

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

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 95/ Coch/2023
(Assessment Year: 2019-20)

Kollad Service Co-Operative Bank Ltd. Kollad, Kottayam 686004 [PAN:AAA AK2083Q] (Appellant)	vs.	The Income Tax Officer Ward – 2, Kottayam (Respondent)
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ITA No. 995/ /Coch/2022
(Assessment Year: 2019-20)

Thachnattukara Farmers Producer Company Ltd. 9/38, KTA Complex, Palode Mannarkkad, Palakkad 678583 [PAN:AAFCT3538G] (Appellant)	vs.	The Income Tax Officer Ward – 1, Palakkad (Respondent)
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ITA No. 47/ /Coch/2023
(Assessment Year: 2019-20)

Olavanna Service Co-Operative Bank Ltd. Olavanna P.O., Kozhikode [PAN:AAA AO3624P] (Appellant)	vs.	The Income Tax Officer Ward – 2(3), Kozhikode (Respondent)
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Appellants by: S/Shri Suresh Kumar, R. Krishnan, CAs
& Ms. Lakhmi Menon, Adv.

Respondents by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 07.07.2023
Date of Pronouncement: 25.09.2023

ORDER

Per Bench

The captioned appeals agitate the same issue. The same were accordingly heard together, and are being decided per a common order for the sake of convenience.

2. The sole issue arising for adjudication in these appeals is the validity in law of the adjustment by way of denial of deduction under section 80P of the Income Tax Act, 1961 ('the Act'), inadmissible in view of section 80AC of the Act, on the processing of returns under section 143(1)(a) of the Act. The year involved is Assessment Year (AY) 2019-20. Section 80AC of the Act, brought on the statute by Finance Act, 2006, w.e.f. 01.04.2006, provides that deduction under the specified provisions of Chapter VI-A of the Act would be allowed only where a return claiming the said deduction/s is filed within the time specified u/s. 139(1). Its scope stands extended by Finance Act, 2018, w.e.f. 01.04.2018, to include all other deductions under Chapter VI-A (Part C), and which contains s. 80-P as well. Sec. 143(1)(a), as applicable for the current year, i.e., consequent to its amendment by FA, 2018, in its relevant part, reads as under:

Assessment.

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

- (a) the total income or loss shall be computed after making the following adjustments, namely:—
 - (i) any arithmetical error in the return;
 - (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
 - (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
 - (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
 - (v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or
 - (vi) addition of income appearing in Form 26AS...;

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

3. The controversy, as explained to us, arises as the amendment to section 143(1)(a)(v) of the Act including within its scope disallowance of deduction claimed under any provision of Chapter VI-A, sub-heading (C), if the return is filed beyond the date specified u/s.139(1), being the clear mandate of s. 80AC, is only by Finance Act, 2021 w.e.f. 01.4.2021. Prior thereto, section 143(1)(a)(v), brought on the statute-book by Finance Act, 2008, w.e.f. 01.04.2008, was in agreement with section 80AC of the Act, i.e., extending the disallowance of deductions on account of their being not claimed per a return filed within the time specified u/s.139(1) to the provisions specified in the latter (s. 80AC). While this is again restored w.e.f. 01/4/2021, there is a clear mismatch for the intervening period, resulting in the disallowance of deduction u/s. 80P being challenged as outside the purview of s. 143(1)(a).

4. Before us, while the assessee relied on the orders by the Tribunal in *The SardDogri Coop. Agri Services Society Ltd. v. Dy. CIT* (in ITA Nos. 716/Chd/2022, dated 05/6/2023), as indeed by the Hon'ble Apex Court in *Govind Das &Ors. v. ITO* [1976] 103 ITR 123 (SC) and *CIT v. B.C. SrinivasaSetty* [1981] 128 ITR 294 (SC), the Revenue would on the orders by the Tribunal in *Muhamma Service Coop. Bank Ltd. v. ITO* (in ITA No. 264/Coch/2021, dated 19/12/2022) and *Thannermukkom Co-op. Society Ltd. v. ITO* (in ITA Nos. 652 & 653/Coch/2022, dated 13/12/2022), besides the decisions by the Apex Court in *CC(I) v. Dilip Kumar & Co.* [2018] 9 SCC 1 (SC)(FB) and *Pr. CIT v. Wipro Ltd.* [2022] 446 ITR 1 (SC). While the orders by the Tribunal are on the point, that by the Hon'ble Courts are supportive in nature.

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

5.1 Before proceeding to discuss the issue at hand, argued at length before us, we enlist the following principles discerned on reading the decisions relied upon by either side. This is as it is these principles, constituting their *ratio decidendi*, that constitute the judicial precedence, and toward which aspect, though well-settled, we may refer to the decisions in *Mavilayi Service Co-op. Bank Ltd. v. CIT* [2021] 431 ITR 1 (SC) and *Shri Bhagavati Textiles Ltd v. CIT* [2000] 244 ITR 496 (Ker):

- (i) Taxing statutes, more so exemption provisions, are to strictly construed;
- (ii) section 80AC of the Act is mandatory in character;
- (iii) the charging and computation provisions form an integral part, so that in the absence of the latter, the former would fail;
- (iv) section 143(1)(a)(v) of the Act, prior to its amendment by Finance Act, 2021, did not include within its ambit the disallowance of deduction under Chapter VI-A(C) and, thus, u/s. 80P of the Act; and
- (v) section 143(1)(a)(ii) of the Act is *prima facie* inapplicable.

5.2 There was before us no dispute, nor could possibly be, *qua* the first two propositions, advanced with reference to the decision in *Dilipkumar and Co.* Section 143(1) is not a computational provision, but a procedural provision with a view to give effect to s. 80AC, on the statute w.e.f. 01/4/2006, and in the amended form w.e.f. 01/4/2018, the mandate of which is clear, i.e., for a valid claim u/s. 80P (r/w ss. 80A & 80AB), or any other provision to which it relates, the assessee has to necessarily do so per a return of income furnished within the time specified u/s. 139(1). Section 143(1)(a)(v) allows the Revenue to effectuate the condition for a valid claim, *inter alia*, u/s. 80P r/w s. 80AC, on the processing of a return. This would obviate the need to invoke s. 147 in cases where claims are pressed without complying with the said condition. There is thus no mismatch or incongruity between the charging and the procedural provisions, but only enhancing the scope of the summary procedure for vetting returns of income; the assessing authority being fully competent to give effect to the relevant provisions under the regular

assessment. This, rather, gives rise to a piquant situation as substantive law would apply differently to assessees, similarly placed, depending on whether their returns are selected for being subject to the verification procedure under the Act or the summary procedure there-under, violating Art. 141 of the CoI, even as observed by the Bench during hearing. It is one thing to limit the scope of or enquiry under a certain procedure, but quite another to include the same, and yet not make it applicable for a period; ss. 80AC and 143(1)(a)(v) being in harmony prior to 01/4/2018 and, then, again from 01/4/2021 onwards.

5.3 Sure, there is no discussion *qua* the retrospective operation of section 143(1)(a)(v) of the Act as amended by Finance Act, 2021 in the decisions cited. However, as afore-noted, s.143(1)(a) is not a computational but a procedural provision. It is s.80AC, prescribing the condition precedent for claiming deduction under any provision of Chapter VI-A(C), as section 80P (r/w ss. 80AA and 80AB), which is the computational provision, while sections 4 & 5 are the charging provisions. Being a procedural provision, s.143(1)(a)(v) would apply to any return processed on or after 01/4/2021, i.e., the date it comes into effect, irrespective of the year to which it pertains. That is, returns for even earlier years would be liable to be processed under the amended sec. 143(1)(a)(v) w.e.f. 01/4/2021. Per contra, processing of returns prior to 01/4/2021 could not be under the amended s. 143(1)(a)(v).

5.4 Continuing further, the question of a retrospective operation to a procedural provision does not arise inasmuch a procedure could apply w.e.f. a particular date and, besides, there being no vested right in procedure, it would apply irrespective of the year to which the return, to which it is applied, pertains. That is, is retroactive. Finance Act, 2021, received the assent of the Hon'ble President of India on 28.3.2021. As such, even assuming it to have a 'retroactive' operation, i.e., for assessment year commencing 01.4.2018 and subsequent years, on which aspect – it

being a procedural provision, there could be no doubt, being only to give effect to the statutory mandate of section 80AC, even as explained in the Finance Bill, 2021, also referred to during hearing, it could only be while processing a return of income on or after 28.3.2021, while it would in any case be applicable for any processing on or after 01.4.2021. In other words, the amendment has been given an almost immediate effect. We state so by way of a passing reference only, with a view to emphasize that the Legislature, conscious of the mismatch that obtains resulting in substantive law applying differently across persons similarly placed, made the corrective applicable with immediate effect. Section 80AC, which provides for non-eligibility to deduction u/s. 80P under defined circumstances, being operative AY 2018-19 onwards, no prejudice is caused by the almost immediate operation of the amendment enhancing the scope of the enabling provision. In fact, the Memorandum explaining the provision itself admits to a disconnect between the substantive provision (section 80AC) and procedural provision [143(1)(a)(v)], which the amendment seeks to bridge by enhancing the scope of the latter provision.

The amended s. 143(1)(a)(v) would apply only w.e.f. 01/4/2021, and not earlier. Further, the legal basis for effecting the disallowance of deduction u/s. 80P (or for that matter under any provision included per the 2021 amendment to s. 143(1)(a)(v)), i.e., s. 80AC, being on the statute w.e.f. 01/4/2018, the retroactive operation of s. 143(1)(a)(v) afore-referred would thus extend to returns up to AY 2018-19 and not beyond.

5.5 The processing of the returns of income in the instant cases has been in July/August, 2020. Section 143(1)(a)(v), which could not have been made applicable prior to 28/3/2021, i.e., the date the Finance Act, 2021 became law, is made applicable w.e.f. 01/4/2021. The provision in the amended form was thus not on the statute at the time of processing of the relevant returns. There is thus no

question of the same having been invoked for effecting the disallowance, as being claimed before us. Why, the processing of the return being machine-made, which could not possibly have been updated for the revised procedure prior to 28/3/2021, there is no question of disallowance under section 80AC of the Act being carried out by the AO u/s. 143(1)(a)(v) of the Act prior to 01/4/2021. The only manner, therefore, whereby the impugned disallowance could be made on processing of a return u/s.143(1)(a) of the Act is under sub-clause (ii) thereof, which is to be read along with *Explanation* below section 143(1) of the Act. We consider this aspect for two interrelated reasons:

(i) the same, though stands adverted to the Tribunal per its decision above, is only cursorily so, without dwelling into any interpretative exercise, and which has led us to state of it being found as *prima facie* inapplicable;

(ii) Ms. Devi, the ld. Sr. D.R., was emphatic that it is this provision which has been invoked by the Revenue, and not section 143(1)(a)(v) of the Act, as being stated by the appellants.

We find merit in the assertion by Ms. Devi, as the processing is by the Central Processing Centre (CPC), i.e., machine made, which runs on a software. The scope of section 143(1)(a)(v) could not possibly have been extended prior to 28.3.2021, only whereby it became law. In fact, disallowance in ITA Nos. 995/Coch/2022 and 47/Coch/2023 was admitted as u/s.143(1)(a)(ii), and only for 95/Coch/2023 it was stated by Shri Suresh, the ld. counsel for the assessee, as made under sub-clause (v), even as there is nothing on record to exhibit so. This we may though add would be of no consequence as where there is power to justify the action, a non-mention or wrong mention of the provision would be of no moment [*Hukumchand Mills Ltd. vs. State of Madhya Pradesh* [1964] 52 ITR 583 (SC); *Isha Beevi vs. TRO* [1975] 101 ITR 449 (SC)]

5.6 We, accordingly, next examine s. 143(1)(a)(ii), reproduced supra. *Explanation* thereto, which only makes its reading complete, reads as under: -

“*Explanation.*—For the purposes of this sub-section,—

(a) “an incorrect claim apparent from any information in the return” shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).”

The definition, in view of it being exhaustive, as apparent from the adoption of the word “means”, is to be strictly read. The date of filing the return, it was submitted by Shri Suresh, is not an information required to be furnished under this Act to substantiate any entry. It cannot therefore be regarded as an invalid claim on the basis of inconsistency u/s.143(1)(a)(ii) of the Act r/w *Explanation* thereto. The date of filing the return, he would add, appears only in the acknowledgement to the return, which cannot be regarded as part of the return. We agree. The return form has been scrutinized. The date of filing the return is not required to be entered to substantiate any entry in respect of any claim of deduction and, in fact, cannot possibly be. A return would stand to be regarded as complete in all respects, ready for being filed, on it being verified, and which would therefore only be prior to its filing. For the purpose of giving effect to s. 143(1)(a)(v), however, it is permissible to travel outside the return. This further clarifies of sub-clauses (ii) and (v) of section 143(1)(a) as operating in different fields, i.e., without any overlap. The orders by the Tribunal relied upon by the Revenue are w.r.t. the strict interpretation of s. 80AC, which aspect is not disputed, and do not concern the applicability of s. 143(1)(a). The same would therefore not assist it in the matter.

5.7 The invocation of s.143(1)(a)(ii) of the Act for effecting a disallowance u/s.80P r/ws. 80AC for processing a return prior to 01.4.2021 is, thus, not valid in law. We decide accordingly, and the appeals succeed.

6. In the result, all the appeals are allowed.

*Order pronounced on September 25, 2023 under Rule 34 of The Income Tax
(Appellate Tribunal) Rules, 1963*

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: September 25, 2023
n.p.

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By Order

Assistant Registrar
ITAT, Cochin