

आयकर अपीलीय अधिकरण, 'बी' (एस एम सी) न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: 59/CHNY/2022

निर्धारण वर्ष/Assessment Year: 2018-19

**M/s. TYSPL84 Kottiyal
Primary Agricultural
Co-operative Society Limited,**
819, Main Road, Kottiyal Village,
Udayarpalayam Taluk,
Ariyalur District – 612 904.

The Income Tax Officer,
Vs. Ward-2,
Perambalur.

PAN: AACAT 6059K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri R. Vijayaraghavan, Advocate
& Shri Saroj Kumar Parida, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri S. Chandrasekaran, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.03.2023

घोषणा की तारीख/Date of Pronouncement

: 09.03.2023

आदेश /ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Appeal No.CIT(A), Tiruchirappalli-1/10930/2019-20 dated 08.12.2021. The return of income was processed and intimation u/s.143(1) of the Income Tax Act, 1961 (hereinafter the 'Act') was issued by the DCIT, CPC, Bengaluru for the assessment year 2018-19 vide order dated 31.05.2019.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the claim of deduction claimed by assessee u/s.80P of the Act and disallowance made for not filing of return of income before the due date as prescribed u/s.139(1) of the Act.

3. At the outset, the Id.counsel for the assessee drew our attention to the provisions of section 143(1) of the Act and stated that the provisions of section 143(1)(a)(v) was amended by the Finance Act, 2021 w.e.f. 01.04.2021 wherein the provisions of Chapter VI-A under the heading "C - Deductions in respect of certain incomes" was brought in and unamended provision only refer to provisions of section 10AA, 80IA, 80IAB, 80IB, 80IC, 80ID or section 80IE of the Act. The Id.counsel for the assessee stated that this provision of section 80P of the Act, which is in dispute in present case was brought in ambit of disallowance u/s.143(1) of the Act w.e.f. 01.04.2021. Hence, no disallowance can be made. The Id.counsel for the assessee also relied on the decision of Rajkot Bench of this Tribunal in ITA No.38/RJT/2022, order dated 31.10.2022.

4. Apart from this, the Id.counsel for the assessee stated that the assessee has filed petition before CBDT for condonation of delay in

filing of return of income along with 44AB audit report and copy of which is enclosed in assessee's paper-book at page 2. The Id.counsel drew our attention to the petition dated 12.09.2022 filed on 15.09.2022 with CBDT. According to him, this petition request for condonation of delay in filing the return of income for assessment year 2018-19 along with 44AB audit report relaxing the requirement contained in Chapter VIA u/s.80AC(ii) as per provisions of section 119(2)(b) / 119(2)(c) of the Act.

5. On the other hand, the Id. Senior DR relied on the jurisdictional High Court decision in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd., in W.P.No.7038 of 2020, order dated 07.04.2021, wherein the Hon'ble High Court has considered the scope of provisions of section 143(1)(a) of the Act and finally held that the disallowance falls u/s.143(1)(a)(ii) of the Act. The relevant clause (ii) reads as under:-

“(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return”

The Hon'ble High Court has considered this issue in para's 7 to 9 as under:-

“7. The scope of an 'intimation' under Section 143 (1) (a) of the Act, extends to the making of adjustments based upon errors apparent from the return of income and patent from the record. Thus to say that the scope of 'incorrect claim' should be circumscribed and restricted by the Explanation which employs the

term 'entry' would, in my view, not be correct and the provision must be given full and unfettered play. The explanation cannot curtail or restrict the main thrust or scope of the provision and due weightage as well as meaning has to be attributed to the purposes of Section 143(1)(a) of the Act.

8. The provisions of Section 80AC(ii) make it clear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if the return of income in that case were filed within the prescribed due date. Thus no claim under any of the provisions of Part C of Chapter VIA would be admissible in the case of a belated return. There is no dispute on this position. The date of filing of a return of income would be apparent on the face of return and upon a perusal thereof, it would be clear as to whether the return is a valid return, having been filed within the statutory time limit, or a belated one. This is mechanical exercise and one that can be carried out by the CPC, very much within the scope of Section 143 (1) (a) (ii) of the Act.

9. The conduct of the petitioners is also relevant. Not only have the returns been filed belatedly but the petitioners have also chosen not to co-operate in the conduct of assessment. They are admittedly in receipt of the defect notices from the CPC, but have not bothered to respond to the same. The writ petitions have themselves been filed belatedly and after the elapse of more than six to eight months from the dates of impugned orders, in all cases. It is only when the Revenue has initiated proceedings for recovery by attachment of bank accounts have the petitioners approached this Court. This factor also strengthens my resolve that these are not matters warranting interference in terms of Article under Section 226 of the Constitution of India, quite apart from the decision that I have arrived at on the legal issue.”

6. After hearing rival contentions and going through the judgment of Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd., *supra*, I'm of the view that once the Hon'ble High Court has interpreted the provisions that delayed filing of return u/s.139(1) of the Act falls under clause (ii) of section 143(1)(a) of the Act, as the

same is held to be incorrect claim, I cannot accept the plea of the assessee. Hence, this plea is rejected.

7. Coming to alternative claim made by assessee that assessee's petition filed before CBDT is pending, I'm of the view that the matter can be remanded back to the file of the AO to await the decision of CBDT and decide the issue accordingly. The assessee as well as the Revenue, both are directed to take up this issue before CBDT to expedite the process for disposal of the petition filed by assessee u/s.119(2)(b) / 119(2)(c) of the Act dated 12.09.2022. In term of the above, the matter is set aside and remanded back to the file of the AO.

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

Order pronounced in the open court on 9th March, 2023 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 9th March, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.