

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. 315/Rjt/2022
Assessment Year 2019-20**

Godhavadar Seva Sahakari Mandali Ltd. Amreli PAN: AADAG1703G (Appellant)	Vs	The ADIT(CPC), Bangalore (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 : 19-04-2023
Date of pronouncement : 25-04-2023

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 09-11-2022, in proceedings under section 250 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 Bangalore by disallowing claim of deduction of Rs. 6,53,498/- by failing to appreciate that provisions of Sec. 143(1)(a)(v) do not provide for denial of deduction u/s 80P 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>	2,01,930/-
2.	<i>The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in upholding action of the CPC Bangalore 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. 80P of the Act of Rs. 6,53,498/- to the Appellant by failing to appreciate that this was not a prima facie adjustment permissible u/s 143(1)(a) of the Act.</i>	2,01,930/-
3.	<i>The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, erred in holding that in view of Sec. 80AC, benefit of deduction u/s 80P has been denied by CPC, by failing to appreciate that this was not a prima facie adjustment permissible u/s 143(1)(a) of the Act during the year under appeal.</i>	-
4.	<i>The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, erred in not adjudicating ground of disallowance of claim of deduction of Rs.6,53,498/- u/s 80P of the Act on</i>	2,01,930/-

	<i>merits.</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>		<i>2,01,930/-</i>

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 ₹ 6,53,498/- 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 ₹ 6,53,498/- 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:

“6. Decision:

The appellant in its ground of appeal has assailed AO-CPC in denying the exemption u/s 80P of the Act. The appellant alleged that the order u/s. 143(1) of the Act passed by the AO-CPC is bad in law as provisions of Sections of Sec. (1)(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 limit as provided u/s 139(1) of the Act but u/s 139(4).

6.1 The submission of the appellant is examined. The appellant in its submission has stated that it got a communication u/s 143(1)(a) of the Act from CPC dated 14/12/2020 for proposed adjustment u/s

143(1)(a) in returned income of the deduction claimed of Rs. 653498/- u/s 80P of the Act. It is essential to note that section 143(1)(a) of the Act specifically provides that no adjustments can be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. The AO-CPC in its intimation at page 6 has provided the reasons for adjustments u/s 143(1)(a)(ii) of the Act being the return of income not filed within the due date as provided. Therefore, as can be seen the proposed adjustment provided the assessee an opportunity and therefore, the intimation u/s 143(1)(a) of the Act as passed by the CPC is good in law. And the adjustment made u/s 143(1)(a) of the Act is valid adjustment as far as the legality of it is concerned. Therefore, the action of the AO CPC is correct and is upheld. The ground of appeal is dismissed.

6.2 As far as the assessee second claim that no adjustments can be made u/s 143(1)(a) of the Act as sub-clause (v) of the said section states that:

(v) disallowance of deduction claimed under sections 10AA, 80-1 A, 80-1AB, 80-1B, 80-1C, 80-1D or section 80-E, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

The appellant state that the above specifically mentions certain sections wherein the disallowance can be made u/s 143(1)(a) of the Act are provided within it and as such the deduction u/s SOP of the Act is not mentioned is not mentioned in the sub-clause, therefore, the denial of deduction by the AO-CPC for the impugned A.Y. 209-20 is not warranted and is not legally tenable. The appellant further relied on the case of Lanjani Co-operative Agri Society Ltd. Vs. DCIT (2022/219TTJ0750) of IT AT Chandigarh.

6.3 The factual matrix of the case is that the return of income u/s 139 of the Act was filed by the assessee on 30.11.2020, whereas the extended date for filing the return was 31.-8.2019. Therefore, the return was not filed within the due date as provided u/s 139(1) of the Act. Further section 80AC introduced in the Act vide Finance Act 2018 provides that no deduction shall be allowed if the return is not

filed within the due date as specified u/s 139(1) of the Act. Section 80AC is reproduced below:

"Deduct/on not to be allowed unless return furnished.

80AC. Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after—

(i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 30-ID or section 80-IE;

(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes", no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139"

The submission of the appellant is examined in the light of the provisions of above section which clearly in clause (ii) mentions "C-Deduction in respect of certain incomes", which clearly covers deduction u/s SOP of the Act. Therefore, the AO-CPC was correct in denying the exemption u/s SOP of the Act to the assessee as it has not filed the return within the due date as specified u/s. 139(1) of the Act. The ground of 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 ₹ 6,53,498/- 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.

6.1 In response, Ld. Departmental Representative submitted that the case of the assessee is covered under the provisions of section 143(1)(ii) of the Act, since this clause refers to the incorrect claim which is apparent from the information in the return of income. The DR pointed out that at the time of e-filing of return of income, the assessee was fully aware of the fact that the claim was incorrect, since as per the provisions of section 80AC(ii) of the Act, no deduction shall be allowed unless the assessee furnishes the return of income for such assessment year on or before the due date specified in sub-section (1) of section 139. Further, the Ld. Departmental Representative

relied upon the Supreme Court decision the case of Prakash Nath Khanna v. CIT 135 Taxman 327, wherein the Honourable Supreme Court held at the time within which the return is to be furnished is indicated only in sub-section (1) of section 139 and not in sub-section (4) of section 139 and therefore the return filed under section 139(4) would not dilute the fact that the return was filed after the due date. Further, the Ld. Departmental Representative also placed reliance of the case of PCIT v. Wipro 140 Taxman.com 223, wherein the Honourable Supreme Court held that for claiming benefit under section 10B, it was mandatory for the assessee to file a declaration as per the provisions of section 139(1), which is of mandatory nature and directory as well. Further, Ld. Departmental Representative relied on the case of Saffire Garments 28 taxmann.com 27 (Rajkot) (SB), wherein the Rajkot ITAT Special Bench held that proviso to sub-section (1A) of section 10A, which provides that no deduction under section 10A shall be allowed to an assessee who does not furnish its return on or before due date specified under section 139(1) is a mandatory provision. Accordingly, the Ld. Departmental Representative submitted that, evidently, the assessee had filed return of income beyond the due date prescribed under section 139(1) of the Act. Therefore, in light of the above decisions, the deduction claimed under section 80P was required to be disallowed in view of the express language of section 143(1)(ii), which provides for disallowance of incorrect claim which is apparent from the information given in the return of income.

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 ₹ 6,53,498/- 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 to 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). We are therefore of the considered view that the case of the assessee specifically covered by the provisions of section 143(1)(a)(v) of the Act, with specifically deals with the issue of disallowance of claim of the assessee in case the return of income has been filed by the assessee beyond the prescribed date. It is well settled principle of law that general provisions of the Act cannot operate within the purview of specific provisions, which have been introduced in the Statute to deal with specific situations/circumstances. Therefore, we are unable to agree to the proposition that till such time section 143(1)(a)(v) of the Act was not introduced in the Income Tax Act, the claim of deduction under section 80P could be disallowed in section 143(1)(a)(ii) of the Act, especially in the fact that the scope of sub- clause (ii) has been specifically defined in section 143(1). As observed earlier, in our view, the scope of sub- clause (ii) of section 143(1)(a) does not cover delay in filing of return of income beyond the due prescribed date, which has been only introduced as part of sub-

clause (v) of section 143(1)(a) of the Act w.e.f. 01-04-2021. Further, in our considered view, the case of assessee is also not covered by the decision of *Saffire Garments*²⁸ *taxmann.com 27 (Rajkot) (SB) supra*, where the issue for consideration before the ITAT was on a different set of facts and the issue whether denial of deduction under Chapter- VI could be made within the scope of prima facie adjustments under section 143(1) was not considered upon by the ITAT Special Bench.

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 146 taxmann.com 468**

(Chandigarh - Trib.), the ITAT held that 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. Again, in the case of **Lunidhar Seva Sahkari Mandali Ltd. v. Assessing Officer (CPC) 49 taxmann.com 28 (Rajkot - Trib.)**, the assessee, a co-operative society claimed deduction under section 80P. The Assessing Officer denied said deduction holding that return of income was not filed within due date prescribed under section 139(1) of the Act. However, assessee had filed its return of income belatedly on 30-11-2020. It was noted that denial of claim under section 80P would not come within purview of prima facie adjustment under section 143(1)(a)(v) for reason that said section was not in force during period under consideration i.e. assessment year 2019-20. Further case of assessee would also not fall within purview of prima facie adjustment under section 143(1)(a)(ii). Therefore, since return of income was filed within due date permissible under section 139(4), in which claim for deduction under section 80P was made, therefore, deduction under section 80P could not be denied to assessee only on basis that assessee did not file its return of income within due date prescribed under section 139(1) of the Act.

7.4 We note that the instant case, there was a few-month 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 25-04-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 25/04/2023

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