

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोरद, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE-PRESIDENT

&

DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 134/KOL/2024

Assessment Year: 2018-19

Jatrapur Samabay Krishi Unnayan Samity Ltd.....Appellant
[PAN: AACAJ 6681 R]

Vs.

DCIT, CPC, IT Department, Bangalore.....Respondent

I.T.A. No.: 135/KOL/2024

Assessment Year: 2018-19

Santipur Thana Co-operative Agricultural Marketing Society
Ltd.....Appellant
[PAN: AAOAS 4661 C]

Vs.

DCIT, CPC, IT Department, Bangalore.....Respondent

Appearances:

Assessee represented by: S.K. Pranshukha, A/R.

Department represented by: Manoj Tiwari, JCIT, Sr. D/R.

Date of concluding the hearing : April 4th, 2024

Date of pronouncing the order : April 17th, 2024

ORDER

Per Rajpal Yadav, Vice-President (KZ):

The ITA No. 134/KOL/2024, at the instance of the assessee is directed against the order of the ld. CIT(A) dated 14.11.2023 passed for AY 2018-19.

The ITA No. 135/KOL/2024 is at the instance of the assessee against the order of Id. CIT(A) dated 19.12.2023 passed for AY 2018-19.

2. ITA No. 134/KOL/2024 is time barred by 12 days. Ld. Counsel for the assessee submitted that in fact the appeal is not time barred. The Registry has calculated the days from the date of order instead of date of service/communication of the order and if date of communication of the order is being considered then appeal is within time limit. He pointed out that order is dated 14.11.2023. But it was received by the assessee on 30.11.2023. The appeal has been filed on 05.01.2024. After excluding these 12 days which has wrongly been counted by the Registry, the appeal would be in time. We have duly verified this fact and are satisfied that appeal is within time.

3. In both the appeals, common issue is involved namely whether deduction u/s 80P of the Act of Rs. 6,70,778/- (ITA No. 134/KOL/2024) and of Rs. 11,12,450/- (ITA No. 135/KOL/2024) could be denied to the assessee by CPC, Bangalore on the ground that returns u/s 139(1) of the Act was not filed by the assessee within the due date of filing of the return

4. With the assistance of Id. representatives, we have gone through the record carefully. We find that this issue is involved in a large number of appeals. The ITAT, Rajkot in the case of *Shri Nava Ujala Seva Sahakari Mandali Ltd. vs. DCIT* in ITA No. 20/RJT/2022 order dated 31.10.2022 has considered this issue elaborately. The finding recorded by the ITAT is worth to note which read as under:

“7. We have heard the rival contentions and perused the material on record. In the instant facts, admittedly the assessee did not file return of income within the time permissible under section 139(1) of the Act. However, the assessee filed its return of income belatedly on 28-11-2020 and claimed deduction of ₹ 2,12,008/- under section 80P of the Act. The issue for consideration before us is that whether once the return of income is filed beyond the prescribed date under section 139(1) of the Act, can the deduction under section 80P of the Act be denied to the assessee, by way of adjustment under section 143(1) of the Act. On going through the statutory provisions, we observe that 80AC of the Act provides that no such deduction under section 80P of the Act shall be allowed to an assessee unless he furnishes a return of his income on or before the due date specified under

section 139(1) w.e.f. assessment year 2018-19 onwards. However, section 143(1)(a)(v) of the Act provides that disallowance of deduction claimed under any of the provisions of Chapter VI-A under the heading "C.— Deductions in respect of certain incomes" (which includes deduction under section 80P of the Act), can be made if the return is furnished beyond the due date specified under sub-section (1) of section 139. This amendment has been introduced w.e.f. 1-4-2021. Accordingly, the above amendment would not apply to the impugned assessment year. Further, section 143(1)(ii) of the Act permits adjustment in case of an incorrect claim, if such incorrect claim is apparent from any information in the return. However, Explanation to the aforesaid section specifies the following cases where the claim made in the return of income can be said to be "incorrect" for the purposes of this subsection:

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction

7.1 A joint reading of the above provisions makes it evident that the claim of deduction under section 80P of the Act cannot be allowed the assessee, if the assessee does not file its return of income within the due date stipulated under section 139(1) of the Act w.e.f. assessment year 2018-19 onwards. However, we also note that amendment has been introduced in section 143(1)(a)(v) of the Act to provide that the claim of deduction under section 80P of the Act can be denied to the assessee, in case the assessee does not file its return of income within the time prescribed under section 139(1) of the Act with effect from 01-04-2021 and does not apply to the impugned assessment year i.e. assessment year 2019-20 relevant to financial year 2018-19. Accordingly, in our considered view, denial of claim under section 80P of the Act would not come within the purview of prima facie adjustment under section 143(1)(a)(v) of the Act, for the simple reason that the section was not in force during the period under consideration i.e. assessment year 2019-20.

7.2 The second issue for consideration is that whether the case of the assessee would fall within the purview of prima facie adjustment under section 143(1)(a)(ii) (an incorrect claim, if such incorrect claim is apparent from any information in the return). In our view, the scope of the adjustments that can be made under the said provision has been elaborated in the

Explanation to the aforesaid section, which does not include denial of deduction claimed by the assessee in case the assessee does not furnish its return of income within the date stipulated under section 139(1) of the Act. The Explanation to the said section specifically provides for cases/instances when the claim made by the assessee could be said to be “incorrect”. Therefore, in our considered view, the case of the assessee would also not fall within the purview of prima facie adjustment under section 143(1)(a)(ii) (an incorrect claim, if such incorrect claim is apparent from any information in the return). We also observe that the counsel for the assessee has filed copies of orders passed by Commissioner (Appeals), NFAC in many other cases of cooperative societies having similar issues, in which it has been held that section 143(1)(a)(ii) of the Act does not deal with disallowance of deduction for deed filing of return of income and also the said adjustment is not permissible under section 143(1)(a)(v) of the Act.

7.3 We note that in the case of Chirakkal Service Co-Operative Bank Ltd. Kannur v. CIT 2016] 68 taxmann.com 298 (Kerala), the Kerala High Court held that a return filed by assessee beyond period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can also be accepted and acted upon for entertaining claim raised under section 80P provided further proceedings in relation to such assessments are pending in statutory hierarchy of adjudication in terms of provisions of Act. In the case of ASR Engg. & Projects Ltd. [2019] 111 taxmann.com 49 (Hyderabad - Trib.), the ITAT held that to be eligible to make claim under section 80-IA or any other section of Chapter VI A, assessee should have filed return of income under section 139(1) and even if it did not make claim for deduction in original return and subsequently file revised return making such claim, its claim for deduction under section 80-IA is maintainable. Therefore, where assessee had filed return under section 139(1), it was entitled to claim deduction under section 80-IA even if such claim was not made in original return but subsequently in revised return filed in response to notice issued under section 153A.

7.4 We note that the instant case, there was a few-month delay in filing the return of income by the assessee for the assessment year 2019-20 and return of income was filed within due date permissible u/s 139(4) of the Act, in which the claim for deduction u/s 80P of the Act was made. Therefore, looking into the totality of facts, we are of the view that claim of deduction u/s 80P of the Act cannot be denied to the assessee only on the basis that the assessee did not file return of income its return of income within due date u/s 139(1) of the Act, in light of the discussion and judicial precedents highlighted above. Therefore, in the interests of justice, we are restoring the case to the file of the Ld. CIT(Appeals) for fresh adjudication on merits of the case after giving due opportunity of hearing to the assessee.”

5. On the same line of reasoning, there are other large number of decisions at the end of the Tribunal. The ld. Counsel for the assessee placed on record copy of the decision rendered by ITAT, Kolkata in the case of *Bisharpara Kotalia Cooperative Credit Society Ltd. vs. ITO* in ITA No. 1248/KOL/2023 order dated 06.02.2024. Respectfully following the decisions of the Coordinate Bench, we are of the view that the disallowance of claim u/s 80P of the Act could have not been made by CPC, Bangalore while processing the return u/s 143(1) of the Act. Therefore, we allow both the appeals and delete the disallowance.

6. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 17th April, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 17.04.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Jatrapur Samabay Krishi Unnayan Samity Ltd., Village-Jatrapur, P.O. Joypur, P.S. Kotwali, Dist. Nadia-741 102.**
2. **Santipur Thana Co-operative Agricultural Marketing Society Ltd., 61, Rajput Para Lane, P.O. & P.S. Santipur, Dist. Nadia-741 404.**
3. **DCIT, CPC, IT Department, Bangalore.**
4. CIT(A)-11, Mumbai.
5. CIT(A)-12, Delhi.
6. CIT-
7. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata