

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, AM & Shri Manomohan Das, JM

ITA No.836/Coch/2022: Asst.Year:2014-2015

Pulpatta Service Co-operative Bank Limited, Pulpatta Post Malappuram – 676 123. [PAN: AACAP2318K]	vs.	The Income Tax Officer Ward - 2 Tirur.
(Appellant)		(Respondent)

Appellant by: Sh.K. Rishal, Adv.

Respondent by: Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing : 08.08.2023	Date of Pronouncement: 31.08.2023
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**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the appellate order dated 21.5.2022 confirming it's assessment under section 143(3) of the Income-tax Act, 1961 ('the Act' hereinafter) dated 28.12.2016 for assessment year (AY) 2014-2015.

2. The brief facts of the case leading to the instant appeal are that the assessee, a co-operative society registered as a primary agricultural credit society (PACS) under the Kerala Co-operative Societies Act, 1969 (Kerala Act), filed it's return of income for the relevant year on 26.10.2014 at nil income upon setting off brought forward loss of Rs.21,90,553. As, however, the return/s for the year/s in which the loss had been sustained had not been filed within the due date specified u/s.139(1), the claim of set off was disallowed (s.80) (refer: *CIT v. Manmohan Das (Decd.)* [1965] 59 ITR 699 (SC)). The assessee's alternate claim of deduction u/s.80P on it's current year's income was also found untenable in view of the fact that the assessee, though registered as a PACS, i.e., the principal object of which is to undertake agricultural credit activities and provide loans/advances for agricultural purposes, was in fact not functioning as one. Over 93% of loans (as at the end of the year) were for non-

agricultural purposes. Sec. 2(oaa) of the Kerala Act further provides that where this principal object is not fulfilled, *such societies shall lose all characteristics of a Primary Agricultural Credit Society as specified in the Act, Rules and Bye-laws except the existing staff strength.* Reliance was placed by him on the decision in *Perinthalmanna Service Co-operative Bank Ltd. v. ITO* [2014] 363 ITR 268 (Ker). The claim of deduction u/s.80P was accordingly disallowed. In appeal, the assessee pressed its claim for deduction u/s.80P(1) (r.w.s. 80P(2)(a)(i)) on the basis of the decision in *Mavilayi Service Co-operative Bank Ltd. v. CIT* [2021] 431 ITR 1 (SC). The same was found ineligible inasmuch as the assessee had not claimed deduction u/s.80P per its return or revised return for the current year. Sec.80A(5), reading as under, proscribes deduction under Chapter VIA (Part C – Deductions in respect of certain incomes) of the Act, of which s. 80P is a part, where not claimed per the return of income:

**Deductions to be made in computing total income.**

**80A.** (1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U.

(2) ... (4)

(5) Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading "*C.—Deductions in respect of certain incomes*", no deduction shall be allowed to him thereunder.

(6).....(7)(emphasis, ours)

Aggrieved, the assessee is in appeal.

3. We have heard the parties, and perused the material on record.

3.1 The Id. CIT(A) has in support of his adjudication relied on several decisions, both in the context of the general proposition that a claim not made per a valid return cannot be agitated [A], as well as in the specific context of sec.80A(5)[B], as under, also reproducing there-from:

[A] *Goetze India Ltd. v. CIT* [2006] 157 Taxman 1(SC)

- *Kuthuparamba Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd. v. CIT* [2018] 95 taxmann.com 299 (Ker)

[B]*PCIT v. Paragon Biomedical India Pvt. Ltd.* [2021] 133 taxmann.com 203 (Ker)

- *EBR Enterprises v. UoI* [2019] 107 taxmann.com 220 (Bom)

-*Kadachira Service Co-op. Bank Ltd. v. ITO* [2013] 30 taxmann.com 32 (Coch.)

- *Shree Datta Prasad Sahakari Patsanstha Ltd. v. ITO* [2022] 134 taxmann.com 324 (Mum)

3.2 The prescription of s. 80A(5) is in very clear and, unambiguous terms. That apart, the decisions by the Hon'ble jurisdictional High Court are binding on us. We may, for the sake of better clarity, also reproduce from it's decisions relied upon by the Revenue, as under:

*Kuthuparamba Range Kalluchethu Vyavasaya...Sangham Ltd.*(supra):

“Only when a return is filed claiming deduction under Section 80P, the AO will be enabled to first consider the question of eligibility of the assessee and then consider the allowability of deduction from the total income. We, hence, answer the question of law framed in I.T.A.No.273 of 2015 against the assessee and in favour of the Revenue. The I.T.A. would stand dismissed.”

*Paragon Biomedical India Pvt. Ltd.* (supra):

“The circumstances surrounding the controversy are not in dispute, hence by keeping in view, what is stated above, we are of the view that acceptance of the case of assessee under section 10A of the Act by the CIT(Appeals), *without there being a revised return is illegal and untenable.*” (emphasis, ours)

Sh. Rishal, the ld. counsel for the assessee, on being questioned by the Bench during hearing, could not meet the said reliance by the ld. CIT(A). His reliance on the decision by the Tribunal in *Krushvi Vibhag Karmachari Pat Sanstha Maryadit v. ITO* [2022] 219 DTR Trib(Nag) 161, would thus be of no consequence. Reference here, with profit, maybe made to the recent decision in *Pr. CIT v. Wipro Ltd.* [2022] 446 ITR 1 (SC), wherein it stands clarified, once again, that exemption provisions are to be strictly construed, i.e., strictly in terms of the express language, also called the literal rule, which rather represents the golden rule of interpretation of statutes, as again explained by it in several decisions, viz. *CIT v. Calcutta Knitwears* [2014] 362

ITR 673 (SC). The issue therein was the interpretation of s. 10B, which involved the twin conditions specified in ss. 10B(5) & 10B(8), claimed to be directory in character. The Hon'ble Court rejected the argument, holding the same as mandatory, so that the claim had to be preferred in the prescribed form, and the right to opt out also exercised, by the due date specified in s. 139(1). Sec. 80A(5), cast in, similarly, emphatic and prohibitory terms, spelling out the consequences, is mandatory.

3.3 The assessee's plea assailing the power of the Id. CIT(A) in so deciding inasmuch as the AO had disallowed the deduction u/s.80P on merits, and not on jurisdiction, is, again, to no moment. The first appellate authority has only adjudicated the assessee's claim for deduction u/s.80P, in issue before him. Rather, we observe no specific adjudication by the assessing authority on the jurisdictional aspect which, even where so, would not be binding on the Id. CIT(A) who, as the first appellate authority under the Act, has co-terminus powers. It is nobody's case, nor could be, that the AO does not have the power to disallow the claim u/s.80P on the jurisdictional aspect. On the contrary, a jurisdictional aspect, going to the root of the matter, could be agitated before an appellate authority even if the same had not been so before the assessing or a lower appellate authority. The only restriction on the power of the first appellate authority, as clarified by the Hon'ble Apex Court, is *qua* an additional source of income (*CIT v. Shapoorji Pallonji Mistry* [1962] 44 ITR 891 (SC)), absent in the instant case. The assessee's reliance on the decision in *CIT v. B.P. Sherafudin* [2017] 399 ITR 524 (Ker) is misplaced; the same being with reference to a new source of income.

3.4 We, in view of the foregoing, find no merit in the assessee's case and, accordingly, no reason to interfere. We decide accordingly.

4. In the result, the assessee's appeal is dismissed.

*Order pronounced on August 31, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin; Dated: August 31, 2023

Devadas G\*

Copy to:

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The Sr. DR, ITAT, Cochin.
5. Guard File.

Assistant Registrar  
ITAT, Cochin