

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

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

ITA No.974/Coch/2022: Asst.Year: 2019-2020

Mavelikara Aided School Employees' Co-operative Society Limited, Mavelikara PO Alappuzha – 690 101. [PAN: AACAM9759K] (Appellant)	vs.	The Income Tax Officer Ward 1 Thiruvalla. (Respondent)
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Appellant by: Sri.Rajukutty Joseph, CA
Respondent by: Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing : 11.09.2023	Date of Pronouncement: 09.10.2023
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ORDER

Per Sanjay Arora, AM:

This is an appeal by the Assessee directed against the Order dated 28.09.2022 by the Commissioner of Income Tax (Appeals), Income Tax Department (NFAC, Delhi), dismissing the assessee's appeal contesting the order under section 154 of the Income Tax Act, 1961 ('the Act' hereinafter), dated 12.03.2021 rejecting its rectification application in respect of the processing of its return u/s.143(1)(a) dated 22.12.2020 for assessment year (AY) 2019-2020

2. The brief facts of the assessee's case are that it was denied deduction u/s.80P of the Act while processing its return u/s.143(1)(a) in view of sec.80AC; the return having been filed belatedly on 10.11.2020, i.e., as against the due date 31.8.2019, by which date it ought to have been in terms of sec.80AC, for a valid claim, *inter alia*, u/s.80P. The assessee's rectification application seeking deletion of disallowance was also rejected inasmuch as there was no mistake apparent from the record in the Intimation u/s.143(1)(a), which stands confirmed in first appeal for the same reason.

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

The issue arising is if the Revenue has, in denying deduction u/s. 80P on processing of the assessee's return for the year, furnished beyond the time specified therefor u/s. 139(1), i.e., in view of s. 80AC, mandating the said furnishing in time as a pre-requisite for a valid claim under, *inter alia*, s. 80-P, committed any mistake, as claimed by the assessee, or not.

The terms of s. 80AC, on which the Revenue relies, are explicit and unambiguous. So, however, is the case with s. 143(1)(a) under which the impugned processing of the assessee's return has been carried out. Section 143(1)(a)(ii), applied in the instant case, 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:

The Cochin Bench of the Tribunal has, vide a detailed order in *Kollad SCBank Ltd. & Ors. v. ITO*(in ITA No.95/Coch/2023, dated 25.9.2023), found the adjustment u/s.143(1)(a)(ii) as not maintainable, as indeed u/s. 143(1)(a)(v) where the same is

prior to 01.04.2021, i.e., the date on which the corresponding amendment, i.e., with reference to sec.80AC, stands made in sec.143(1)(a)(v). As explained therein, the adjustment is outside the scope of s. 143(1)(a)(ii), while that u/s. 143(1)(a)(v) could not be given effect to prior to 01/4/2021, as obtains in the instant case. This represents the consistent stand of Tribunal, as in *Decent Junction SCB Ltd. v. ITO* (ITA 185/Coch/2023, dated 29/9/2023 and *Mukkom Urban Co-operative Society Limited v. ITO* (ITA No. 51/Coch/2023, dated 29/9/2023). It would be a different matter, we clarify, where the disallowance has been in regular assessment.

The adjustment disallowing deduction u/s. 80P on processing u/s. 143(1)(a)(ii) is, thus, clearly, a mistake of law. We, accordingly, allowing the assessee's appeal, direct its reversal. We decide accordingly.

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

Order pronounced in the open court on October 09, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: October 09, 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