

आयकरअपीलीयअधिकरण, इन्दौरन्यायपीठ, इन्दौर

IN THE INCOME TAX APPELLATE TRIBUNAL

INDORE SMC BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.208/Ind/2021

(Assessment Year:2018-19)

Avantika Bunkar Sahakari Samiti Maryadit Malan Kho Road Chanderi Ashoknagar	Vs.	DCIT CPC
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAFAA9914 R		
Assessee by	Shri Anil Kamal Garg, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.03.2023	
Date of Pronouncement	12.05.2023	

O R D E R


This appeal by the assessee is directed against the order dated 03.09.2021 of Commissioner of Income Tax(Appeal), National Faceless appeal Centre, Delhi for Assessment Year 2018-19. The assessee has raised following grounds of appeal:

GROUNDS OF APPEAL

(1) That the learned assessing officer has erred in determined total income an amount of Rs 8, 50,630/- against shown by Rs 0/- without specific reason which is illegal unjustified and bad in law.

(2) The learned assessing officer has erred disallowing claimed deduction under section 80P an amount of Rs 8,50,630/- on the basis of the return is not filed within due date without considering the fact and circumstance of case that the return filed with late filing fee is under section 234F of the I T Act with direction of Income Tax Officer letter dt 24/07/2018 for filing of income tax return with late filing fee u/s 234F but in this letter no any reference given regarding deduction under chapter VI-A is not allow if return is not filed in due date for verification the copy of this Letter pest as under

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कार्यालय आयकर अधिकारी, अशोकनगर
आयकर भवन, गुवा बायपास रोड, अशोकनगर (म.प्र.)
फोन / फैक्स 07543-220555

का.क्र. जा.अ. / अशोकनगर / विवरणी / 2018-19 / 654

प्रति,
सविनय प्रबन्धक,
अवतिका बुनकर सहकारी संस्था मनादित,
चन्द्रसे, जिला - अशोकनगर (म.प्र.)

महोदय,

विषय- कर निर्धारण वर्ष 2018-19 के विधे आय की विवरणी दायित्व किए जा

उपरोक्त विषयान्तर्गत लेख है कि कित्त अधिनियम 2017 के तहत कित्त वर्ष 2017-18 से संबंधित कर निर्धारण वर्ष 2018-19 एवं बाद के वर्षों के रि करने में देरी के लिए धारा 234F के तहत शुल्क लगाया जाएगा, यदि आय की विवरणी के प्रावधानानुसार नियत तिथि अथवा उससे पूर्व दायित्व नहीं की गई है। धारा 234F के तहत शुल्क लगाया जाएगा-

(i) यदि विवरणी देय तिथि के पश्चात परंतु कर निर्धारण वर्ष के 31 दिसंबर की तिथि तक तो रु. 5,000/- का शुल्क देय होगा।

(ii) अन्य किसी दशा में रु. 10,000/- का शुल्क देय होगा।

परंतु यदि कुल आय रु. 5,00,000/- से अधिक नहीं है तो यह प्रावधान कित्त की राशि रु. 1,000/- से अधिक नहीं होगी।

इस प्रकार से उक्त नवीन संशोधन के अनुसार धारा 139 के प्रावधानानुसार विवरणी दायित्व आने के उपरान्त भी नियत तिथि अथवा उससे पूर्व विवरणी दायित्व न किया धारा 234F के तहत उपरोक्तानुसार शुल्क लगाया जाएगा। इसके साथ ही आयकर धारा 148 व 271(1)(c) के प्रावधानों के अनुसार पुनर्निर्धारण व सारिस आरोपण की सकती है।

, where the return is filed with late filing fee it is deemed to be considered under section 139(1) of IT Act and where the provision of late filing fee taken in Act their all the privilege granted to assesses in this condition claimed deduction under section 80P is allowable which is bad in law, unjustified and excessive.

(3) The section 234F was insert on 01/4/2018 as under Fee for default in furnishing return of income under section 139 (1) of IT Act .

234F. ⁶[(1) Without prejudice to the provisions of this Act, where a person required to furnish a return of income under section 139, fails to do so within the time prescribed in sub-section (1) of the said section, he shall pay, by way of a fee, a sum of five thousand rupees :

Provided that if the total income of the person does not exceed five lakh rupees, the fee payable under this section shall not exceed one thousand rupees.]

(2) The provisions of this section shall apply in respect of return of income required to be furnished for the assessment year commencing on or after the 1st day of April, 2018.

Therefore, it is clear from the above amendment that the return of income is not furnish u/s section 139(1) of the Income Tax Act which comes in default in furnishing return of income and this mistake should be correct with fee deposited in furnishing return of income therefore this return should be accepted under section 139(1) of the Income Tax Act.

(4) The section 80AC (ii) was insert on 01/4/2018 as under for **Deduction 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 80-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.

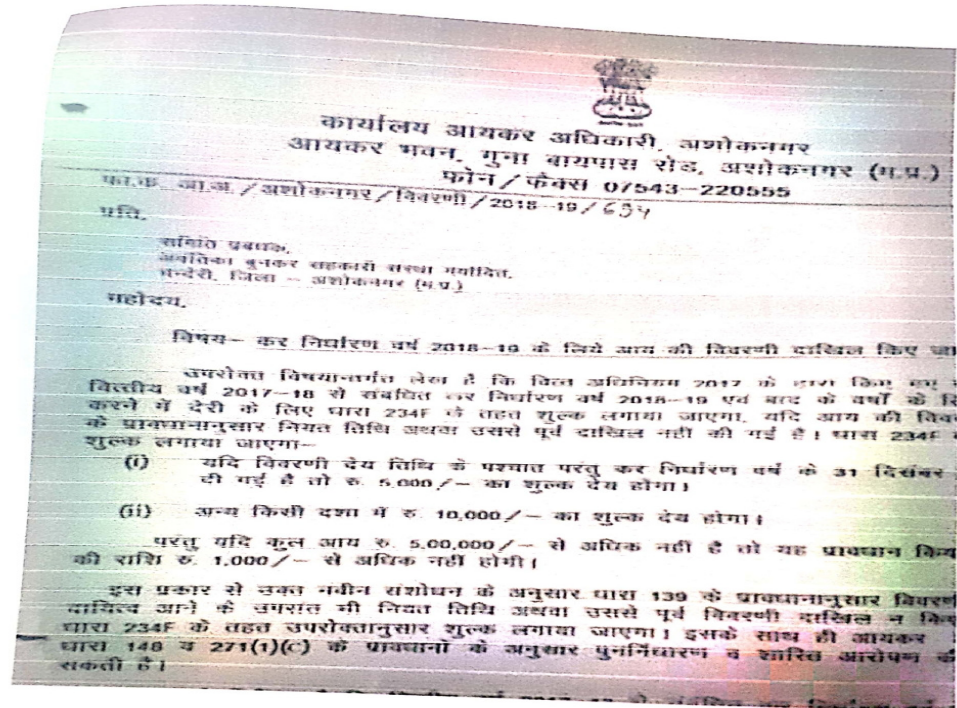
(5) The assesses is eligible deduction under section 80P (2) (a) (ii) of Income Tax Act 1961 because the assesses is Co-operative Society of weavers which is registered in the Office of Deputy Registrar Co-operative Society, Guna on 30/9/2003 vide registration no /DR/GNA /991 with bylaws which is enclosed herewith (Page No -6 to 23). The 56 weavers are member of Co-operative Society for reference list of members is enclosed (Page No -24 to 25) and all members are manufacture handmade Chanderi Saree on handloom therefore this manufacture is a cottage industry. The CBDT

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has issued circular No 722 dated 19/09/1995 for clarification of Co-operative Society of weavers is covered under cottage industries for deduction u/s 80P (2) (a) (ii) which is enclosed herewith (Page No -26 to 26). The Co-operative Society of weavers earned income from business of manufacture of handloom Chanderi Saree by members of society and maintained books of account which is audited by Government Department of Assistant Commissioner of auditor Co-operative Society.

(6) The Learned Income Tax Officer has issued letter on 24/7/2018 for filing of income tax return for assessment year 2018-19 with late filing fee u/s 234F But in this letter no any reference given regarding deduction under chapter VI-A is not allow if return is not filed in due date the copy of this Letter pest as under

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The above letter is not clear to deduction therefore benefit for doubt to given assesses and allow the deduction under section 80P (2) (a) (ii) of Income Tax Act 1961

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(7)
at time of hearing

That the other grounds of appeal to be raised

2. The assessee is a Co-operative Society of weavers registered under the Co-operative Society Act with Deputy Registrar Co-operative Society, Guna vide registration dated 30.09.2003. There are 56 members of the assessee Cooperative Society who are manufactures of handmade Chanderi Saree on handloom which falls in the cottage industry. The assessee filed its return of income on 21.12.2018 in response to the notice issued by the ITO dated 24.07.2018 for filing the return of income with late fee u/s 234F. The assessee declared nil income in the return of income after claiming deduction u/s 80P for a sum of Rs.8,46,630/-. The return of income was processed u/s 143(1) by the CPC whereby an adjustment was made on account of disallowance of the claim of deduction u/s 80P due to late filing of the return. The assessee challenged the action of the AO before the Ld. CIT(A) and submitted that the delay in filing the return of income is due to delay in audit of the accounts of the assessee by the office of Commissioner of Auditor Cooperative society. The CIT(A) dismissed the appeal of the assessee and confirmed the adjustment made by the CPC by considering the fact that there is a delay in filing the return of income.

3. Before Tribunal the Ld. AR of the assessee has submitted that the return of income filed by the assessee u/s 139(4) is to be considered u/s 139(1) of the Act when the assessee has already paid the late fee for filing return u/s 234F. Further Ld. AR has submitted that claim of deduction u/s 80P cannot be disallowed while processing the return of income u/s 143(1)(a)(v) of the Act. The amendment in the provision of section 143(1) has been made w.e.f. 01.04.2021 enabling the AO/CPC to make such disallowance and adjustment on account of delay in filing the return of income and therefore prior to the said amendment it is beyond the scope

of provision of section 143(1)(a) to disallow the claim of deduction u/s 80P on the ground of delay in filing return of income. In support of his contention he has relied upon the following decisions:

1. *Shri Nava Ujala Seva Sahakari Mandali Ltd. vs. DCIT/ ACIT (CPC) 2022 (11) TMI 128 (ITAT Rajkot)*

2. *Lanjani Co-operative Agri Service Society Ltd. vs. DCIT (CPC) (2023) 146 taxmann.com 468 (Chandigarh-Trib.)*

3. *Medi Seva Sahakari Mandli Ltd. vs. ADIT (CPC) (2023) 146 taxmann.com 3 (Rajkot-Trib.)*

4. *Aliudepur Seva Sahakari Mandli Ltd. & Others vs. ADIT (CPC) 2023 (2) TMI 1115 (ITAT Rajkot)*

5. *The Khedbrahma Taluka Primary Teachers Co-op. Credit Society Ltd. vs. ADIT (CPC) 2023 (2) TMI 749 (ITAT Ahmedabad)*

6. *Sri Kodandaramaswamy Primary Agricultural Co-operative Society Ltd. vs. Income Tax Officer, Ward-2 2023 (1) TMI 572 (ITAT Hyderabad)*

7. *Trustees of Tulsidas Gopalji Charitable and Chaleshwar Temple Trust vs. Commissioner of Income Tax (1994) 207 ITR 368 (Bombay High Court)*

8. *Income Tax Officer-3(4) vs. M/s. Uma Developers 2016 (9) TMI 992 (ITAT Mumbai)*

9. *Late Hussein Ismail Dawoodani vs. DCIT 2018 (11) TMI 1885 (ITAT Mumbai)*

4. The Ld. AR of the assessee has submitted that when the assessee society is eligible for deduction u/s 80P in view of the CBDT Circular No.722 dated 19.09.1995 then the said claim of deduction cannot be disallowed while processing the return of income u/s143(1) for the year under consideration.

5. On the other hand, Ld. DR has submitted that there is no dispute that the assessee has filed the return belatedly and not on or before due date of filing the return u/s139(1) of the Act, consequently, the deduction claimed u/s 80P is not allowable. He has relied upon the orders of lower authorities.

6. I have considered the rival submission as well as relevant material on record. The only controversy in this appeal is denying the claim of deduction u/s 80P of the Act while processing the return of income u/s 143(1) by the CPC on the ground that the assessee has filed the return beyond the due date of filing the return of income u/s 139(1) of the Act.

7. It is pertinent to note that by virtue of the amendment of section 143(1)(a)(v) by Finance Act 2021 w.e.f. 01.04.2021 the disallowance of deduction claimed u/s 10-AA, 80-IA, 80-IB, 80-IC, 80-ID or 80-IE has been substituted as deduction claimed under any of the provision of chapter VIA, under heading (C) "deduction in respect of certain incomes". Therefore prior to this amendment the deduction u/s 80P was not required to be disallowed while processing return of income u/s 143(1)(a) of the Act due to the filing of return beyond the due date prescribed u/s 139(1) of the Act.

8. After this amendment of sub-clause (v) the deduction under chapter VIA and under heading (C) can be disallowed while processing the return of income. Hence the enabling amendment to disallow the claim of deduction u/s 80P of the Act was brought in sub-clause (v) of section 143(1)(a) only w.e.f. 01.04.2021. This issue has been considered in a series of decision by the Coordinate Benches of this tribunal. In case of Shri Nava Ujala Seva Sahakari Mandali ltd. vs. The DCIT/ACIT (supra) the Rajkot Benches of this Tribunal has held in para 7 to 7.4 as under:

"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). We also observe that the counsel for the assessee has filed copies of orders passed by Commissioner (Appeals), NFAC in many other cases of cooperative societies having similar issues, in which it has been held that section 143(1)(a)(ii) of the Act does not deal with disallowance of deduction for deed filing of return of income and also the said adjustment is not permissible under section 143(1)(a)(v) of the Act. 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. 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. Therefore, in the interests of justice, we are restoring the case to the file of the Ld. CIT(Appeals) for fresh adjudication on merits of the case after giving due opportunity of hearing to the assessee.”

9. Similar view has been taken by Chandigarh Benches of this Tribunal in case of Lanjani Co-operative Agri Service Society Ltd. vs. DCIT (supra) and in other decisions relied upon by the Ld. AR of the assessee. A consistent view has been taken by this tribunal in a series of decisions. To maintain Rule of consistency, I follow the earlier decisions of this Tribunal and decided this issue in favour of the assessee. Accordingly, the adjustment made on account of the deduction claimed u/s 80P by the CPC while processing the return of income u/s 143(1)(a) for the year under consideration is deleted and claim of the assessee is allowed.

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

Order pronounced in the open court on 12.05.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Indore, 12.05.2023

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore