

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 117/Kol/2024
Assessment Year: 2018-19

General Insurance Employees' Co- opt. Credit Soc. Ltd. C/o National Insurance Co., 1 st Floor Sarkar Mansion H.C. Road Siliguri - 734001 [PAN: AAEAG0487C]	Vs	DCIT, CPC
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sujit Basu, Advocate and Shri Rajib Mukharjee, Advocate
Revenue by :	Shri Manoj Tiwari, JCIT, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 03/04/2024
घोषणा की तारीख/**Date of Pronouncement** : 17/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The instant appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax, Appeal, Addl./JCIT(A) Bhubaneswar, [hereinafter the "1d. First Appellate Authority"] dt. 29/11/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal:-

"1. For that on the facts of the case, the order passed by the Ld. Additional / Joint Commissioner of Income Tax (Appeals) on 29.11.2023 is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, the Ld. Additional / Joint Commissioner of Income Tax (Appeals) was wrong in not considering the merit of the case of the appellant that the amendment was made in section 143(l)(a)(v) by Finance Act, 2021, w.e.f. assessment year 2021-22 and as such the appellant was correct in claiming deduction u/s 80P in its belated return of income for assessment year 2018-19. The Ld. AO, CPC was not right in disallowing the deduction u/s 80P by making adjustment u/s 143(l)(a)(ii) in absence of required enabling power.

3. For that on the facts of the case, the Ld. Additional / Joint Commissioner of Income Tax (Appeals) was wrong in not considering the fact that the power for adjustment u/s 143(l)(a)(ii) was beyond the scope of section 143(l)(a)(v) which was amended w.e.f. 1.4.2021 and as such the Ld. AO was not correct in disallowing the deduction u/s 80P by making adjustment u/s 143(l)(a)(ii).

4. For that on the facts of the case, the Ld. Additional / Joint Commissioner of Income Tax (Appeals) was wrong in not considering the fact that the adjustment for only "Incorrect claim" can be made u/s 143(l)(a)(ii). "Incorrect claim" has been defined by way of Explanation to section 143(1) of the Act and does not state that the claim u/s 80P would be incorrect if return of income is not filed within the due date.

5. For that that on the facts of the case, the Ld. Additional / Joint Commissioner of Income Tax (Appeals) was wrong in not considering the fact that the appellant was not assessed u/s 143(3) but its return was processed u/s 143(1). Once a return is processed as a valid return, there are restrictions within section 143(l)(a) which lists down six specific adjustments which can be made in processing the return. The Assessing Officer had no power to disallow deduction u/s 80P for belated filing of return by way of adjustment u/s 143(l)(a)(v) in assessment year 2018-19, which power has been provided to him only from assessment year 2021-22 by Finance Act, 2021.

6. For that that on the facts of the case, the Ld. Additional / Joint Commissioner of Income Tax (Appeals) was wrong in not considering the fact that there is a clear distinction between the two forms of orders u/s 143(3) and u/s 143(1). Disallowance of claim u/s 80P for assessment year 2018-19 can be made in assessment u/s 143(3) in view of amendment in section 80AC(ii) w.e.f. assessment year 2018-19, but such denial cannot be made u/s 143(l)(a) for assessment year 2018-19 as the amendment made in section 143(l)(a)(v) by Finance Act, 2021 is prospective and not retrospective.

7. For that on the facts of the case, the Ld. Additional / Joint Commissioner of Income Tax (Appeals) was not right in not considering the fact that the appellant had duly handed over its audit report and audited statement of accounts to its tax lawyer Advocate Dibyendu Sarakar in first week of June, 2018 for filing of income tax return but the said Advocate had filed the income tax return of the appellant belatedly on 31.3.2019. The belated filing of return was beyond the control of the appellant and the

Ld. Additional / Joint CIT (Appeals) ought to allow the deduction u/s 80P doe the sake of natural justice.

8. *That the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal."*

3. The sole grievance of the assessee is that the ld. CIT(A) erred in confirming the action of the Central Processing Centre (in short 'CPC') made in the order u/s 143(1)(a) of the Act denying the deduction u/s 80P of the Act solely on the ground that return has been filed beyond the due date prescribed u/s 139(1) of the Act.

4. At the outset, the ld. Counsel for the assessee submitted that enabling provisions u/s 143(1)(a)(v) of the Act has been introduced from 01/04/2021 and for the impugned Assessment Year, there was no mechanism for making the alleged disallowance in processing the return u/s 143(1)(a) of the Act. Reliance placed on plethora of judgments and including that of Co-ordinate Bench, Rajkot in the case of *Dhareshwar Seva Sahakari Mandali Ltd. vs. DCIT in ITA No. 197/Rjt./2022, dated 10/02/2023.*

On the other hand, the ld. D/R vehemently argued supporting the orders of the lower authorities.

6. We have heard the rival contentions and perused the material placed before us. We observe that the assessee is a credit co-operative society. The due date for furnishing return of income for Assessment Year 2018-19 was 31/08/2018. The assessee furnished return belatedly on 31/03/2019. Deduction under Chapter VIA i.e., as per the provision of Section 80P of the Act was made at Rs.4,25,100/-. As per the provision

of Section 80AC of the Act which has been introduced from 01/04/2018 onwards, deduction under Chapter VI of the Act are not allowable unless the assessee furnishes the return within the due date specified u/s 139(1) of the Act. Now, the assessee has filed the return belatedly. For examination of the income tax return either the same needs to be processed u/s 143(1)(a) of the Act or may be scrutinised u/s 143(3) of the Act.

7. In the instant appeal, return has been processed u/s 143(1)(a) of the Act. Now, in sub-clause (v) to Section 143(1)(a) of the Act, mechanism has been provided to make disallowance under Chapter VIA, if return is furnished beyond the due date but the said provision has come into effect from 01/04/2021. Now, Section 143(1)(a)(ii) of the Act refers to an incorrect claim, if such incorrect claim is apparent from any such information in the return. Now, the incorrect claim has been defined in Explanation to Section 143(1)(a) of the Act as under:-

Explanation. – For the purposes of this sub-section, –

- (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. We observe that in the instant case, deduction u/s 80P of the Act has been claimed in the return by Credit Co-operative Society. Such claim is not falling under any of the items mentioned under the

definition of "incorrect claim" as apparent from any information in the return. Therefore, Section 143(1)(a)(ii) of the Act cannot be invoked in the instant case. Now, the only Section which can be applied is Section 143(1)(a)(v) of the Act. But prior to the amendment made in Section 143(1)(a)(v) of the Act, only the disallowance of deduction claimed u/s 10AA, 80IA, 80IB, 80IC, 80ID and 80IE of the Act can be made if return is furnished beyond the due date prescribed u/s 139(1) of the Act. Prior to amendment, Section 80P of the Act was not included in the said list.

8. We thus, are of the considered view that prior to 01/04/2021, there was no mechanism under the Act to make the alleged adjustment in processing of return u/s 143(1)(a) of the Act for disallowing the deduction claimed u/s 80P of the Act solely on the ground of furnishing the return beyond the statutory time limit prescribed u/s 139(1) of the Act. We, therefore, set aside the finding of the Id. CIT(A) and allow the effective grounds raised by the assessee and direct the revenue authorities to allow the deduction claimed u/s 80P of the Act of Rs. 4,25,100/-.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 17th April, 2024 at Kolkata

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 17/04/2024

SC SpB

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata