

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 272/JPR/2022
निर्धारण वर्ष / Assessment Year : 2019-20

Shiksha Vibhag Karmchari Sahkari Samiti Limited. Infront of Ganesh Bag, Devpura, Bundi, Bundi-323001.	बनाम Vs.	Commissioner of Income Tax Appeals, Delhi
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADAS 4745 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Podar (Adv.)
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing 22/02/2023
उदघोषणा की तारीख / Date of Pronouncement :05/04/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC/CIT(A)"], dated 11.05.2022 for the assessment years 2019-20.

2. The assessee has raised the following grounds:-

“1. That the learned Commissioner of Income Tax (Appeale) has grossly erred in not allowing deduction u/s 80P of Rs. 94,77,887/- being due tax was deposited on 11.11.2019 but return was filed on 04.09.2022 due to unavoidable circumstances.

2. That the order of the learned AO and commissioner of Income Tax (Appeals) may kindly be set aside and returned income may kindly be accepted.”

3. The brief facts of the case are that assessee is a co-operative society working for the benefits of its members. The members of the society are only the education department employees. The assessee society filed its return of income for AY. 2019-20 on 04.09.2020 declaring total income of Rs. 1,74,060/- after claiming deduction u/s 80P of the Income Tax Act. The last date for filing of return was 31.08.2019. The return was filed u/s 139(4) of the IT Act. The CPC disallowed the claim of deduction u/s 80P of the Act for Rs. 94,77,887/- because the late filing of return vide order dated 21.12.2021. The assessee filed an appeal against the intimation of the CPC before the Id. CIT(A). The Id. CIT(A) confirmed the order of CPC vide order dated 11.05.2022. Therefore, the assessee has preferred this appeal before this tribunal.

4. The Id. CIT(A) after hearing the contention of the assessee given his relevant findings on the issue, which reads as under:-

“3.1 In the case of the appellant, it is seen that the appellant has filed the return of income for A.Y. 2019-20 on 04.09.2020, claiming deduction u/s 80P of the Act and the due date for the filing the same was 31.08.2019. Thus, there is a delay of 369 days in filing the return of income. The AO, CPC, Bengaluru while passing the intimation order disallowed the claim of the appellant u/s 80P of the Act amounting to Rs. 94,77,887/- and added back to the income of the appellant. Aggrieved by the order of the AO, CPC, the appellant preferred an appeal.

3.2 The appellant during the course of appellate proceedings has furnished the reasons for delay in submitting the return of income in its submission (supra). As per the provisions of income Tax Act, the appellant was required to file the return of income on or before the due date of filing i.e. 31.08.2019. However, the appellant has filed the return on 04.09.2020 and there is a delay of 369 days from the due date of filing the return. Since the appellant failed to file its return of income well within the stipulated time, the AO, CPC while passing the intimation order u/s 143(1) of the Act, proceeded to disallow the appellant's claim of deduction u/s 80P of the Act. I, therefore, agree with the action of the AO in disallowing the claim of deduction u/s 80P of the Act as the assessee has failed to file the return of income for A.Y. 2019-20 will in time. Hence, this ground of appeal is therefore dismissed.”

5. As the assessee did not find any favor from the order of the Id. CIT(A) they preferred the present appeal before the Tribunal. To support the grounds so taken by the assessee, the Id. AR for the assessee has submitted his written submission and the same is reads as under:-

“The appellant is a co-operative society working for the benefits of its members. The members are only the education department employees. It collects funds from members only and distribute to members only. During the year the appellant earned interest income

from its members and other sources. The society claims deduction u/s 80P for interest earned from its members.

The assessee society filed its return of income on 04.09.2020 declaring total income of Rs. 1,74,060/- after claiming deduction u/s 80P of the Income Tax Act, 1961. The last date for filing of return was 31.08.2019. The return was filed u/s 139(4) of the Income Tax Act 1961. The CPC disallowed the claim of deduction u/s 80P of the Income Tax Act for Rs. 94,77,887/- because of late filing of return vide order dated 21.12.2021. The assessee filed appeal against the order before CIT(A)-NFAC, Delhi. The Learned CIT(A) confirmed the order of CPC vide order dated 11.05.2022. Therefore, the assessee filed appeal before your honour. Now the individual grounds of appeal are as under: -

Ground No. 1 & 2-

1. That the learned CIT(A) has grossly erred in not allowing deduction u/s 80P OF Rs. 94,77,887/- being due tax was deposited on 11.11.2019 but return was filed on 04.09.2020 due to unavailable circumstances.

2. That the order of the learned AO and CIT(A) may kindly be set aside and returned income may kindly be accepted.

1. The appellant is a co-operative society working for the benefits of its members. It collects funds from members only and distribute to members only. The appellant earned interest income during the concerned year from its members and claim deduction under section 80P against this income. The certificate of registration and constitution/by-laws of the society states its objectives and procedure of working which enumerates that the activities of the society are such as required by the provision of section 80P.

2. The appellant gives credit facilities only to its members and no other person outside the society. Only the members of the society can avail loan from the appellant. The appellant generates income only from its members that is income generated in-house and no other outsider is involved in the earning activities. Therefore, income of the appellant is deductible u/s 80P. Only some of the interest income from Commercial Banks and some other receipts/income was received during the year which was offered for tax to the revenue and not taken as deduction u/s 80P of the Income Tax Act, 1961.

3. The appellant filed income tax return for the assessment year 2019-20 on 04.09.2020 i.e. after the due date. It is submitted that during the preparation of financial statements and income tax return, the accountant of the appellant was suffering from illness. He was not

able to serve the appellant in availability of papers and document relevant for preparation of income tax return. So that the return of income could not be submitted before the due date which was 31.08.2019.

4. After that the appellant endeavor to furnish the return as early as possible. On 11.11.2019, income tax challan was deposited and appellant tried to file the return of income on e-filing portal many times. But at that time, the e-filing portal consistently showing error and not allowed to file the return. And finally, the income tax return was filed successfully only on 04.09.2020. So, during the period most run between the October 2019 to September 2020. This fact is well known, therefore all the due dates for filing various forms and completion of other obligation works extended by the CBDT through various circulars and notification. In the return, the appellant declared and showed all the information regarding income, expenses, assets and liabilities. Copy of acknowledgment of income tax return and computation of total income is available on paper book page no. 1 to 4. There was nothing which was escaped by the appellant to the revenue. The circumstances were not favorable to the appellant in filing the return otherwise the appellant is prompt to file the income tax return within the due date as seen in earlier years. There is no means rea exist. Therefore, to avoid genuine hardship to the appellant, it is justifiable to condone delay in filing income tax return and allowed the deduction u/s 80P of the Income Tax Act 1961.

5. In first appeal the Learned CIT(A) has not allowed deduction claimed u/s.80P of the Act without appreciating the fact that in order to claim the deduction, the assessee should file its return of income making a claim within the time allowed u/s.139(1) or 139(4) of the Act. Unless the return is filed within the prescribed time then deduction claimed u/s.80P of the Act cannot be allowed because provisions of Section 80A(5) of the Act which stipulates that no deduction shall be allowed if the assessee fails to make a claim in the return of income filed. The argument is totally missed out from the subject matter of the appeal as this is not a claim which has not been made in the return filed by the assessee. It is a claim/deduction which has been made in the return filed u/s 139(4) of the Income Tax Act, 1961.

6. That the assessee is entitled for deduction u/s.80P(2) of the Act in respect of its income including interest income because the assessee is mainly engaged in providing credit facilities to its members and as per the provisions of Section 80P(2)(a)(i) of the Act, in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members the profit derived from such activity is eligible for deduction. It is also submitted that as

per Section 80P(2)(d) of the Act, a cooperative society can claim deduction towards income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society. In this case, the assessee has utilized the surplus funds for giving loans to its members only and remaining funds were lying in the bank only. The same is part of its business activity and hence total income including interest earned from deposits is eligible for deduction. The CIT(A) has not considered the submission in the right perspective and rejected the claim of the assessee.

7. The CPC has disallowed deduction claimed u/s 80P of the Act primarily because of late filing of return u/s 139(4) of the Income Tax Act. The objection of the CPC is with regard to claim of deduction in the light of provisions of Section 80A(5) of the Act which restricts the deduction unless such deduction is claimed in the return of income. If we go through the provisions of Section 80P read with Section 80A(5) of the Act then it is found that nowhere in Section 80P or in Section 80A(5) of the Act it is mentioned that the assessee is required to file its return of income within the prescribed time provided u/s.139(1) or 139(4) of the Act. But, what is required to be seen is whether the assessee has made a claim in the return of income filed for the relevant year or not, even though such return is not filed within due date. In this case, the assessee although not filed its return of income for the impugned assessment year u/s.139(1) of the Act but such return of income was filed u/s 139(4) of the Income tax Act 1961. Therefore, it cannot be said that the assessee is not entitled for deduction u/s.80P unless such deduction is claimed by filing return of income within the prescribed time allowed u/s.139(1) or 139(4) of the Act. This view is fortified by the decision of the Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Ltd., vs. CIT (2016) 384 ITR 490 (Ker), where the Hon'ble Kerala High Court held that "a return filed by the assessee beyond the period stipulated u/s.139(1) or 139(4) or 142(1) or 148 of the Act can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est in law and invalid for the purpose of deciding exemption under Section 80P of the Act."

8. The assessee has claimed deduction u/s 80P because it was a co-operative credit society and its only business was to grant medium term, short term and long term loans to its members. It was observed that it can claim deduction u/s 80P and it was allowed in earlier years and subsequent years also.

9. In the present case the due date of filing of the return was 31.08.2019. The assessee has filed its return after the due date on 11.11.2019.

10. The assessee aggrieved with the disallowance of its deduction claimed u/s 80P by the intimation u/s 143(1) of the Act by CPC, Bangalore carried by the issued before the First Appellate Authority assailing the disallowance. The assessee's appeal did not succeed. The addition made by way of a disallowance was sustained.

Our submission is that the disallowance has been made merely because the return was filed beyond the due date. That prior to this year, there was no such requirement. Only on account of Amendment carried out in Section 80AC by Finance Act 2018, the requirement according to the Revenue was there. That as a result of this amendment from 2018-19 assessment year, the deduction falling in the heading "C" of chapter VI A of the Income Tax Act, 1961 can be said to be brought in the ambit of this section. However, at the relevant point of time, no such powers were vested with the CPC Bangalore. The enabling provision to do so u/s 143(1) was available on the Statue only by the Finance Act, 2021. That in the Assessment Year 2019-20 as per law, the claim u/s 143(1) (a) could be disallowed by CPC Bangalore only on the grounds of arithmetical error or that the assessee had made an incorrect claim etc. but not on the grounds that the return was filed beyond the due date. It is also submitted that the assessee Society is eligible for deduction u/s 80P and all information related to this deduction was correctly provided. The attention is invited to Section 143(1) (a) sub clause (v) as it then stood at the relevant point of time, it is submitted that there was no mention of Section 80P therein.

It is also re-iterated that only by the Finance Act, 2021 wherein sub-clause (v) of Section 143(1) (a) was amended that the CPC, Bangalore could be said to be vested with the jurisdiction to make a disallowance on the grounds of return filed beyond the due date exercising the powers u/s 143(1)(a).

Reliance for the proposition of law is placed in near similar facts and legal position though in the context of different provisions was placed upon the decision of the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi & Ors. Vs UOI & ors (2016) 289 CTR 0602 (Kar). Apart from that orders of the different Benches of the ITAT were also relied upon pleading that the enabling provisions having been introduced by the Finance Act, 2021 effective from 01.04.2021 by way of amendment of sub-clause (v) of Section 143(1). Accordingly, prior to the assessment year 2020-2021 disallowance of deduction claimed u/s

80P on the grounds of late filing of return by an order u/s 143(1) was not in accordance with law.

Reliance was also placed upon various decisions that absence of enabling provision the order is sans powers. Decisions of the ITAT, Chandigarh in M/s Sonalac Paints & Coating Ltd. Vs DCIT in ITA 1158 / CHD / 2017 dated 01.05.2018; HIMUDA Nigam Vihar, Shimla V ACIT in ITA Nos.480,481 & 972 / CHD / 2012 dated 08.11.2019 of ITAT, Lucknow Bench in Dy. CIT, Central Circle-1, Kanpur Vs M/s Rama Medicare Ltd. In ITA No. 183 / LKW / 2019.

In all fairness invited attention to the decision of the Hon'ble Madras High Court in WP No. 7038 of 2020 dated 07.04.2021 in the case of Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs DCIT. But the said decision is distinguishable as the decision is very fact specific. The position of law as argued by the assessee before the First Appellate Authority extracted in the order and before the ITAT has not been argued, hence the non-availability of the enabling provision in the Statute at the relevant point of time has not been considered by the Court.

It is further submitted that firstly, it was an ex-parte order where the assessee was not present nor heard. It was further argued that the decision rendered was in the context of the prayer in the Writ Petition on facts as available. Attention was also invited to the fact that the petitioners therein were repeatedly found to be non-cooperative with the Revenue right from the assessment proceedings stage. For the said purposes, para 9 of the said order was referred to. It was his submission that therein the Court went on to categorically observe that the assessee petitioners did not cooperate and it was noticed that the writ petitions were filed belatedly i.e. after more than 6 to 8 months and only when the Revenue had initiated proceedings for recovering by attaching the bank accounts etc. that the petitioners were found to have approached the Court invoking the writ jurisdiction.

In the facts of the present case, it was his submission that the none of the assessee have been found to be non-cooperative. They have cooperated in the proceedings all along. It is only a case wherein the return was filed late. The assessee has all along been live and alert in approaching the First Appellate Authority well within time and again the appeal before the ITAT also has been filed well within time. There is no delay.

It is a matter of fact that sub-clause (v) of Section 143(1)(a) was amended by the Finance Act, 2021 wherein instead of reference to Sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or Section 80-IE, the provision instead makes a mention of Section 10AA or under any of the

provisions of Chapter VI-A under the head "C-Deductions in respect of certain incomes". Accordingly, the enabling provisions to address the amendment in Section 80-AC by Finance Act, 2018 came into play only in 2020-21 assessment year. Thus, no doubt Section 80AC as amended by the Finance Act, 2018 mandated that even for claiming deduction claimed u/s 80P, the return of income was to be filed before the due date as specified under sub-section (1) of Section 139. However, for the Assessing Officer to insist upon the compliance by was of making a disallowance, the power was vested in the said Authority only vide Finance Act, 2021. Hence, in the absence of the enabling provisions, the CPC Bangalore lacked the jurisdiction to make this disallowance in the order u/s 143(1). Accordingly, on facts, the appeal of the assessee should be allowed.

In the facts of the present case, admittedly the provision enabling the AO to pass an order relying upon sub-clause (5) of Section 143(1)(a) was not on the Statute for 2018-19 and 2019-20 assessment year.

It is also worthwhile to mention that no show cause notice or any other communication was made by the CPC before disallowing the legitimate claim made by the assessee. Therefore, otherwise on the principle of natural justice alone the CPC processed order u/s 143(1) deserves to be quashed.

The latest decision by Hon'ble Chandigarh Bench in the case of Lanjani Cooperative Agri Service Society Limited Vs. DCIT, CPC, Bangalore ITA No. 332/Chd/2021 dated 08.06.2022 where the claim of the assessee is allowed on the same ground under the same facts and circumstances. Copy of order is enclosed herewith.

Your Honor is requested to decide the appeal in favour of the assessee by considering the above submission and oblige."

6. The bench noted that the contention of the assessee is taking is self-serving statement and therefore, bench directed the Id. AR of the assessee to declare the reasons as to why the return of income has not been filed in time. In support of the same the Id. AR of the assessee submitted an affidavit and the content of the said affidavit reads as under:-

"I Santosh Kumar Patni S/o Shri Shikhar chand Jain aged about 59 years secretary of M/s Shiksha Vibhag Karmchari Sahkari Samiti Limited R/o Bundi do hereby solemnly affirm and declare on oath as under:-

1. That I am the secretary of M/s Shiksha Vibhag Karmchari Sahkari Samiti society having registered office at Bag Devpura, Bundi, Rajasthan.
2. That we have filed the income tax return of M/s Shiksha Vibhag Karmchari Sahkari Samiti having PAN-AADAS4745E FOR ASSESSMENT YEAR 2019-20 on 04.09.2020 by claiming deduction u/s 80P of the Income Tax Act, 1961 for Rs. 94,77,887/-.
3. That we could not file the income tax return for AY 2019-20 due to technical glitches on ITBA Portal and illness of the accountant.
4. That we have deposited the due tax challan on 11.11.2019 and tried to file the return of income on e-filing portal many times but due to technical glitches or errors on income tax portal we could not file the income tax return up to 03.09.2020. And finally, the income tax return was filed successfully on 04.09.2020."
7. The Id. AR of the assessee also submitted that the society has not received any notice / show cause notice prior to the processing of return u/s. 143(1)(a) of the Income Tax Act, 1961 and the CPC was not authorized to make the adjustment so made. The enabling provisions were came into the statue w.e.f. 01.04.2021. The Id. AR of the assessee also submitted that CBDT has issued various circulars and notification for extending the date of filling the return of income for assessment year 2019-20. The latest circular on which Id. AR of the assessee heavily relied upon is reproduced here in below:-

“Order under Section 119(2)(a) of the Income-tax Act, 1961

That date for furnishing of income-tax returns under section 139 of the Income-tax Act, 1961 (Act) for the Assessment year 2019-20 was 31st March, 2020. However, on consideration of difficulties being faced by the taxpayers due to COVID-19 Pandemic, the said date was initially extended to 30th June, 2020 and subsequently to 31st July, 2020 and 30th September, 2020 vide the Taxation and other laws (relaxations of certain provisions), Ordinance dated 31.03.2020 respectively.

2. In this context, on further consideration of genuine difficulties being faced by the taxpayers due to the outbreak of COVID-19 Pandemic, the Central Board of Direct Taxes (CBDT), in exercise of powers conferred under section 119(2)(a) of the Act, hereby, further extends the date for furnishing of belated and revised returns for the Assessment year 2019-20 under sub-section (4) and (5) of section 139 of the Act respectively, from 30th September, 2020 to 30th November, 2020.”

8. The Id. AR of the assessee also relied upon the following judgement to drive home to the contentions raised by the assessee in the written submission so filed:

- The Lanjani Co-operative Agri Service Society Ltd. & Ors vs. DCIT in ITA No. 332 & 333/CHD/2021 & Ors dated 30.08.2022.
- ACIT Vs. M/s. DAEF Co op T & C Society in ITA No. 3047/CHNY/2019.

9. Per contra, the Id. Sr. DR relied on the order of the lower authorities. The Id. DR stated that the assessee has not filed the return of income which the assessee is required to file within the time allowed u/s. 139(1) of the Act but ultimately filed on 04.09.2020 and that too u/s. 139(4). As regards the non-issue of notice u/s. 143(1) of the Act Id. DR submitted that since the

assessee has not followed the provision of law there is no specific provision to give the show cause notice. The Id. AR of the assessee has paid the challan of tax on 11.11.2019 and ultimately filed the return of income on 04.09.2020. The extension granted by the CBDT is not for the due date of filling ITR which was 31st August. The assessee has not submitted any evidence to support the fact that the site was having the problems. The case law heavily relied upon is of the SMC bench decision and the relevant assessment year in that case is of AY 2018-19 and 2019-20 as in the case of the assessee so the decision relied upon is distinguishable. Considering the specific provision of law u/s. 80AC of the Act. The Id. DR also relied on the decision in the case of Suolificio Linea Italia (India) (P.) Ltd. 93 taxmann.com 462 (Calcutta H.C.) (2018).

10. We have heard the rival contentions and gone through the various contentions raised by both the parties and also gone through the decisions relied upon to drive home to the contentions so raised. We have also gone through the various extensions granted by the CBDT. The bench noted that the provision to make the adjustment u/s. 143(1)(a)(v) giving power of making the

adjustment in this regard came in to the statue w.e.f. 01.04.2021 so legally the CPC has no power to make such adjustment for A. Y. 2019-20. Similar view is taken by the Bombay Bench of this tribunal in the case of New Ideal Cooperative Housing Society Ltd. vs. ITO in ITA No. 2681/Mum/2019 dated 03.02.2021 wherein it was held that adjustments made to the returned income by denial of deduction u/s. 80P(2)(d) and 80P(2)(c)(ii) did not fall in any other adjustments prescribed in Section 143(1) of the Act and that a Co-operative society will not get exemption was not something which was a subject matter of adjustment u/s. 143(1)(a) of the Act and the appeal of the assessee was liable to be allowed.

11. We note that the instant case, there was a delay in filing the return of income by the assessee 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 in the intimation u/s. 143(1) of the Act 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, considering the discussion and

judicial precedents highlighted above we have no hesitation in holding that the assessee cannot be denied the deduction u/s. 80P of the Act on the ground that the assessee did not file the Return of Income within the due date prescribed u/s. 139(1) of the Act while processing of return u/s. 143(1) of the Act

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

Order pronounced in the open Court on 05/04/2023.

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 05/04/2023.

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shiksha Vibhag Karmchari Sahkari Samiti Limited., Bundi.
2. प्रत्यर्थी / The Respondent- Commissioner of Income Tax Appeals, Delhi.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 272/JP/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar