

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA
Before
Shri Rajpal Yadav, Vice President
&
Dr. Manish Borad, Accountant Member

I.T.A. No.354/KOL/2022
Assessment Years: 2018-19

W.B. Fire & Emergency Services **Appellant**
Cooperative Credit Society Ltd.
(PAN: AAAAW7725K)

Vs.

Income Tax Officer, Wd-47(1), **Respondent**
Kolkata.

Appearances by:

Shri G. Banerjee, AR appeared for Appellant.

Shri P. P. Barman, Addl. CIT appeared for Respondent.

Date of concluding the hearing : 21.06.2023

Date of pronouncing the order : 21.06.2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by ld. Commissioner of Income-tax (Appeals), NFAC, Delhi [in short ld. “CIT(A)”] dated 21.04.2022 arising out of the Intimation order framed u/s 143(1) of the Act by Ld. DCIT, CPC, Bangalore dated 29.06.2019.

2. The sole grievance of the assessee is against the action of the Ld. CIT(A) in confirming the action of the AO disallowing deduction u/s 80P of the Act for delay in filing the return of income.

3. Ld. Counsel for the assessee vehemently argued referring to the written submissions filed before the lower authorities stating the

reasons for delay in filing the return, also claimed that no opportunity was granted before making such adjustment and further attention was also drawn to the application u/s. 119B of the Act for condonation of delay in filing the return.

4. On the other hand, the Ld. DR supported the order of the lower authorities.

5. We have heard rival submissions and have gone through the record placed before us. We notice that the assessee is a Co-operative Society engaged in the business of providing credit to its members. The assessee is required under law to get its account audited under the rules and regulations of West Bengal Cooperative Societies Act, 2006 by the auditor appointed by Directorate of Cooperative Societies. For the AY 2018-19 due date for filing the return was 31.10.2018 (extended). However, the return was submitted on 29.01.2019. Reasons for the delay was that assessee is defunct since 26.01.2015 and entire workload is being handled by only three employees in order to get the accounts prepared, get them audited and also after facing the technical problem which come across for filing return there was a delay.

6. We note that the Central Processing Centre denied the deduction u/s. 80P of the Act solely for the reason that return was not filed within the due date. Provisions of section 143(1)(a)(v) provides that –

“(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VIA under the heading “C – Deductions in respect of certain incomes”, if the return is furnished beyond the due date specified under sub-section (1) of section 139;”

In the above provision, an amendment brought is in by Finance Act from 01.04.2021 w.e.f. 1.4.21 and before such amendment in place of

the phrase section 10A or in any of the provisions of Chapter VIA under the head e – the words “*deductions in respect of certain income, previously which was provided as section 10AA, 80IA, 80IB, 80IC, 80ID or section 80IE of the Act were appearing.*”

7. From perusal of the said amendment, we note that before 01.04.2021 there was no mechanism for the CPC to *prima facie* disallow the claim u/s. 80P of the Act. It was only from 01.04.2021 that such powers have been conferred with the CPC to make *prima facie* disallowance in case of the claim made u/s. 10AA or deduction claimed under any of the provisions in Chapter VIA which, inter alia, includes 80P of the Act.

8. We note that section 80AC of the Act puts a bar against claiming of deduction in respect of certain income provided under the head (C) of Chapter VIA which includes section 80P of the Act also if the return of income are not filed before the due date prescribed u/s. 139(1) of the Act. Had it been a case of scrutiny proceeding u/s. 143(3) of the Act, the situation certainly would have been against the assessee subject to the approval by the authorities for condonation of delay in filing the return. However, before us, the issue is regarding *prima facie* adjustment made u/s. 143(1)(a)(v) of the Act and as discussed above, such power of making the *prima facie* adjustment towards deduction u/s. 80P of the Act came to CPC only from 1.4.2021 and thus, the alleged disallowance by CPC is beyond its jurisdiction. Therefore, the assessee deserves relief. We are thus inclined to hold that the Ld. CIT(A) erred in denying the deduction u/s. 80P of the Act for Rs.27,98,883/-. We, therefore, set aside the order of the Ld. CIT(A) and allow the grounds of appeal raised by the assessee

and direct the AO to allow the claim of deduction u/s. 80P of the Act at Rs.27,98,883/-.

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

Order is pronounced in the open court on 21st June, 2023

Sd/-(Rajpal Yadav)
Vice President

Sd/-(Manish Borad)
Accountant Member

Date: 21st June, 2023

(Jd. Sr. PS)

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1. Appellant
2. Respondent
3. CIT(A), NFAC, Delhi
4. CIT
5. DR, ITAT, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata