

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.427/PUN/2023
निर्धारण वर्ष / Assessment Year : 2018-19

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| Dandkaranya Gramin Bigar Sheti Shakari Pat Sanstha Ltd., Chabukswarwadi, Tal. Miraj, Dist. Sangli- 416401. PAN : AACAD5166H | Vs. | ITO, Ward-2(1), Sangli. |
| Appellant | | Respondent |

Assessee by : None
Revenue by : Shri Rajesh Gawali

Date of hearing : 21.06.2023
Date of pronouncement : 11.07.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 16.12.2022 for the assessment year 2018-19.

2. Briefly, the facts of the case are that the appellant had filed Return of Income for the assessment year 2018-19 on 20.12.2018. Against the said return of income, an intimation u/s 143(1) of the Income Tax Act, 1961 ('the Act') was received by the appellant.

The intimation dated 31.05.2019, wherein, the prima-facie adjustment of Rs.10,88,923/- was made denying the claim of deduction u/s 80P of the Income Tax Act, 1961 ('the Act'). Against the said intimation, an appeal was filed before the NFAC, who vide impugned order dismissed the appeal of the assessee accepting the action of the CPC.

3. Being aggrieved, the appellant is in appeal before this Tribunal in the present case.

4. When the matter was called on, none appeared on behalf of the assessee despite due service of notice of hearing. Therefore, we proceed to dispose of the matter on merits considering the material on record and after hearing the ld. Sr. DR.

5. I heard the ld. Sr. DR and perused the material on record. The issue in the present appeal no longer *res integra* as decided by the Hon'ble Kerala High Court in the case of case of Chirakkal Service Co-op Bank Ltd vs. CIT, 384 ITR 490 (Kerala). The relevant portion of the decision of the Hon'ble High Court is reproduced as under :-

"19. Section 80A(5) provides that where the assessee fails to make a claim in his return of income for any deduction, inter alia, under any

provision of Chapter VIA under the heading "C.-Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder

Therefore, in cases here no returns have been filed for a particular assessment year, no deductions shall be allowed. This embargo in section 80A(5) would apply, though section 80P is not included in section 80AC. This is so because, the inhibition against allowing deduction is worded in quite similar terms in sections 80A(5) and 80AC, of which section 80A(5) is a provision inserted through the Finance Act 33/2009 with effect from 1.4.2013 after the insertion of section 80AC as per the Finance Act of 2006 with effect from 1.4.2006. This clearly evidences the legislative intendiment that the inhibition contained in subsection 5 of section 80A would operate by itself. In cases where returns have been filed, the question of exemptions or deductions referable to section 80P would definitely have to be considered and granted if eligible.

20. Here, questions would arise as to whether belated returns filed beyond the period stipulated under section 139(1) or section 139(4) as well as following sections 142(1) and 148 proceedings could be considered for exemption. If those returns are eligible to be accepted in terms of law, going by the provisions of the statute and the governing binding precedents, it goes without saying that the claim for exemption will also stand effectuated as a claim duly made as part of the returns so filed, for due consideration.

21. When a notice under section 142(1) is issued, the person may furnish the return and while doing so, could also make claim for deduction referable to section 80P. Not much different is the situation when pre-assessment enquiry is carried forward by issuance of notice under section 142(1) or when notice is issued on the premise of escaped assessment referable to section 148 of the IT Act. This position notwithstanding, when an assessment is subjected to first appeal or further appeals under the IT Act or all questions germane for concluding the assessment would be relevant and claims which may result in modification of the returns already filed could also be entertained, particularly when it relates to claims for exemptions. This is so because the finality of assessment would not be achieved in all such cases, until the termination of all such appellate remedies. Under such circumstances, the Tribunal was not justified in denying exemption under section 80P of the IT Act on the mere ground of belated filing of return by the assessee concerned. A return filed by the assessee beyond the period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 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 IT Act. We thus answer substantial questions of law Band formulated and enumerated above.”

6. In view of the above decision of the Hon’ble High Court (supra), I direct the Assessing Officer to allow the claim of deduction u/s 80P of the Act. Therefore, the appeal filed by the assessee stands allowed.

7. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 11th day of July, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 11th July, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “SMC” बेंच, पुणे / DR, ITAT, “SMC” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.