

आयकर अपीलीय अधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.126/Viz/2022

(निर्धारण वर्ष / Assessment Year : 2017-18)

The Konayapalem Primary
Agricultural Cooperative Credit
Society Limited, Konayapalem
Village, Chandarlapadu Mandal,
Krishna District,
Andhra Pradesh – 521182.
PAN: AACAT 6987 G

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

Vs. Income Tax Officer,
Ward-(3),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri ASRSS Siva Prasad, AR

Dr. Aparna Villuri, Sr. AR

05/02/2024

28/02/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal is filed by the assessee is against the order of the Ld. CIT(A)-NFAC, Delhi in DIN & Order No. ITBA/NFAC/S/250/2021-22/1038084944(1), dated 24/12/2021

arising out of the order passed U/s. 144 of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. At the outset, it is noticed from the appeal record that there is a delay of 97 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drawn my attention to the affidavit filed by the assessee along with petition seeking for condonation of delay and read out the contents of the affidavit which is as under:

"I, Mekala Srinivasa Rao, Secretary to the Konayapalem Primary Agricultural Cooperative Credit Society Limited, Konayapalem Village, Chandarlapadu Mandal, Krishna District, Andhra Pradesh - 521182 hereby state and affirm on oath as under:

.....

Basetti Venkateswara Rao, Secretary of our society expired on 15/12/2021 and later I was appointed in his place.

I do not have information relating to appellate proceedings and its status and I came to know about the proceedings very late as there was arrangement of our work schedules due to the demise of Basetti Venkateswara Rao.

I could not file the appeal before Hon'ble ITAT, Visakhapatnam within due date for the reasons mentioned above though the appeal fees was paid in time.

....."

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR, I find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed limit with a delay of 97

days. Therefore, I hereby condone the delay of 97 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Briefly stated the facts of the case are that the assessee is Primary Agricultural Cooperative Credit Society Ltd [PACS]. During the AY 2017-18, as per the information available with the Department, it is noted that the assessee made cash deposits of Rs. 1,21,69,085/- during the demonetization period in its account with the Krishna District Central Co-operative Bank, Raithupet, Krishna District. By observing that the assessee did not file its return of income before the due date U/s 139(1) of the Act, a notice U/s 142(1) of the Act was issued on 09/03/2018 and served on the assessee. However, the assessee did not comply with the notice and failed to file the return of income by 31/3/2018 which is the last date to file the valid return of income for the AY 2017-18. Further, another notice U/s. 142(1) of the Act dated 3/9/2019 was issued wherein the assessee was intimated about the completion of assessment U/s. 144 of the Act since the assessee has not filed its return of income in response to the notice U/s. 142(1) of the Act. However, the assessee has furnished Trading Account, Income & Expenditure Account,

Balance Sheet as on 31/3/2017 and claimed the entire profit earned of Rs. 19,29,178/- as deduction U/s. 80P of the Act in the return of income filed on 7/8/2019. On verification of the information submitted by the assessee and on perusal of the evidence furnished before him as well as the return of income filed by the assessee, the Ld. AO completed the assessment U/s. 144 of the Act as best judgment assessment based on the material available on record and as per the provisions of the Act. In the assessment order, the Ld. AO observed that since no valid return of income was filed by the assessee as per the provisions of section 139 of the Act, the provisions of section 80A(5) are clearly applicable since the assessee failed to make the claim of deduction U/s. 80P(2)(a)(i) of the Act. Accordingly, the Ld. AO brought to Rs. 19,29,178/- on account of disallowance of deduction U/s. 80P(2) of the Act and assessed the total income at Rs. 19,29,178/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. On the facts and circumstances of the case and in law, the Ld. CIT(A)-NFAC erred in sustaining the order of the AO by confirming the disallowance of deduction claimed U/s. 80P amounting to Rs. 19,29,178/-.*
- 2. Both in law and in facts of the case, the order made by the Ld. CIT(A)-NFAC is bad in law, arbitrary, contrary to the provisions of law and against the principles of natural justice.*
- 3. The Ld. CIT(A)-NFAC is wrong in appraising that the return filed by the assessee in response to notice U/s. 142(1) which is accepted by the e-filing portal is an invalid return.*
- 4. The Ld. CIT(A)-NFAC ought to have taken into consideration that provisions of section 80A(5) are applicable only when the assessee fails to make a claim for deduction U/s. 80P in the return of income filed.*
- 5. The Ld. CIT(A)-NFAC is not justified in disallowing the deduction claimed U/s. 80P of the Act as the assessee filed return of income and claimed deduction U/s. 80P of the Act.*
- 6. The Ld. CIT(A)-NFAC is wrong in upholding the order of the AO passed U/s. 144 of the Act then the assessee has filed return of income in response to notice U/s. 142(1) and submitted the information that has been called for from time to time.*
- 7. For these reasons and those which may be urged at the time of hearing of appeal and on the facts and circumstances of the case the disallowance of deduction claimed U/s. 80P amounting to Rs. 19,29,178/- shall be deleted.*
- 8. The appeal craves leave to add to alter, amend, modify, substitute, delete and / or rescind all or any of the grounds of appeal on or before the final hearing, if the necessity so arises.*

5. At the outset, the Learned Authorized Representative [Ld. AR] argued that the assessee is a Primary Agricultural Cooperative Credit Society Limited and claimed deduction U/s. 80P of the Act for the AY 2017-18. The Ld. AR further submitted that as per section 80P(2)(a)(i) of the Act, the assessee is entitled for deduction as the assessee is carrying on the business of banking or providing credit facilities to its members. The Ld. AR further submitted that section 80A(5) cannot be applied in the instant case due to the fact that it does not mention within which period the return should be filed. The Ld. AR further submitted that section 80AC(ii) which was inserted w.e.f. 1/4/2018 specifies that "any Deduction is admissible under any provisions of this Chapter under 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 of the Act. The Ld. AR argued that since the heading "C-deductions in respect of certain incomes" has been segregated from the other deductions it has to be applied to the instant case also. The Ld. AR further argued that as per the Finance Act, 2018 which came into effect w.e.f 01/04/2018, the substitution to section 80AC is only applicable from the AY commencing

on or after 01/04/2018 i.e., AY 2018-19 and not applicable to the earlier assessment years i.e., AY 2017-18 as in the case of the assessee. Therefore, the assessee is entitled to claim deduction U/s. 80P(2)(a)(i) of the Act. The Ld. AR relied on the decision of the Mumbai Tribunal in ITA No. 1613/Mum/2021 (AY 2017-18), dated 05/09/2022 in the case of Saidatar Co-operative Credit Society Ltd vs. ITO, Ward-32(1)(1), Mumbai.

Per contra, the Ld. DR submitted that the assessee has not filed a valid return of income in accordance with the provisions of section 139(1) or 139(4) of the Act in order to claim deduction u/s. 80P of the Act. The Ld. DR further submitted that as per section 80A(5) of the Act when no valid return of income is filed, the assessee has failed to make a claim of deduction u/s. 80P(2)(a)(i) of the Act, and therefore no deduction is permissible under the Act. The Ld. DR strongly relied on the orders of the Ld. Revenue Authorities.

6. I have heard both the parties perused the material available on record and the orders of the authorities below. Admitted facts are that the assessee has not filed its return of income U/s. 139 of the Act within the prescribed time limit for the impugned assessment year but has submitted trading account, P & L Account, income and expenditure account and balance sheet as on 31/3/2017 during the assessment proceedings only after issuance of show cause notice U/s. 144 of the Act.

Therefore, the Ld. AO applied the provisions of section 80A(5) of the Act since the assessee has not filed a valid return of income as per the provisions of section 139 of the Act and disallowed the claim of deduction u/s. 80P of the Act. Section 80A(5) of the Act is extracted below for reference:

"Sec. 80A (5) 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."

7. As per sub-section (5) of section 80A of the Act it is imperative to the assessee to make a claim in its valid return of income for any deduction under any provisions of the Chapter under the heading "C-deduction in respect of certain incomes". Since the assessee has failed to file its valid return of income within the prescribed time for the relevant assessment year claiming the deduction *prima facie* no deduction is permissible under the Act. Similarly, the assessee has not filed its valid return of income either U/s. 139(1) or U/s. 139(4) of the Act as observed by the Ld. AO as well as Ld. CIT(A)-NFAC and therefore, the Ld. AO held that the assessee failed to make the claim of deduction U/s. 80P(2)(a)(i) of the Act. I cannot appreciate the argument of the Ld. AR that the provisions of section 80AC are not applicable to the case of the assessee as the substitution came into effect from 01/04/2018 i.e., for the AY

2018-19 on wards because even after the substitution by Finance Act, 2018, to claim the deduction U/s. 80P(2)(a)(i) of the Act, the assessee has to file a valid return of income within the stipulated time as per the provisions of section 139 of the Act which is missing in the instant case. Further, on perusal of the case law relied on by the Ld. AR in the case of Saidatar Co-operative Credit Society Limited (supra), I find that there is no discussion about the applicability of the provisions of section 80A(5) which goes to the root of the matter. Further, on identical issue, the Division Bench of this Tribunal in the case of The Vatsavai Primary Agricultural Cooperative Credit Society Limited vs. ITO in ITA No. 220/Viz/2021 (AY 2017-18) has observed as under:

"6. We have heard both the parties perused the material available on record and the orders of the authorities below. Admitted facts are that the assessee has not filed its return of income for the impugned assessment year but has submitted trading account, P & L Account, income and expenditure account and balance sheet as on 31/3/2017 during the assessment proceedings. Section 80A(5) of the Act is extracted below for reference:

"Sec. 80A (5) 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.;"

7. As per sub-section (5) of section 80A of the Act it is imperative to the assessee to make a claim in its return of income for any deduction under any provisions of the Chapter under the heading "C-deduction in respect of certain incomes". Since the assessee has failed to file its return of income claiming the deduction prima facie no deduction is permissible under the Act. Similarly, the assessee has filed return of income manually on 5/3/2022 which was sent by speed post to CPC, Bangalore on 15/3/2022. It is noticed from the submissions made by the Ld.AR that the return has been filed U/s. 139(4) of the Act. As per section 139(4) of the Act "Any person who has not furnished a return within the time

*allowed to him under sub-section (1), may furnish the return for any previous year at any time before three months prior to the end of the relevant assessment year or before the completion of the assessment, **whichever is earlier.**" It is noted from the paper book page no. 21 the assessee has filed its return of income for the AY 2017-18 on 5/3/2022 u/s. 139(4) of the Act. We are of the view that since the return of income has been filed after completion of the assessment, the return should have been held as invalid and hence the claim made by the assessee for deduction U/s. 80P(2)(a)(i) cannot be held as an admissible deduction under the Act. The decision of the Hon'ble Kerala High Court in the case of Chirakkal Service Cooperative Bank vs. CIT (supra) relied on by the Ld. AR cannot be accepted due to the fact that in that case, the assessee has filed the belated return within the due dates. Similarly, in the decision of Hon'ble Madras High Court in the case of CIT vs. Sri Vasavi Gold & Bullion Pvt Ltd (supra) there was a technical issue in the e-filing of the appeals. But in the instant case the assessee has never filed its return of income. We therefore are inclined to uphold the order of the Revenue Authorities and dismiss the appeal of the assessee."*

The above decision of this Tribunal on similar issue being Division Bench decision is binding on me. Therefore, I am of the view that since the assessee has not filed its valid return of income within the prescribed time limit and in accordance with the provisions of section 139 of the Act, it was rightly held by the Ld. Revenue Authorities that the claim made by the assessee for deduction U/s. 80P(2)(a)(i) cannot be held as an admissible deduction under the Act. I am therefore inclined to uphold the orders of the Revenue Authorities and dismiss the appeal of the assessee.

8. In the result, appeal of the assessee is dismissed.

Pronounced in the open Court on 28th February, 2024.

Sd/-

(दुव्वूरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated :28/02/2024

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – The Konayapalem Primary Agricultural Cooperative Credit Society Limited, Konayapalem Village, Chandarlapadu Mandal, Krishna District, Andhra Pradesh – 521182.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(3), CR Buildings, 1st Floor Annex, MG Road, Vijayawada, Andhra Pradesh-520002.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam