
3. Chairman (CBDT), All Members, Central Board of Direct Taxes
4. Ali Pr.CCSIT/CCsIT/Pr DsGIT/DsGIT
5. Ali Joint Secretaries/CsIT, CBDT
6. Directors/Deputy Secretaries/Under Secretaries of Central Board of Direct Taxes
7. ADG(Systems)-4 with request to place the order on official website
8. Addl.CIT, Date base Cell for placing the order on officers website
9. The Institute of Chartered Accountants of India, IP Estate, New Dell, 110004
10. CIT (M&TP) with request to issue Press Release & for placing on Twitter handle of the department

(Rajarajeswar R.)

Under Secretary to Government of India

8. Section 139(1) of the Act is also relevant to decide the issue in dispute, which reads as under: -

"139. (1) Every person,—

(a) being a company or a firm; or

(b) being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,

shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed²⁰ form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided that a person referred to in clause (b), who is not required to furnish a return under this sub-section and residing in such area as may be specified by the Board in this behalf by notification in the Official Gazette, and who during the previous year incurs an expenditure of fifty thousand rupees or more towards consumption of electricity or at any time during the previous year fulfils any one of the following conditions, namely :—

- (i) is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be specified by the Board in this behalf; or
- (ii) is the owner or the lessee of a motor vehicle other than a two-wheeled motor vehicle, whether having any detachable side car having extra wheel attached to such two-wheeled motor vehicle or not; or
- (iii) [***]
- (iv) has incurred expenditure for himself or any other person on travel to any foreign country; or
- (v) is the holder of a credit card, not being an "add-on" card, issued by any bank or institution; or
- (vi) is a member of a club where entrance fee charged is twenty-five thousand rupees or more,

shall furnish a return, of his income during any previous year ending before the 1st day of April, 2005, on or before the due date in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided further that the Central Government may, by notification in the Official Gazette, specify the class or classes of persons to whom the provisions of the first proviso shall not apply :

Provided also that every company or a firm shall furnish on or before the due date the return in respect of its income or loss in every previous year :

Provided also that a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of [section 6](#), who is not required to furnish a return under this sub-section and who at any time during the previous year,—

- (a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or
- (b) is a beneficiary of any asset (including any financial interest in any entity) located outside India,

shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed:

Provided also that nothing contained in the fourth proviso shall apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a) of that proviso in accordance with the provisions of this Act:

Provided also that every person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to the provisions of clause (38) of [section 10](#) or [section 10A](#) or [section 10B](#) or [section 10BA](#) or [section 54](#) or [section 54B](#) or [section 54D](#) or [section 54EC](#) or [section 54F](#) or [section 54G](#) or [section 54GA](#) or [section 54GB](#) or Chapter VI-A exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:

Provided also that a person referred to in clause (b), who is not required to furnish a return under this sub-section, and who during the previous year—

- (i) has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current accounts maintained with a banking company or a co-operative bank; or
- (ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or
- (iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or
- (iv) fulfils such other conditions as may be prescribed,

shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.

Explanation 1.—For the purposes of this sub-section, the expression "motor vehicle" shall have the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Explanation 2.—In this sub-section, "due date" means,—

(a) where the assessee other than an assessee referred to in clause (aa) is—

- (i) a company; or
- (ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or
- (iii) a ²¹[***] partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force ²²[or the

spouse of such partner if the provisions of [section 5A](#) applies to such spouse],

the ²³[31st day of October] of the assessment year;

(aa) in the case of an assessee ²⁴[, including the partners of the firm or the spouse of such partner (if the provisions of [section 5A](#) applies to such spouse), being such assessee,] who is required to furnish a report referred to in [section 92E](#), the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year.”

As seen from Explanation 2(ii) if the assessee's books of account requires to be audited under the Income Tax or any other law for the time being in force, the time limit would be extended up to 31st October of that assessment year. **In the present case, the learned A.R. submitted that as per Section 63 of the Karnataka Co-Operative Societies Act, 1959 the assessee's books are required to be audited under the Act.**

8.1 For clarity the same is reproduced as under: -

“Extract of Section 63 of the Karnataka Cooperative Societies Act, 1959

CHAPTER VIII

AUDIT, INQUIRY, INSPECTION AND SURCHARGE.

63 Audit. - (1) Every Cooperative society shall get its accounts audited at least once in a year before the first of September following the close of the cooperative year by an auditor or an auditing firm appointed by the general body of the cooperative society from a panel of auditors or auditing firms approved by the Director of cooperative audit;

Provided that the Director of co-operative audit shall be the authority competent to prepare and maintain a list of auditors and auditing firms who satisfy the prescribed qualification and experience for undertaking the audit of accounts of co-operative societies in the state.

[Provided further that, the National Bank shall prepare a list of auditors and auditing firms who satisfy, the prescribed qualification and experience for undertaking the audit of accounts of State Co-operative Bank and District Central Co-operative Banks.]”

9. A conjoint reading of Section 139(1) of the Act read with the Explanation 2(ii) of the section and Section 63 of the Karnataka Co-Operative Societies Act, 1959 makes it clear that the assessee's books are required to be audited under the Co-Operative Societies Act, the extended time is available to the assessee upto 31.10.2018 to file the return of income for the AY 2018-19. Admittedly in the present case the assessee filed the return of income on 31.10.2018. The assessee cannot be denied deduction under Section 80P(2)(a)(i) of the Act if the assessee filed the return of income on or before 31.10.2018 and the same has been disclosed in the return of income as required in ITR-5 stating that assessee is liable to audit under Cooperative Society Act and mentioned the date of audit in the return of income filed by the assessee. If it is so, the assessee could avail the benefit of circular issued by CBDT cited supra and the assessee has to be granted with the deduction under Section 80P(2)(i)(a) of the Act.

10. Further the learned D.R. strongly placed reliance on the order of the coordinate bench in the case of Syndicate Bank Staff Co-operative Society Ltd. in ITA No. 1062/Bang/2022 dated 03.01.2023 wherein the Tribunal upheld the denial of deduction under Section 80P(2)(a)(i) of the Act. Since the assessee has filed the return of income only on 30.12.2018 for AY 2018-19 this case law cannot be applied to the facts of the present case. Further the learned D.R. relied on the order of the Tribunal's Mumbai Bench in the case of Janki Vaishali Co-operative Housing Society Ltd. in ITA No. 944/Mum/2022 dated 31.10.2022 wherein the Tribunal upheld the denial under Section 80P(2)(i)(d) of the Act on the reason that the assessee has filed return of income on 24.12.2018 which is beyond the due date for filing the return of income under Section 139(1) of the Act. As discussed earlier in the present case assessee has filed return of income on 31.10.2018, which is within the extended time limit in the case of the present assessee whose books are to required to be audited under the relevant Co-operative Societies Act and

Explanation 2(ii) of Section 139(1) of the Act is applicable to the assessee's case.

11. Being so, I find no force in the argument of the learned D.R. Accordingly, I direct the AO to grant deduction claimed by the assessee under Section 80P(2)(i)(a) of the Act if the assessee establish that it has disclosed the fact that assessee is liable to audit under Cooperatives Societies Act and mentioned the date of furnishing audit report in the return of income filed by the assessee on 31.10.2018 for the impugned AY 2018-19. Accordingly the issue in dispute is remitted to the file of AO for fresh consideration in the light of above observations.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Dictated and pronounced in the open Court on 16th January, 2023.

Sd/-
(Chandra Poojari)
Accountant Member

Bengaluru, Dated: 16th January, 2023

Copy to:

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

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.