

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 202/Rjt/2022
Assessment Year 2019-20**

Lunidhar Seva Sahkari Mandali Ltd., Lunidhar, Kundavav Amreli-365460 PAN: AABAL9846M (Appellant)	Vs	The Assessing Officer (CPC), Bengaluru (Respondent)
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**Assessee by: Shri D.M. Rindani, A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 07-02-2023
Date of pronouncement : 22-02-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2019-20, arises from order of National Faceless Appeal Centre (NFAC), Delhi dated 16-06-2022, in proceedings under section 143(1) of the Income Tax Act, 1961; in short "the Act".

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

	<i>Grounds of Appeal</i>	<i>Tax effect relating to each Ground of appeal</i>
1.	<i>The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in confirming action of CPC Bengaluru by disallowing claim of deduction of Rs.2,22,704/- by failing to appreciate that provisions of Sec. 143(l)(a)(v) do not provide for denial of deduction u/s SOP of the Act when the return of income is not filed within time allowed u/s 139(1) of the Act but u/s 139(4).</i>	66,362/-
2.	<i>The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in upholding action of the CPC Bengaluru in making adjustment to the returned income of the Appellant by way of an intimation u/s 143(1) and in denying the benefit of Sec. SOP of the Act of Rs.2,22,704/- to the Appellant by failing to appreciate that this was not a prima facie adjustment permissible u/s 143(l)(a) of the Act.</i>	66,362/-
3.	<i>The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, erred in not adjudicating ground of disallowance of claim of deduction of Rs.2,22,704/- u/s SOP of the Act on merits.</i>	66,362/-
4.	<i>The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, erred in holding that in view of amendment in Sec. 80AC, benefit of deduction u/s SOP has been denied by CPC by failing to appreciate that this was not a prima facie adjustment permissible u/s 143(l)(a) of the Act during the year under appeal.</i>	
5.	<i>The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.</i>	"
	<i>Total tax effect</i>	66,362/-

3. The brief facts of the case are that the assessee is a co-operative society, who filed return of income on 30-11-2020 declaring total income of ₹ Nil and claimed deduction of ₹ 2,22,704/- under section 80P of the Act. Thereafter, the assessee received intimation under section 143(1)(a) of the Act making adjustment in the returned income and not granting deduction of ₹ 2,22,704/- claimed in the return of income under section 80P of the Act, since the return of income was not filed within the due date prescribed under section 139(1) of the Act.

4. The assessee filed appeal against the order of Ld. CIT(A), who dismissed assessee's appeal with the following observations:

"4.4 Adjudication

The submission has been considered but cannot be accepted. The due date for filing the return of income under Sec. 139(1) was 31.08.2019. The due date for filing the return of income under Sec.139(4) was 31.03.2021. Even though, the due date for filing the return of income for this year was extended Upto 30.09.2020 under Sec.119 by the Board due to covid pandemic. The appellant filed the return of income on 30.11.2020 which is within one year from the end of the relevant Assessment Year. Hence, it has to be construed as a belated return under Sec. 139(4) of the Act. Whether deduction under Sec.80P can be denied for not filing the return of income before the due date prescribed under sec. 139(1) is the moot point for consideration. In this regard, the amendment to Sec. 80AC in the Finance Bill 2018 reads as under:

"With an objective of bringing uniformity in all income-based deductions, the government vide Budget 2018 has proposed that the scope of section 80AC be extended to all similar deductions which are covered under the heading "C—Deductions in respect of certain incomes" under Chapter VIA i.e. from Sections 80IA to 80RRB. The impact of such an amendment

shall be that no deduction would be allowed to a taxpayer under these provisions if the income-tax return is not filed on or before the due prescribed under Section 139(1) of the Income Tax Act."

*5. In view of the above amendment in Sec. 80AC, the benefit of deduction under Sec. 80P has been denied by the CPC as the return was filed beyond the due date i.e., on 05.11.2020 and hence the denial of deduction under Sec. 80P is upheld.
In the result, the appeal is Dismissed."*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) denying assessee's claim of exemption under section 80P of the Act.

6. Before us, the counsel for the assessee submitted that CPC made adjustment to income of the assessee by denying assessee's claim of deduction of ₹ 2,22,704/- under section 80P of the Act on the ground that the claim of assessee was incorrect under section 143(1)(a)(ii) of the Act since the return of income was not filed within the due date prescribed under section 139(1) of the Act. The counsel for the assessee submitted that the adjustment made by the CPC was beyond the scope of section 143(1)(a)(v) of the Act. The counsel for the assessee submitted that 143(1)(a)(v) of the Act was amended w.e.f. 01-04-2021 and hence any prima facie adjustment relating to denial of deduction when the return of income was not filed within due date, was not possible for the year under consideration. Further, "incorrect claim" u/s 143(1)(a)(ii) of the Act is defined by way of an Explanation to section 143(1) of the Act which does not state that the claim would be "incorrect" if return of income is not filed within the due date.

Hence, the action of CPC is bad in law and therefore Ld. CIT(A) erred in facts and in law in holding that the assessee is not eligible for claiming deduction under section 80P of the Act for not filing return within the due date prescribed under section 139(1) of the Act. In response, Ld. Departmental Representative relied upon the observations made by Ld. CIT(A) in the appellate order.

7. We have heard the rival contentions and perused the material on record. In the instant facts, admittedly the assessee did not file return of income within the time permissible under section 139(1) of the Act. However, the assessee filed its return of income belatedly on 30-11-2020 and claimed deduction of ₹ 2,22,704/- under section 80P of the Act. The issue for consideration before us is that whether once the return of income is filed beyond the prescribed date under section 139(1) of the Act, can the deduction under section 80P of the Act be denied to the assessee, by way of adjustment under section 143(1) of the Act. On going through the statutory provisions, we observe that 80AC of the Act provides that no such deduction under section 80P of the Act shall be allowed to an assessee unless he furnishes a return of his income on or before the due date specified under section 139(1) w.e.f. assessment year 2018-19 onwards. However, section 143(1)(a)(v) of the Act provides that disallowance of deduction claimed under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" (which includes deduction under section 80P of the Act), can be made if the return is furnished beyond the due date specified under sub-section (1) of section 139. This amendment has been introduced w.e.f. 1-4-2021. Accordingly, the above amendment would

not apply to the impugned assessment year. Further, section 143(1)(ii) of the Act permits adjustment in case of an incorrect claim, if such incorrect claim is apparent from any information in the return. However, Explanation to the aforesaid section specifies the following cases where the claim made in the return of income can be said to be “incorrect” 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

7.1 A joint reading of the above provisions makes it evident that the claim of deduction under section 80P of the Act cannot be allowed the assessee, if the assessee does not file its return of income within the due date stipulated under section 139(1) of the Act w.e.f. assessment year 2018-19 onwards. However, we also note that amendment has been introduced in section 143(1)(a)(v) of the Act to provide that the claim of deduction under section 80P of the Act can be denied to the assessee, in case the assessee does not file its return of income within the time prescribed under section 139(1) of the Act with effect from 01-04-2021 and does not apply to the impugned

assessment year i.e. assessment year 2019-20 relevant to financial year 2018-19. Accordingly, in our considered view, denial of claim under section 80P of the Act would not come within the purview of prima facie adjustment under section 143(1)(a)(v) of the Act, for the simple reason that the section was not in force during the period under consideration i.e. assessment year 2019-20.

7.2 The second issue for consideration is that whether the case of the assessee would fall within the purview of prima facie adjustment under section 143(1)(a)(ii) (an incorrect claim, if such incorrect claim is apparent from any information in the return). In our view, the scope of the adjustments that can be made under the said provision has been elaborated in the Explanation to the aforesaid section, which does not include denial of deduction claimed by the assessee in case the assessee does not furnish its return of income within the date stipulated under section 139(1) of the Act. The Explanation to the said section specifically provides for cases/instances when the claim made by the assessee could be said to be “incorrect”. Therefore, in our considered view, the case of the assessee would also not fall within the purview of prima facie adjustment under section 143(1)(a)(ii) (an incorrect claim, if such incorrect claim is apparent from any information in the return).

7.3 We note that in the case of **Chirakkal Service Co-Operative Bank Ltd. Kannur v. CIT 2016] 68 taxmann.com 298 (Kerala)**, the Kerala High Court held that a return filed by assessee beyond period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can

also be accepted and acted upon for entertaining claim raised under section 80P provided further proceedings in relation to such assessments are pending in statutory hierarchy of adjudication in terms of provisions of Act. In the case of **ASR Engg. & Projects Ltd. [2019] 111 taxmann.com 49 (Hyderabad - Trib.)**, the ITAT held that to be eligible to make claim under section 80-IA or any other section of Chapter VI A, assessee should have filed return of income under section 139(1) and even if it did not make claim for deduction in original return and subsequently file revised return making such claim, its claim for deduction under section 80-IA is maintainable. Therefore, where assessee had filed return under section 139(1), it was entitled to claim deduction under section 80-IA even if such claim was not made in original return but subsequently in revised return filed in response to notice issued under section 153A. In the case of **Lanjani Co-Operative Agri Service Society Ltd. (CPC) v. DCIT [2023] 146 taxmann.com 468 (Chandigarh - Trib.)**, the ITAT held that the enabling provisions of sub-clause (v) of section 143(1) providing for disallowance of deduction under section 80P due to late filing of return having been introduced by Finance Act, 2021 effective from 1-4-2021, disallowance of deduction claimed under section 80P during relevant years 2018-19 and 2019-20 on grounds of late filing of return was unjustified

7.4 We note that the instant case, there was a delay in filing the return of income by the assessee for the assessment year 2019-20 and return of income was filed within due date permissible u/s 139(4) of the Act, in which the claim for deduction u/s 80P of the Act was made. Therefore, looking into the totality of facts, we are of the view that claim of deduction u/s 80P

of the Act cannot be denied to the assessee only on the basis that the assessee did not file return of income its return of income within due date u/s 139(1) of the Act, in light of the discussion and judicial precedents highlighted above.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 22-02-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 22/02/2023

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot