

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.419/Nag./2023
(Assessment Year : 2017-18)

The Vidarbha Region Life Insurance
Corporation Employees Co-operative
Society Ltd., Dadabhai Nauroji Marg
LIC Square, Sadar, Nagpur 440 001
PAN – AABAT0542L

..... Appellant

v/s

Income Tax Officer
Ward-2(2), Nagpur

..... Respondent

Assessee by : Shri Aniruddha Ghude
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 14/05/2024

Date of Order – 14/05/2024

ORDER

PER K.M. ROY, A.M.

The instant appeal has been filed by the assessee challenging the impugned order dated 31/10/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), Delhi, [*"learned CIT(A)"*], for the assessment year 2017-18, emanating out of the assessment order dated 24/12/2019, passed by the Income Tax Officer, Ward-2(2), Nagpur.

2. In its appeal, the assessee has raised following grounds:-

"1. That, the order passed by the Learned CIT (Appeal) is invalid, illegal and bad in law.

2. That, as per section 80P(2) (a) any amount of profit and gain of business attributable to carrying on business of banking or providing credit facilities to its members shall be allowed as deduction. Hence the income earned from the above said shall be allowed as deduction under section 80P(2)(a) of Income Tax Act 1961. That, on the facts and circumstances of the case the Learned Assessing Officer has erred in disallowing claim of deduction u/s 80P of the Income Tax Act, 1961.

3. Assessing officer have prevented the assessee from the basic principle of natural justice since the list of pendency was not communicated clearly.

4. Assessee have received the order in favor on the same grounds for earlier assessment year by the same authority but the same principles/documents are not considered in this order

5. That, the appellant prays to set aside the order passed by learned Commissioner of Income Tax (Appeals), NFAC and grant consequential relief to the appellant.

6. That, the explanation given by the Learned Commissioner of Income Tax (Appeals), NFAC for passing the order are not acceptable to the appellant.

7. That, appellant craves for stay on the demand raised by the Commissioner of Income Tax (Appeals), NFAC.

8. That, the appellant prays to amend, alter, withdraw or leave any of the grounds as and when the occasions arise."

3. Facts in brief:- The assessee is a Co-operative Society shown gross total income of ₹ 1,97,83,227 and claimed deduction (Chapter VI-A) under section 80P of ₹ 1,97,83,227. During scrutiny of the case, the Assessing Officer noticed that the assessee society has not complied with the notices issued under section 142(1) of the Act. According to the Assessing Officer, in absence of any reply from the assessee, the claim of deduction under section 80P of the Act is not verifiable. A list of members / non-members of the society has not been furnished. Whether the assessee society is allowable for exemption under section 80P of the Act is, therefore, questionable. The Assessing Officer, therefore, issued a show cause notice dated 20/12/2019 to

the assessee society asking as to why the exemption claimed under Chapter VI of ₹ 1,97,83,227 should not be disallowed. The assessee has not furnished any reply against the show cause notice issued on 20/12/2019. The Assessing Officer, therefore, concluded that the assessee has no reply to offer on the issue of exemption claimed by it. He accordingly, disallowed the claim of exemption of the assessee of ₹ 1,97,83,227, and make this addition, treating the same as income from other sources. The assessee being aggrieved by the order so passed by the Assessing Officer, filed appeal before the first appellate authority.

4. The learned CIT(A) upheld the order of the Assessing Officer by dismissing the order passed by the assessee observing as under:-

"7.0 We have carefully considered the issue under dispute and examined the same in the light of the facts and circumstances of the case as emanating from the impugned assessment order u/s.143(3) of the Act and relevant provisions of the statute.

7.1 During the course of assessment proceedings, the assessee failed to furnish the basic details such as list of members / non members of the society. Therefore, the AO disallowed the claim of the assessee for deduction u/s 80P(2)(a) as it was not possible for the Assessing Officer to verify the eligibility of the assessee for deduction claimed in the absence of such information.

7.2 During the appellate proceedings, the assessee filed detailed written submissions along with the case laws. However, even during the present appellate proceedings, the assessee failed to furnish the basic information/documents such as list of members, Details of Loan and deposits etc., In the absence of such basic details, it is not possible to verify the claim of the assessee for deduction u/s 80P. Therefore, all the written submissions and case laws become irrelevant in absence of basic details/information to determine the eligibility of the assessee for deduction u/s 80P.

7.3 Further, as mentioned in the foregoing paragraphs, in Form No.35 at column NO.12 the assessee stated that it had filed additional evidence in terms of Rule 46A. However, as verified from the submissions made by the assessee, it is noticed that he has not filed any application with regard to admission of additional evidence. Further, in Column No. 12.1, it is stated that "List of Members, Details of Deposits, Details of Loan and other required

documents are the documents filed as additional evidence. However, on verification of the attachments to form No.35, it is noticed that the assessee has neither filed any application under Rule 46A or any documentary evidence as mentioned in Column No. 12.1 despite giving several opportunities during the present appellate proceedings.

7.4 In the written submissions, the assessee contended that the AO wrongly placed reliance on the decision of the Hon'ble Apex Court in the case of the Citizen Co-operative Society Ltd. However, as seen from the assessment order, the AO did not place reliance on the said case. The AO disallowed the claim of the assessee for deduction u/s 80P only on the ground that the assessee did not file necessary documents such as List of members.

7.5 The assessee further contended that no addition was made on this issue for the A.Y. 2013-14 and therefore addition made for the A.Y 2017-18 should also be deleted. However, there is no res judicata in income tax proceedings. Further, in order to allow the deduction, the assessee should satisfy the conditions mentioned in section 80P for each assessment year independently. As already mentioned, the assessee failed to furnish details/information such as "List of Members, Details of Deposits, Details of Loan etc., for the year under consideration Therefore, the argument of the assessee cannot be accepted. In view of the above, am of the considered opinion that the AO rightly disallowed the deduction claimed u/s 80P of Rs. 1,97,83,227/-. Therefore, the ground raised by the assessee on this issue is dismissed.

8.0 In the result, the appeal filed against the order u/s143(3) for the A.Y.2017-18 is dismissed."

5. Before us, the learned Counsel for the assessee submitted that the list of members, details of deposit, details of loan and other required documents could not be uploaded as there is a restriction on the portal on the volume of documents to be uploaded. Further, due to technical glitch in the system of the assessee, these could not be prepared in a composite manner, as the system was not updated. Now he is ready with all the details and the system of the appellant has also been upgraded to cope up with the technicalities of uploading in the portal. Thus, he prayed to give one more opportunity to establish his case before the learned CIT(A). He pleaded that he has a prima-facie strong case.

6. The learned Departmental Representative submitted that he was alive to the problem of uploading bulk documents and further expressed that the appellant could have extracted the data in a compressed manner.

7. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. It appears that the assessee was genuinely handicapped for submitting necessary particulars due to technical glitch before both the authorities. However, for the sake of natural justice and in the interest of fairplay, we deem it expedient to remand the matter back to the file of the learned CIT(A) for denovo adjudication. The assessee is also directed to submit all the documents and evidences in their possession diligently and shall fully co-operate in rendering effective delivery of justice in the matter. The issues are consequently restored back to the file of the learned CIT(A) with the aforesaid directions.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 14/05/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 14/05/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur