

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH :NAGPUR [VIRTUAL HEARING]
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.52/NAG./2023
Assessment Year 2017-2018

Maharashtra Nagari Co-op Credit Society Ltd., 105, Seva Samiti Bldg Market, Main Road, Indira Gandhi Chowk, Hinghanghat. PIN - 442 301. Maharashtra PAN AAAAM4597P	vs.	The Income Tax Officer, Ward-1, Aayakar Bhavan, Civil Lines, Wardha – 442 001. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Mahavir Atal, C.A.
For Revenue :	Shri Abhay Y. Marathe

Date of Hearing :	22.03.2024
Date of Pronouncement :	16.04.2024

ORDER

This assessee’s appeal for assessment year 2017-18, arises against the National Faceless Appeal Centre [in short the “NFAC”] Delhi’s Din and Order No. ITBA/NFAC/S/250/2022-23/1044996292(1), dated 29.08.2022, involving proceedings u/s. 144 of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

“1. Where on the facts and circumstances of the case, the learned Commissioner was justified in affirming the addition made by the Assessing Officer u/s.80P(2)(a)(i) to the tune of Rs.19,33,650/-.

2. *The appellant craves leave to add or alter any other ground that may be taken at the time of hearing.”*

2. Coming to the assessee's sole substantive grievance seeking to claim section-80P(2)(a)(i) deduction of Rs.19,33,650/-; the Revenue's vehement preliminary stand in light of assessment as well as CIT(A)'s detailed discussion is that the same is not eligible to be granted once no return had been filed within the time stipulated by the Assessing Officer in furtherance to his sec.142(1) notice.

3. Learned DR quoted sec.80AC of the Act that filing of sec.139(1) return is a condition precedent for claiming the impugned deduction. It is noticed from a perusal of the CIT(A)'s detailed discussion in para-6 that the assessee had indeed filed its return, albeit belatedly, in response to sec.142(1) notice. That being the case, I am of the opinion that the amended provision herein i.e., sec.80AC of the Act imposing such a stipulation of filing of sec.139(1) return within the "due" date, has been substituted by the Finance Act, 2018 w.e.f. 01.04.2018 whereas the impugned assessment year herein is 2017-2018 only. There is no indication in the statute that this substituted sec.80AC carries any retrospective effect. I thus find no merit in Revenue's instant preliminary argument going by stricter interpretation as per Commissioner of Customs (Imports), Mumbai vs. M/s. Dilip Kumar And Co. & Ors. [2018] 9 SCC 1 (SC) (FB).

4. Learned DR next quoted sec.80A(5) of the Act that the assessee had not made the impugned claim even in its alleged belated return. Mr. Marathe draw my attention to the CIT(A)'s detailed discussion in paragraphs 7 to 7.1 rejecting the assessee's claim in very terms. He failed to rebut the clinching fact emerging from the assessee's pleadings in Form-35 that the assessee had indeed raised the impugned claim in its return filed on 11.12.2019. It is reiterated that sec.80AC of the Act has already been held as not applicable in light of the detailed discussion in preceding paragraph(s). Faced with this situation, I reject the Revenue's instant second substantive argument while placing reliance on sec.80A(5) of the Act.

5. Lastly comes the Revenue's third argument in light of Citizen Co-op Society Ltd., vs. ACIT [2017] 84 taxmann.com114 (SC) that the assessee has derived its impugned interest income from both nominal as well as regular members. This last issue is found to be no more *res integra* once hon'ble apex court's recent landmark decision in Mavilayi Service Co-operative Bank Ltd., vs., CIT [2021] 431 ITR 1 (SC) has rejected the Revenue's very stand. Faced with this situation, I thus accept the assessee's impugned sec.80P(2)(a)(i) deduction claim in very terms. Necessary computation shall follow as per law. Ordered accordingly.

6. Delay of 116 days is condoned as per assessee's solemn averments in light of Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) having settled the law long back that all

such technical aspects must make a way for the cause of substantial justice.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 16.04.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 16th April, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Nagpur concerned
4.	D.R. ITAT, "SMC" Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.