

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' SMC BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member

आयकर अपील सं./I.T.A. No.837/Chny/2023
निर्धारण वर्ष/Assessment Year: 2021-22

SL 25 The Rasipuram Co-operative
Housing Society Limited, 10, Sivan
Kovil Street, Rasipuram, Namakkal,
Tamil Nadu 637 408.

Vs. The Income Tax Officer,
Ward 2,
Namakkal.

[PAN:AAFAT3843E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से/Respondent by : Shri Suresh Guduri, JCIT
सुनवाई की तारीख/ Date of hearing : 07.09.2023
घोषणा की तारीख /Date of Pronouncement : 13.09.2023

आदेश /ORDER

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi dated 24.05.2023 relevant to the assessment year 2021-22.

2. Brief facts of the case are that the assessee has filed its return of income for the assessment year 2021-22 belatedly on 28.03.2022 admitting NIL income after claiming deduction under Chapter VI-A of the Income Tax Act, 1961 ["Act" in short] of ₹.42,33,215/-. The return filed by

the assessee was processed under section 143(1) of the Act dated 02.11.2022 by making disallowance under sections 80P(2)(a)(ii), 80P(2)(c)(ii) and 80P(2)(d) amounting to ₹.22,82,260/-, ₹.50,000/- and ₹.19,00,955/- on the reason that the return of income was filed after the due date. On appeal, the Id. CIT(A) confirmed the action of the Assessing Officer.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that auditing of the assessee under Tamil Nadu Cooperative Societies Act, 1983 was completed on 13.01.2022 and audit report was received by the society only on 13.01.2022 and immediately, the assessee filed the return based on the final audit report 28.03.2022. The Id. Counsel for the assessee has also filed copy of the Application under section 119(2)(B) of the Act. It was submission that the delay in filing the return was unintentional and prayed for allowing the deduction claimed under section 80P of the Act.

4. On the other hand, the Id. DR supported the orders of authorities below.

5. Heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the

assessee filed the return 28.03.2022 belatedly after claiming deduction under section 80P of the Act for the reason that the auditing of the assessee under Tamil Nadu Cooperative Societies Act, 1983 was completed only on 13.01.2022, which was received by the assessee on 23.03.2022. However, the CPC concluded the intimation under section 143(1) of the Act dated 02.11.2022 by denying the claim of deduction under section 80P of the Act. On appeal, the Id. CIT(A) dismissed the appeal of the assessee.

6. Similar issue was subject matter in appeal before the Tribunal in the case of 3148 Kanakkampalayam Primary Agricultural Cooperative Credit Society v. ITO in ITA No. 151/Chny/2023 dated 12.04.2023 for the assessment year 2018-19, wherein, the Tribunal has observed and held as under:

3. Upon perusal of case records, it could be seen that the assessee is a registered cooperative society and subjected to audit. The auditors were to be appointed by Registrar of Co-operative societies. The audit was completed on 31.10.2018 and the audit report was released to the assessee during February, 2019. Upon receipt of the same, the assessee filed return of income during March, 2019. Thus, it could be concluded that the late filing of return of income was not intentional but beyond the control of the assessee. In such a case, the denial of impugned deduction, which the assessee is otherwise eligible to claim, could not be held to be justified as held by this Tribunal in M/s M/s TPD 101 Uthangarai Milk Producers Co-operative Society Ltd. vs. ITO (ITA No.544/Chny/2021 dated 31.05.2022) as under: -

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Admittedly, the assessee being a Co-operative Society registered under the Tamil Nadu Co operative Societies Act, 1983, is subject to

Audit u/s.80 of the Act, by the Co-operative Audit Department. It is also an admitted fact that the Audit of the assessee's books of accounts has been carried out by the Department and such Audit was completed on 08.10.2019. The assessee claims that the delay in filing of the return for the relevant AY is on account of delay in completion of Audit by the Co-operative Audit Department and such delay cannot be attributed to the assessee, because, completion of Audit by the Department, is not in the hands of the assessee. We have gone through the reasons given by the assessee in light of provisions of Sec.80AC of the Act, and we find that the assessee is, otherwise, entitled for deduction u/s.80P(2) of the Act, in respect of profits derived from its business, because, it has satisfied all conditions prescribed therein. The only reason for the AO to reject the deduction claimed u/s.80P(2) of the Act, was that the assessee does not file its return on or before due date specified u/s.139(1) of the Act. Except this, the AO has not brought on record any other reasons to deny deduction claimed u/s.80P(2) of the Act. Therefore, from the reasons given by the assessee for not filing return of income within the due date specified under the Act, we are of the considered view that the delay in filing of return, cannot be attributable to the assessee, because, completion of Audit by the Co-operative Department, is not under the control of the assessee. Further, the assessee has filed its return of income as soon as it has received the Audit Report from the Department. Further, the delay in filing of the return for the relevant AY is very small in as much as the extended due date for filing of return of income for the AY 2019-20 was 31.10.2019, whereas, the assessee has filed its return of income on 14.11.2019. Therefore, considering reasons given by the assessee for delay in filing of return of income for the relevant AY and also taken note of the fact that the assessee is, otherwise, entitled for deduction u/s.80P(2) of the Act, we are of the considered view that the ACIT/CPC were erred in rejecting deduction claimed u/s.80P(2) of the Act. Hence, we direct the AO to allow deduction as claimed by the assessee u/s.80P(2) of the Act, and delete additions made to total income.

8. In the result, the appeal filed by the assessee is allowed.

Considering the same, we direct Ld. AO to allow the impugned deduction. The decision of Hon'ble High Court of Madras in AA520 Veerappampalayam PACS vs. DCIT (138 Taxmann.com 571) as referred to by revenue is primarily with respect to scope of Sec. 143(1)(a) and do not address the impugned issue and therefore, this case law is not applicable.

4. In the result, the appeal stand allowed.

6.1 The Id. DR could not controvert the above findings of the Tribunal.

Respectfully following the Coordinate Bench (Division Bench) decision of the Tribunal in the case of 3148 Kanakkampalayam Primary Agricultural Cooperative Credit Society v. ITO (supra), the Assessing Officer is directed to allow deduction as claimed by the assessee under section 80P of the Act and delete the additions made to the total income of the assessee.

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

Order pronounced on 13th September, 2023 at Chennai.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 13.09.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.