

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरुआर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.144/Viz/2023
(निर्धारणवर्ष/ Assessment Year: 2018-19)

HPC Employees Cooperative Society Limited, Visakhapatnam. PAN: AAAH5103. (अपीलार्थी/ Appellant)	Vs.	The Income Tax Officer, Ward-2(5), Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थीकीओरसे/ Assessee by	:	Sri GVN Hari, AR
प्रत्यर्थीकीओरसे/ Revenue by	:	Dr. Aparna Villuri, Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	03/06/2024
घोषणाकीतारीख/Date of Pronouncement	:	24/07/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1050477363(1), dated 07/03/2023

arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [“the Act”] for the AY 2018-19.

2. Briefly stated the facts of the case are that the assessee being a Cooperative Society Limited, filed its return of income on 25/03/2019 admitting NIL income after claiming deduction U/s. 80P of the Act for Rs. 82,07,180/-. The return was summarily processed U/s. 143(1) of the Act wherein the deduction claimed U/s. 80P was disallowed and the total income was determined at Rs. 82,07,180/-. Subsequently, the case was selected for scrutiny to verify the following issues i.e., (i) Investments / Advances / Loans and (ii) Deduction claimed by the assessee from total income under Chapter-VIA of the Act. Thereafter, notice U/s. 143(2) of the Act was issued on 28/09/2019 and duly served on the assessee. Subsequently, notice U/s. 142(1) of the Act was issued along with a questionnaire and served electronically upon the assessee. In response, the assessee filed replies to the notices. After examining the details and explanation submitted by the assessee during the assessment proceedings, the Ld. AO sustained the additions made by the CPC, Bangalore vide its intimation U/s. 143(1) of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal

before the Ld. CIT(A)-NFAC. On appeal, before the Ld. CIT(A)-NFAC the assessee made written submissions stating that the assessee is an Employee Cooperative Society providing banking / credit facilities to its members and hence its income is eligible for deduction U/s. 80P of the Act. Further, the Ld. AR also reiterated before the Ld. CIT(A)-NFAC that the assessee is eligible for exemption under the Principle of Mutuality. The Ld. CIT(A)-NFAC, considering the submissions of the assessee, upheld the order of the Ld. AO stating that the Ld. AO has rightly invoked the provisions of section 80AC r.w.s 80P(2) of the Act. The Ld. CIT(A)-NFAC also concluded that the Principle of Mutuality does not come into force and thereby dismissing 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. *The order of the Ld. CIT(A)-NFAC is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) is not justified in upholding the action of the Assessing Officer in disallowing the deduction of Rs. 82,07,180/- claimed U/s. 80P(2) of the Act.*
3. *The Ld. CIT(A) ought to have held that the appellant is eligible for deduction U/s. 80P of the Act as the return of income though not filed within the due date U/s. 139(1) of the Act was filed within the time allowed U/s. 139(4) of the act and as even this delay was due to reasons beyond the control of the appellant.*

4. *In the alternative, the Ld. CIT(A) ought to have held that the appellant is eligible for deduction U/s. 80P of the Act on the principle of mutuality.*
5. *Any other grounds may be urged at the time of hearing.”*

3. **Grounds No. 1 & 5** are general in nature and therefore they need no separate adjudication.

4. **Grounds No. 2, 3&4** relate to disallowance of deduction of Rs. 82,07,180/- claimed U/s. 80P(2) of the Act stating that the return of income was not filed within the due date as specified U/s. 139(1) of the Act. The Learned Authorized Representative [“Ld. AR”] argued that the core issue of Principle of Mutuality was not considered and adjudicated by the Ld. CIT(A)-NFAC. The Ld. AR also submitted that the assessee is an Employee Cooperative Society wherein the contributions of employees’ are distributed to employees and therefore the principle of mutuality applies. The Ld. AR also reiterated that section 139(4) of the Act is not an independent provision and cannot be construed as having separate existence from section 139(1) of the Act. He therefore pleaded that on the Principle of Mutuality, the assessee should be exempted from payment of taxes. The Ld. AR placed reliance on the following cases:

- (i) Judgment of the Hon'ble Andhra Pradesh High Court in the case of Commissioner of Income Tax vs. Nataraj Finance Corporation [1988] 169 ITR 0732
- (ii) Decision of the ITAT, Vizag Bench in the case of ACIT vs. M/s. The Anakapalle Rural Electrical Co-operative Society Ltd (ITA No.140 & 141/Viz/2019, AY 2013-14 & 2014-15), dated 22/09/2020.

Per contra, the Learned Departmental Representative [“Ld. DR”] submitted that as per section 80AC of the Act, no deduction shall be allowed to the assessee if the return of income is not filed on or before the due date specified U/s. 139(1) of the Act. The Ld. DR therefore submitted that the Ld. AO has rightly invoked the provisions of section 80AC of the Act and pleaded that the orders of the Ld. Revenue Authorities be upheld.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Admittedly the assessee has not filed its return of income within the due date specified U/s. 139(1) of the Act for the AY 2018-19. The assessee has filed its return of income belatedly U/s. 139(4) of the Act on 25/03/2019 by claiming deduction U/s. 80P of the Act. In this connection section 80AC introduced by the Finance Act, 2018 w.e.f 1/4/2018 is extracted below:

“Sec. 80AC. *Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after—*

- (i) *the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section-80-IA or section-80-IAB or section-80-IB or section-80-IC or section-80-ID or section-80-IE;*
- (ii) ***the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the 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.]”

6. From the plain reading of the above section 80AC of the Act it is clear that any deduction under the provisions of this Chapter under the heading “C-Deduction in respect of certain incomes”, no such deduction shall be allowed unless the assessee files the return of income on or before the due date specified U/s. 139(1) of the Act. Further, there is no merit in the argument of the Ld. AR that section 139(4) is not an independent provision. We also extract below section 139(4) of the Act which reads as under:

“Sec. 139(4): 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.”

7. From the bare reading of sub-section (4) of section 139 of the Act, it is clear that *“any person who has not furnished the return of income within the time limit allowed under sub-section (1) of the Act, may furnish*

the return of income.....whichever is earlier". The intention of the Legislature is to facilitate and exercise the option to file the return of income belatedly U/s. 139(4) of the Act for those assesseees who have not filed return of income within the time limit specified u/s 139(1) of the Act. However, section 80AC limits its allowability of deduction under this Chapter "deduction in respect of certain income" specifically for the return of income furnished on or before the due date specified U/s. 139(1) of the Act and not for return of income furnished U/s. 139(4) of the Act. Therefore, it cannot be given an extended interpretation to cover the return of income filed U/s. 139(4) of the Act. The cases relied on by the Ld. AR are distinguishable on facts and are of no help to the assessee. The alternative plea by the Ld. AR to apply the Principle of Mutuality, being an afterthought of the assessee cannot also be considered. We are therefore inclined to dismiss the Grounds No. 2, 3 & 4 raised by the assessee.

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

Pronounced in the open Court on 24th July, 2024.

Sd/-

(दुव्वूरु.आर.एल.रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 24 .07.2024

OKK - SPS

Sd/-

(एस.बालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee –HPC Employees Cooperative Society Limited, B-11, East, Yendada Park, Malkapuram, Visakhapatnam, Andhra Pradesh – 530011.
2. राजस्व/The Revenue – The Income Tax Officer, Ward-2(5), Infinity Tower, Shankaramatham Road, Santhipuram, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam