

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 683/Kol/2022
Assessment Year : 2018-19

M/s. Dignagar Samabai Krishi Unnayan Samiti Ltd.	Vs .	ITO, Ward-41(1), Kolkata
PAN: AABAD 1763 F		
Appellant		Respondent

Date of Hearing	12.04.2023
Date of Pronouncement	13.04.2023
For the Assessee	Shri Sunil Surana, AR
For the Revenue	Shri Vijay Kumar, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2018-19 is directed against the order dated 26.09.2022 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)'].

2. Brief facts of the case are that the assessee received an intimation from CPC, Bangalore u/s 143(1) of the Act making an adjustment in returned income by which CPC did not granting deduction of Rs. 7,29,310/- claimed by the assessee in the return of income u/s 80P of the I.T. Act. Since the return of income was filed by the assessee beyond due date prescribed u/s 139(1) of the Act.

3. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) and the ld. CIT(A) dismissed the appeal of the assessee.

4. Aggrieved by the above order, assessee is in appeal before the Tribunal.

5. At the time of hearing of the above appeal, Ld. Counsel for the assessee submitted before us that this issue is squarely covered by the Co-ordinate Benches judgments in the case of Lunidhar Seva Sahakari Mandali Ltd. vs. Assessing Officer (CPC) in ITA No. 202/Rjt/2022 dated 22.02.2023 and ITA No. 186/Rjt/2022 dated 10.02.2023 in other group of cases. Thus pleaded that the assessment year involved herein being A.Y. 2018-19, the disallowance u/s. 143(1)(a)(v) cannot be done. Therefore pleaded to quash the Intimation passed by the CPC, Centre. 5. Per contra, the Ld. D.R. appearing for the Revenue relied upon the order passed by the Lower Authorities and requested to dismiss the assessee appeal.

6. We have given our thoughtful consideration and perused the materials available on record. It is apparent from the Ld. NFAC order when the assessee has clearly pointed out the amendment in Section 143(1) made by Finance Act, 2021 which is not applicable for the present assessment year 2018-19. However the

same was not been considered by the Ld. NFAC and erroneously dismissed the assessee's appeal.

6.1. The Co-ordinate Bench of this Tribunal in Lunidhar Seva Sahakari Mandali Ltd. (cited supra) considered the above amendment and held as follows:

"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 Rs. 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.”

6.2. Respectfully following the above Co-ordinate Bench decisions, 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 under proceedings made u/s. 143(1)(a)(v) of the Act for the Assessment Year 2018-19. Thus the intimation u/s 143(1) dated 04.07.2019 is invalid in law and thereby quashed.

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

Order pronounced in the open court on 13.04.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 13.04.2023

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Dignagar Samabai Krishi Unnayan Samiti Ltd., Dignagar, P.S. Kotwali, Nadia-741401.
2. Respondent – ITO, Ward-41(1), Nadia.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata