

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

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

ITA No.437/Coch/2023: Asst.Year:2021-2022

&

SA No.81/Coch/2023

Mukkom Service Co-operative Bank Limited, F-1241 Mukkom P.O. Kozhikode – 673 602 [PAN: AACAM3643G]	vs.	The Income Tax Officer Ward 2(3) Kozhikode.
(Appellant)		(Respondent)

Appellant by: Sri. Johnson George, CA

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

Date of Hearing : 23.11.2023	Date of Pronouncement: 11.12.2023
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**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the dismissal of it's appeal, vide order dated 04.05.2023, by the Commissioner of Income-tax (Appeals), Income Tax Department [CIT(A)], contesting the denial of deduction under section 80P of the Income-tax Act, 1961 ('the Act') vide Intimation u/s.143(1) of the Act for assessment year (AY) 2021-22 dated 02.11.2022.

2. The denial of deduction u/s.80P in the instant case has been on account of application of s.80AC of the Act which, with effect from 01.04.2018, bars the claim of deduction, *inter alia*, under any provision falling under Chapter VI-A (Part-C), where not made per a return filed within the time specified u/s.139(1). The return in the instant case stands filed on 30.03.2022, i.e., admittedly beyond the extended period of time allowed for filing the original return, i.e., 15/03/2022. Deduction u/s.80P, claimed on the entire income of Rs. 115.76 lacs, was accordingly

disallowed u/s. 80AC u/s.143(1). The same being confirmed in appeal with reference to sec. 143(1)(a)(v) of the Act, the assessee is in further appeal.

3. The issue before us is the maintainability of the Revenue's action in denying the assessee its claim for deduction u/s.80P on processing u/s. 143(1)(a). This Tribunal has, vide a detailed order in *Kollad Service Co-operative Bank Ltd. & Ors. v. ITO*(in ITA No.95/Coch/2023& Ors. 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 with effect from which the corresponding amendment, i.e., with reference to sec.80AC, stands made in s.143(1)(a). As explained therein, the adjustment is outside the ambit 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. The decision is followed in other orders by this Bench, as in *Mukkom Urban Co-op. Society Ltd. v. ITO* (in ITA No. 51/Coch/2023, dated 29/9/2023), relied upon by the assessee before us, going in fact to the extent of stating it to be a 'mistake', rectifiable u/s. 154, as in *Mavelikara Aided School Employee's Cooperative Society Ltd. v. ITO* (ITA No. 974/Coch/2022, dated 9/10/2023), as well as supported by orders by other Benches.

4.1 So, however, the Intimation u/s. 143(1)(a) of the Act is dated 02.11.2022, i.e., after 01.04.2021, since when, as elaborately explained in *Kollad Service Cooperative Bank Ltd.* (supra), sub-clause (v) to clause (a) of section 143(1), reading as under, stands amended (by Finance Act, 2021), to provide for adjustment on processing of a return of income by way of disallowance of deduction claimed, *inter alia*, under the provisions of Chapter VI-A (Part C), where the return is furnished beyond the due date specified u/s. 139(1) of the Act for the relevant year:

**“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) to (iv) -----

(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading “C – Deductions in respect of certain incomes”, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) ----- ” (emphasis, ours)

The enabling provision is thus, as explained in *Kollad Service Co-op. Bank Ltd. Ltd.* (supra), brought in harmony with s. 80-AC as amended by FA 2018 w.e.f. 01.04.2018. Further, section 143(1)(a) of the Act being procedural in nature, it would apply w.e.f. 01.04.2021, i.e., on processing of return on or after the said date, irrespective of the assessment year to which the return being processed pertains. Various other arguments, viz., the taxing statutes, particularly exemption provisions, are to be strictly construed; character of section 80AC of the Act, i.e., directory or mandatory; charging and computation provision forming an integral part, so that absence of latter would follow the former, etc., were considered. In fact all the orders passed by the Cochin Bench of the Tribunal subsequent to *Kollad SCB Ltd.* (supra), where incidentally the intimations, being for AY 2019-20, were prior to 01.04.2021, would, due to the prohibitive measure of s. 80AC, operate to assist the Revenue's case of disallowance of deduction u/s. 80P(2) of the Act as being legally competent in view of section 143(1)(a) of the Act as amended by FA, 2021.

4.2 We may here also refer to the provision of section 80AC of the Act, which reads as under after its substitution by Finance Act, 2018, w.e.f. 01.04.2018:

**Deduction not to be allowed unless return furnished.**

80AC. Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after-

- (i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-LAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE:
- (ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading 'C-Deductions in respect of certain incomes,

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.”  
(emphasis, ours)

As explained in *Kollad SCB Ltd.* (supra), as indeed in other decisions by the Tribunal, as in *Thannermukkom Service Co-operative Society Ltd.* [(ITA Nos. 652 & 653/Coch/2022, dated 13.12.2022) and *Muhamma SCB Ltd. v. ITO* (ITA No. 264/Coch/2021, dated 19.12.2022)], the language of the provision is clear and unambiguous, conveying a mandatory intent. It is even otherwise well-settled that the exemption/deduction provisions are to be strictly construed and, further, that the burden to prove it's return, and the claims preferred thereby, is on the assessee. Case law on each of the propositions is legion [viz. *L. Hazari Mal Kuthiala v. ITO* [1961] 41 ITR 12 (SC)]. We may though reproduce the relevant part of latter orders:

‘5. We find no merit in assessee's foregoing arguments claiming Section 80AC(ii) of the Act as a mere directory provision in the light of *Commissioner vs. Dilip Kumar & Company* (2018) 9SCC 1 (SC) (FB) that provisions in a taxing statute (including deductions) have to be strictly interpreted only. We next observe that the legislature has interpreted "no such deduction" and "unless" in Section 80AC(ii); for the period after 01.04.2018, by way of negative covenants which forms a mandatory stipulation only in light of PRINCIPLES OF STATUTORY INTERPRETATION by Justice G.P. Singh (termed as the treatise on the subject of statutory constructions) at Pages 446 to 448 under Chapter 5 thereof. So far as the assessee's reliance on this tribunal's learned coordinate bench's decision (supra) is concerned, the same hardly forms a binding precedent once dealing with assessment year 2009-10 only i.e., before 01.04.2018. We thus uphold the learned lower authorities action under challenge therefore denying sec. 80P deduction in issue. Rejected accordingly.’

4.3 The assessee has, before us, relied on the decision in *Uthangarai Milk- Producers Co-Operative Society Ltd. vs. ITO* (ITA No. 544/Chny/2021, dated 31.05.2022). The same would be of no assistance thereto inasmuch as the processing of the return was for AY 2019-20 vide Intimation dated 20.10.2020, i.e., prior to 01.04.2021, the date on which the amended section 143(1)(a)(v), widening its scope, comes into play. Like-wise, for the decision in *Mukkam Megala Multipurpose Co-operative Society Ltd. vs. ITO* (in ITA NO. 952/Coch/2022, dated 08.03.2023), also relied upon, wherein the assessment year involved is again 2019-20. The same, rather

than assisting the assessee's case, defeats it inasmuch as the relief to the appellant in that case was allowed by the Tribunal on the basis that the amended clause of section 143(1)(a)(v) of the Act is effective only from 01.04.2021 (para 8).

5. In view of the afore-going, we find no merit in the assessee's case; being, rather, covered by several decisions by the Tribunal against it. The assessee though is at liberty to seek any other alternate remedy, where so advised. We decide accordingly. Since the appeal is disposed of, the stay petition become infructuous.

6. In the result, the appeal is dismissed and the stay petition rendered infructuous.

*Order pronounced on December 11, 2023 under Rule 34 of The Income Tax  
(Appellate Tribunal) Rules, 1963*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin; Dated: December 11, 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