आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत

IN THE INCOME TAX APPELLATE TRIBUNAL, "**SMC**" BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.470/SRT/2023 (AY 2017-18)

(H*earing in Physical Court)*

The Wanka Vividh Karyakari Seva Sahkari Mandali Ltd. AT & PO Wanka, Taluka-Nizar, Tapi-394370 akshaymodi40@gmail.com **PAN No: AAHFT 1009 K**	Vs	Income Tax Officer, Ward-2, Bardoli, Income Tax Office, 2nd Floor, BSNL Building, Opp. Jalaram Temple, Station Road, Bardoli-394601
अपीलार्थी/Appellant		**प्रत्यर्थी** /Respondent

निर्धारिती की ओर से /Assessee by	Shri Akshay Modi, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	13.07.2023
सुनवाई की तारीख/Date of hearing	13.10.2023
उद्घोषणा की तारीख/Date of pronouncement	13.10.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "Ld. NFAC/Ld.CIT(A)"] dated 15.05.2023 for assessment year 2017-18, which in turn arises from the addition made by the Income Tax Officer, Ward-2 Bardoli /Assessing Officer in assessment order passed under section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 06.12.2019. The assessee has raised the following ground of appeal:-

> *"1. On the facts and in the circumstances of the case as well in law, the (Appeals), NFAC, New Delhi erred in upholding the order of the ITO, Ward 2, Bardoli (for the sake of brevity "**The AO**") passed u/s 144 of the Act, without appreciating the past assessment "**records**" of the appellant co.op.society is purely on misleading, misconception, arbitrary and perverse observations and hence, being without jurisdiction, bad in law, in-valid, illegal, unwarranted of facts is liable to be quashed.*

2. On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in not allowing deduction u/s 80P of the Act to the extent of Rs.2,88,208/- and hence, the order passed under complete misconception, misconstruction and misinterpretation of the relevant provisions of law and facts of the case, is liable to be quashed.

3. On the facts and in the circumstances of the case as well in law, both the lower authorities have failed to appreciate that the appellant being the registered co.operative society engaged in the activity of providing credit facilities exclusively toits members-farmers, duly eligible for deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the Act and hence, the ex-parte order passed by the AO denying the deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the Act is, being without jurisdiction, unwarranted of facts, arbitrary, perverse, bad in law, illegal and invalid, liable to be stuck down.

4.Your appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal."

2. Rival submission of both the parties heard and record perused. The learned Authorized Representative (Ld. AR) for the assessee submits that assessee is a Primary Agricultural Co-Operative Credit Society and engaged in the business of providing credit facilities exclusively to its agriculturist Members by accepting deposits from its members also. The assessee is also providing loan to its members under the scheme namely, Kishan Credit Card ('KCC' for short). The assessee-co-operative society is registered under Gujarat Co-Operative Societies Act, 1962, the status of assessee-co-operative society was accepted by Assessing Officer while passing the assessment order. The Assessing Officer issued notice under section 142(1) on 19.02.2017 to assessee to file its return of income for assessment year 2017-18. The notice under section 142(1) was issued against PAN AAHFT1009K and such PAN was issued by Department by treating the assessee as "firm", in fact, the assessee is not a firm rather the assessee is a co-operative

society. Since assessee is managed by agriculturist and due to lack of awareness about the law, new PAN was not obtained. When such fact came to assessee's notice assessee immediately applied for creation of PAN and new PAN: AAQAS3479N was allotted. Such fact was explained before Assessing Officer by filing an affidavit of Secretary, namely Mr. Tukaram Sambhubhai Patel of assessee, along with affidavit, the assessee also filed copy of application for cancellation of its old PAN, copy of such application and affidavit of Secretary are placed on record. Since notice under section 142(1) was issued against old PAN in the status of "partnership firm", the ITBA portal of Department was not accepting its return of income as "co-operative society". Thus assessee was unable to file its return of income and such fact was explained before Assessing Officer. However, before Assessing Officer, the assessee furnished profit and loss account, balance-sheet and computation of total income along with written submission dated 30.11.2019. In the computation of total income, the assessee claimed deduction under section 80P(2)(a)(i) and under section 80P(2)(d) aggregating of Rs.2,10,640/-. The copy of such details are placed on record. The Assessing Officer while passing the assessment order accepted the status of assessee as "Primary Agricultural Co-Operative Credit Society". However, the Assessing Officer denied such deduction under section 80P(2)(a)(i) and 80P(2)(d) by wrongly applying the provision of Section 80A(5). The Assessing Officer denied such deduction on the sole ground that assessee failed to file its return of income as has been recorded in para-6 of

assessment order. The assessee before lower authorities explained such difficulties. The ld AR for the assessee submits that the assessee is eligible for deductions claimed under section 80P(2)(a) & (d) and such deduction cannot be denied by the assessing officer for the sole reasons that the assessee failed to file return of income. To support his submissions, the Ld. AR for the assessee relied on the decision of Hon'ble Apex Court in the case of CIT vs. G.M. Knitting Industries (P.) Ltd. [2016] 71 taxmann.com 35 (SC)/[2015] 376 ITR 456 (SC)/[2015] 279 CTR 534 (SC) [24-07-2015] wherein it was held that filing of return of income is directly and not mandatory for claiming deduction under relevant Section of Chapter-VI-A (Section 80P). The making of claim because at the stage of assessment before completion of assessment, meets the directory requirement of making of claim in the return of income.

3. The ld AR for assessee submits that deduction under section 80P is certainly govern by principle laid down by Hon'ble Apex Court in the case of G.M. Knitting Industries (P.) Ltd. (supra). There is no dispute that assessee's made claim of such deduction in the course of assessment proceedings by filing computation of total income, before completion of assessment proceedings. The Ld. AR for the assessee submits that Central Board of Direct Taxes vide Circular No.14(XL-35), dated 11.04.1955 directed its officers that Department should not take advantage of ignorance of assessee of their right. Similarly, Bangalore Tribunal in the case of Prathamika Krishi Pattina, Sahakara Sangha Ltd. vs. ITO [2022] 142 taxmann.com 405 (Bangalore -Trib.)

also held that where assessee-society sought cancellation of old PAN and filed return under new PAN, it was the duty of Revenue to examine and verify the contention of assessee, instead of cancellation of old PAN. The Ld. AR for the assessee further submits that Bangalore Tribunal in the case of Prathamika Krishi Pattina, Sahakara Sangha Ltd. (supra) also held that provision of Section 80AC, which contemplates denial of deduction in respect of certain provisions of Chapter VI "A" of Act, if a return of income is not filed by an assessee, do not apply to claim for deduction under section 80P. Similarly, in case of Krushi Vibhag Karmachari Vrund Sahakari Pat Sanstha Maryadit Vs ITO (2023) 147 taxmann.com 449 (Nagpur-Trib.) also held that requirement of making a claim in the return of income under section 80A(5) is directly in nature and therefore lower authorities were not justified in rejecting assessee's claim of deduction under section 80P on the ground such claim was not made in a return but during the course of assessment proceedings. The Ld. AR for the assessee finally submits that claim of assessee under section 80P was not disputed and it was denial only on the ground that return of income was not filed. Thus, on the basis of aforesaid submissions, the assessee is eligible for full deduction under section 80P (2) (a) & (d) as the case may be.

4. On the other hand, learned Senior Departmental Representative (Ld. Sr-DR) for the Revenue supported the order of Assessing Officer. The Ld. Sr-DR for the Revenue submits that assessee has not filed return of income. It is the duty of assessee to file return of income and to

claim eligible deduction. The Assessing Officer has no power to accept any claim in absence of such claim in the return of income for such claim is made for revised return as has been held by Hon'ble Apex Court in the case of Goetze (India) Limited 284 ITR 323 (SC). He admittedly this is a case where assessee has not filed return of income at all. The Ld. Sr-DR for the Revenue submits that he fully supported the order of lower authorities.

5. I have considered the submission of both the parties and perused the order of lower authorities carefully. I have also deliberated on various case law relied by Ld. AR for the assessee. I find that the Assessing Officer issued notice under section 142(1) to file return of income for assessment year 2017-18. The Assessing Officer recorded that assessee failed to furnish return of income under section 139 in response to such notice. The Assessing Officer further recorded that if assessee failed to comply notice issued under section142(1) of the Act, he will gather relevant material and to make assessment of total income to his best judgment. The Assessing Officer further recorded that due to change of jurisdiction fresh notice was issued upon the assessee on 03.10.2019 for furnishing details by 11.10.2019. In response to such show cause notice, assessee furnished certain details. On perusal of such details, Assessing Officer accepted that assessee engaged in providing different type of loans to its members and on further perusal of details, he find that in the computation of income, assessee claimed deduction under section 80P of Rs.2,88,208/-. On recording such observation, the Assessing Officer

further issued show cause notice that assessee has not filed returned of income, and in absence of such returned income, why income should not be determined without allowing deduction under section 80P. The assessee filed its reply on 26.08.2011 and explained that the PAN issued by Department is issued under the status of farm and that they have applied for new PAN in favour of Co-operative Society and new PAN was yet to be uploaded in their bank account. The Assessing Officer on the basis of contents of show cause notice, disallowed the deduction under section 80P and treated the same as income of assessee. I find that before Ld. CIT(A) assessee filed similar submission as argued before me. The Ld. CIT(A) confirmed the action of Assessing Office by taking view that claiming deduction under section 80P(2)(a)(i) and 80P(2((d) the assessee failed to file return of income and as per provision of Section 80A(P). The assessee is not eligible for claiming such deduction. The Ld. CIT(A) also held that assessee had optioned to file partition before jurisdictional Commissioner for condonation of delay in filing returned of income.

6. I find that in the present appeal, the dispute is very narrow as to whether the assessee is eligible for deduction under section 80P without filing returned of income. First I deal with the objection of ld Sr DR that in assessing officer has no power to entertain the claim, if not made in the return of income. I find that there is no dispute regarding such restrictions of power of assessing officer, however, being Appellate Authority, such claim of assessee which is emanated from the record of lower authorities can be entertained and admitted

by the appeal authorities. I find that such claim was raised by the assessee before assessing officer, therefore, facts related to the issue is emanating from the record of lower authorities, thus, the claim of assessee is admitted.

7. I find that Co-ordinate Benches of Bangalore Tribunal in the case of Prathamika Krishi Pattina, Sahakara Sangha Ltd. (supra) held that provision of Section 80AC which deals with the denial of deduction in respect of certain provision of Chapter VIA, if a returned of income is not filed by assessee, it was held that such provision do not apply to the claim of deduction under section 80P. The relevant part of decision (supra) is extracted below:

> *"**7.** I have heard the rival submissions. The learned Counsel for the assessee submitted that the provisions of section 80A(5) of the Act will come into play only when a return of income is filed by an assessee and the claim for deduction under Chapter VIA of the Act is not claimed in the said return. It was contended that since the assessee did not file return of income for Assessment Year 2017-18, there was no question of invoking the provision of section 80A(5) of the Act. His further submission was that section 80AC of the Act is it existed prior to its submission by the Finance Act, 2018 w.e.f. 1-4-2018 reads as follows:*
>
> > "80AC. Deduction not to be allowed unless return furnished – Where in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1st day ofApril,2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or sectiion80-IAB or section 880-IC or section 80-ID or section 80-IE, no such deduction shall be allowed to him unless he furnished a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139."
>
> *He pointed out that the aforesaid provisions contemplate filing of return of income to claim deductions under certain provisions of Chapter VI "A" of the Act and 80P is not one of the section which is mentioned in section 80AC of the Act. Ahe therefore submitted that the deduction under section 80P of the Act cannot be denied to the assessee for non filing of return of income. Learned DR, on*

the other hand, reiterated the stand of the Revenue as reflected in the order of the CIT(A).

***8**. I have given a careful consideration to the rival submissions. I agree with the submissions of the learned Counsel for the assessee that section 80A(5) of the Act is applicable only when a return of income is filed by an assessee and a deduction under Chapter VI "A" of the Act, is not claimed in such return of income. It will not apply to a case where no return of income is filed. The provisions of section80AC of the Act as we have already seen, contemplates denial of deduction in respect of certain provisions of Chapter VI "**A**" of the Act, if a return of income is not filed by an assessee. Those provisions, as rightly contended by the learned Counsel for the assessee, do not apply to the claim for deduction under section 80P of the Act. Therefore, the Revenue authorities were not justified in not entertaining the claim of the assessee for deduction under section 80P of the Act as made by the assessee. Since neither the AO nor the CIT(A) have examined the other conditions for allowing deduction under section 80P of the Act, I deem it fit and proper to remand the issue of the assessee's eligibility to claim deduction under section 80P of the Act, in the sense with regard to the quantum of deduction and also with regard to the other conditions for allowing deduction under section 80P of the Act, for examining afresh by the AO. I therefore allow the appeal of the assessee **for statistical purposes**."*

8. I further find that Co-ordinate Benches of Nagpur Bench in the case of Krushi Vibhag Karmachari Vrund Sahakari Pat Sanstha Maryadit vs. ITO [2023] 147 tamann.com 449 (Nagpur-Trib.) also held that making of claim in return of income under section 80A(5) is directory and the authorities below were not justified in rejecting the claim of assessee under section 80P. The relevant extract is reproduced below:

***"5.** I have heard both the sides and scanned through the relevant material on record. It is an undisputed fact that the assessee did not file return of income for the year under consideration either originally or pursuant to notice u/s 148. Computation of income was filed during the course of assessment proceedings in which the deduction u/s 80P was claimed. Whereas, the authorities below have canvassed a view that the assessee violated section 80A(5) and hence the deduction was not available; the assessee has made out a case that section 80A(5) does not apply where no return is furnished and rather it is section 80AC which*

would govern the case and because of omission of section 80P in the list of sections given in section 80AC, the deduction should be granted. In order to appreciate the contention of the ld. AR, it would be apposite to reproduce section 80AC, before its substitution by the Finance Act, 2018 w.e.f 1-4-2018, which reads as under:

> *" Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139."*

6. *On going through the above provision, it is crystallized that the requirement of filing return before the time u/s 139(1) is sine qua non for claiming deduction under the six sections (80-IA or 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE). In other words, if a return is filed belatedly u/s 139(4) or under any other section, claiming deduction under any of the six sections, the writ of the section 80AC will operate to prevent its granting. This section does not deal with granting or non-granting of deduction under any other sections of Part C of Chapter VI-A, including section 80P. Thus, to infer that since section 80AC does not cover section 80P, the latter section is immune from any other statutory requirement, is wholly incorrect. In fact, section 80AC is alien to deduction under any section except the specified six sections.*

7. *Now, I turn to section 80A(5), which has been pressed into service by the AO for denying the benefit of deduction u/s 80P of the Act, which runs as under:*

> *'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.'*

8. *This section provides that where an assessee fails to make a claim in his return of income for any deduction, amongst others, the sections enshrined in Part C to Chapter VI-A (including section 80P and six sections as given in section 80AC), then the deduction shall not be*

allowed. A perusal of the mandate of section 80A(5) divulges that the claiming of deduction under various sections of part C of Chapter VI-A in the return of income is essential. The reference in this provision is only to return of income, without any further qualification. The return may be u/s 139(1) or 139(4) or any other relevant section.

9. *On a conjoint reading of sections 80A(5) and 80AC, it gets manifest that claiming of deduction under various sections of Part C of Chapter VI-A in the return of income is essential. However, an additional requirement for claiming deduction under sections 80-IA or 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE is that such deduction must be claimed in a return filed u/s 139(1) of the Act. In one sense, section 80AC is an exception to section 80A(5), making the mandate of the latter section more stringent in the prescribed cases. Whereas other deductions of Part C of Chapter VI-A, including section 80P, can be claimed in the return filed under any section, including section 139(4); the six deductions as referred to in section 80AC must necessarily be claimed in the return filed u/s 139(1) only. Ex consequenti, the contention that since section 80P is not covered under section 80AC, the deduction under this section becomes automatically allowable without adhering to the requirement of section 80A(5), is bereft of force and hence dismissed.*

10. *Now I advert to the requirements of section 80A(5), which stipulates that no deduction under other sections including 80P shall be allowed if the assessee fails to make such a claim in the return of income. Thus, there are twin conditions, viz., first, claiming deduction u/s 80P and second, claiming such deduction in the return of income. There is no dispute on the first condition, which has been satisfied in this case as the assessee did claim the deduction albeit during the course of assessment proceedings. The whole controversy revolves around the second condition, which says that the claim should be made in the return of income. The assessee in the extant case did not file any return of income, but made a claim of the deduction in computation of income filed during the course of the assessment proceedings. The moot question is whether the requirement of making a claim in the return of income is a mandatory or a directory requirement. If it is held as mandatory, then the claim must be made in the return of income, failing which the benefit of deduction*

would be lost. Au contraire, if it is held as directory, then the claim made either in the return of income or in any manner before the conclusion of assessment proceedings, as is the case under consideration, would validate the entitlement.

11. *The Hon'ble Supreme Court in CIT v. G.M. Knitting Industries (P.) Ltd. [2016] 71 taxmann.com 35/[2015] 376 ITR 456/279 CTR 534 came across a situation in which the assessee claimed additional depreciation in Form 3AA but the Form was not furnished along with the return of income. Such Form was submitted during the course of assessment proceedings. The AO denied the claim on the ground that the Form 3AA was required to be statutorily filed along with the return of income. The view of the AO was reversed by the Tribunal as well as the Hon'ble High Court by holding that even if the Form was filed during the course of assessment proceedings, it amounted to sufficient compliance. The Hon'ble Supreme Court, taking note of the judgment in CIT v. Shivanand Electronics [1994] 75 Taxman 93/209 ITR 63/119 CTR 94 (Bom.), approved the view of the Hon'ble High Court having the effect that the requirement of filing Form 3AA was a necessary ingredient for claiming additional depreciation, but the timing of filing the Form was a directory requirement, which was fulfilled on filing it even during the course of assessment proceedings. The Hon'ble Bombay High Court in Shivanand Electronics (supra) dealt with the requirement of filing audit report for the purpose of claiming deduction u/s 80J, which required that the report should be filed "along with return of income" under s. 80J(6A). It held that such requirement of filing the audit report along with the return of income was not mandatory, but directory in the sense that if assessee complied with the same before completion of assessment, deduction under s. 80J, on the basis of such report, was allowable.*

12. *Recently, the Hon'ble Supreme Court was confronted with the claim of benefit u/s 10B in Pr. CIT v. Wipro Ltd. [2022] 140 taxmann.com 223/288 Taxman 491/446 ITR 1. The assessee furnished original return taking the benefit of section 10B and did not carry forward the loss. Thereafter, a revised return was filed foregoing the claim of deduction u/s 10B. The AO rejected the withdrawal of exemption under section 10B by holding that assessee did not furnish the necessary declaration in*

writing before due date of filing return of income, which was an essential requirement for not claiming the benefit of section 10B. The Hon'ble High Court decided the issue in favour of the assessee by holding that the requirement of filing the declaration was mandatory but filing it along with the return of income u/s 139(1) was a directory requirement. The matter was brought by the Revenue before the Hon'ble Supreme Court. The assessee, inter alia, relied on the judgment of the Apex Court in G.M. Knitting Industries (P.) Ltd. (supra). Their Lordships held that the requirement of filing the report in support of deduction u/s 10B was not a directory but a mandatory requirement. It further held that both the conditions of - filing the declaration and filing it before the time limit u/s 139(1) - were mandatory and had to be cumulatively satisfied. Rejecting the reliance on G.M. Knitting Industries (P.) Ltd. (supra), the Hon'ble Supreme Court held that that decision was relevant in the context of deduction provisions and not the exemption provisions as given under Chapter III of the Act. As the Hon'ble Summit Court in Wipro Ltd. (supra) was dealing with section 10B, falling under Chapter III of the Act, it held qua G.M. Knitting Industries (P.) Ltd. (supra) that: 'Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VI-A of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VI-A, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VI-A shall be applicable while considering the claim under section 10B (8) of the IT Act.'

***13**. Ongoing through the judgments in G. M. Knitting Industries (P.) Ltd. (supra) in juxtaposition to Wipro Ltd. (supra), the principle which emerges is that the fulfilment of requirement of making a claim for exemption under the relevant sections of Chapter III in the return of income is mandatory, but when it comes to the claim of a deduction,* inter alia*, under the relevant sections of Chapter VI-A, such requirement becomes directory. In the latter case, the making of a claim even after the filing of return but before completing the assessment, meets the directory requirement of making a claim in the return of income. The instant case*

involves deduction u/s 80P and thence, would be governed by the principle laid down in G.M. Knitting Industries (P.) Ltd. (supra), as per which the making of a claim of deduction is mandatory but the timing is directory. Even if the claim is made during the course of assessment proceedings, such a claim has to be allowed. In view of the foregoing discussion, I am satisfied that the authorities below were not justified in rejecting the assessee's claim of deduction u/s 80P only on the ground that such a claim was not made in the return but during the course of assessment proceedings. The impugned order is **ergo *set aside*** *and the matter is remitted to the file of the AO for examining the claim of deduction u/s 80P on merits."*

9. Considering the aforesaid factual and legal discussion and keeping in view that the nature of deduction and quantum was not disputed by Assessing Office, so I direct the assessing officer to allow deduction under section 80P(2)(a)(i) and 80P(2)(d) as the case may be.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 13/10/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 13/10/2023
Dkp. Out Sourcing Sr.P.S
Copy to:
1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Senior Private Secretary/ Private Secretary/Assistant Registrar, ITAT, Surat