

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.278/Chny/2022  
निर्धारण वर्ष /Assessment Year: 2018-19

M/s.The Chennai Teachers Guild-  
Co-op. Society Ltd.,  
No.37, Old No.19,  
B.V.Naicken Street,  
Triplicane,  
Chennai-600 005.

v. The AO,  
CPC,  
Bengaluru.

[PAN: AAAAT 8690 A]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.B.Suresh, CA

प्रत्यर्थी की ओर से /Respondent by

: Mr.D.Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 02.03.2023

घोषणा की तारीख /Date of Pronouncement

: 08.03.2023

**आदेश / ORDER**

**PER MANJUNATHA.G, AM:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 21.03.2022, and pertains to assessment year 2018-19.

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

**:: 2 ::**

*1. Ld. CIT(A) erred in confirming the disallowance made by CPC / AO at the time of processing the return u/s.143(1), for the deduction claimed u/s.80P.*

*2.1. Ld. CIT(A) erred in confirming the disallowance made by CPC / AO in denying the deduction claimed u/s.80P since 80P is not included in the list of sections mentioned in sec.143 (1)(a)(v) for which adjustments can be done at the time of processing the return u/s.143(1) if the return is filed beyond the due date u/s.139(1).*

*2.2 Ld. CIT(A) and CPC erred in applying the general provision of sec. 143(l)(a)(ii) when there is a specific provision of 143(1)(a)(v) to deal with the particular and present situation. Amendment in 2021 in 143(1)(a)(v) also confirms the appellant's.*

*2.3 Ld. CIT(A) erred in following the decision of a writ petition which can't set a precedence and judicial binding.*

*2.4 During the assessment the deduction u/s.80P was allowed and the Returned Income Nil was accepted as assessed income. Intimation u/s.143(1) gets merged with assessment order and only the assessment order will prevail. Hence disallowance has to be deleted.*

*2.5 Since the Return of Income was filed within the time allowed u/s.139(4) the appellant is eligible for deduction claimed u/s.80P.*

*3. Without prejudice to the above, the calculation of interest u/s.234A, 234B and 234C are erroneous. The appellant is not required to pay any advance tax on the respective due dates during the previous year. As per Sec.80AC The liability to pay tax arises only after the expiry of the due date specified u/s.139(1). Interest u/s.234A is liviable only if there is a liability to pay tax on the due date u/s.139(1). There is no liability to pay tax up to the expiry of due date specified u/s.139(1). The calculation of interest as per all these three sections should be ZERO.*

*For these grounds and other grounds that may be adduced in future the appellant prays that the appeal may please be allowed.*

**3.** The brief facts of the case are that the assessee is a Co-op. Society filed its return of income for the AY 2018-19 on 17.11.2018 declaring 'NIL' total income after claiming deduction u/s.80P of the Income Tax Act, 1961 (in short "the Act"). The return of income filed by the assessee has been processed u/s.143(1) of the Act, and determined total income of Rs.7,68,14,720/- after rejecting deduction claimed under Chapter-VIA of the Act. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate order dated 21.03.2022, dismissed the appeal filed by the assessee.

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**4.** The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in not appreciating the fact that when the case has been taken up for scrutiny, and the order has been passed u/s.143(3) of the Act, the assessment order passed u/s.143(1) of the Act, merged with the assessment order passed u/s.143(3) of the Act, and thus, when the AO has allowed deduction u/s.80P of the Act, in assessment proceedings u/s.143(3) of the Act, additions made u/s.143(1) of the Act, does not survive. He further submitted that the case has been selected for limited scrutiny to verify deductions from total income under Chapter-VIA of the Act, and the AO has completed assessment u/s.143(3) of the Act, on 29.03.2021, and allowed deduction claimed u/s.80P of the Act. Therefore, earlier assessment passed u/s.143(1) of the Act, cannot survive.

**5.** The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that in scrutiny assessment, the AO had simply accepted return filed by the assessee without verifying the allowability of deduction u/s.80P of the Act. The assessment order passed by the AO u/s.143(1)(a) of the Act, rejecting deduction u/s.80P of the Act, is in accordance with law, and thus, there is no merit in the arguments of the assessee that once order passed u/s.143(3) of the Act, assessment proceedings u/s.143(1) of the Act, does not survive.

**6.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from record clearly indicate that the return of income filed by the

**:: 4 ::**

assessee for the AY 2018-19, has been processed u/s.143(1) of the Act, on 08.02.2020. Further, for the very same assessment year, the assessment has been completed u/s.143(3) of the Act, on 29.03.2021. In assessment proceedings u/s.143(1) of the Act, the AO rejected deduction claimed u/s.80P of the Act. In assessment proceedings u/s.143(3) of the Act, the AO has allowed deduction claimed u/s.80P of the Act. From the above, it is very clear that subject matter of assessment in both provisions under the Act, is deduction claimed u/s.80P of the Act. In our considered view, once proceedings have been initiated u/s.143(3) of the Act, and assessment has been completed thereunder, then earlier assessment order passed u/s.143(1)(a) of the Act, is no long operative for that assessment year, because, the first assessment order passed u/s.143(1) of the Act, is merged with the proceedings initiated u/s.143(3) of the Act. Therefore, we are of the considered view that when the AO has allowed the claim of deduction u/s.80P of the Act, in assessment proceedings u/s.143(3) of the Act, then order passed u/s.143(1) of the Act, by rejecting deduction claimed u/s.80P of the Act, in assessment proceedings u/s.143(1) of the Act, cannot survive. Because, the moment proceedings u/s.143(3) of the Act, is initiated, the proceedings u/s.143(1) of the Act, merged with proceedings u/s.143(3) of the Act. Since, the AO has allowed the claim of the assessee u/s.80P of the Act, in proceedings u/s.143(3) of the Act, the additions made by the AO in assessment proceedings u/s.143(1) of the Act, by rejecting deduction u/s.80P of the Act, is no longer survives and thus, we direct the

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AO to delete addition made towards deduction claimed u/s.80P of the Act, and consequent demand raised in the intimation issued u/s.143(1)(a) of the Act.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 08<sup>th</sup> day of March, 2023, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 08<sup>th</sup> March, 2023.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

**Sd/-**

(मंजूनाथा.जी)

**(MANJUNATHA.G)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF