

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.515/PUN/2024
निर्धारण वर्ष / Assessment Year : 2019-20

Raigad Zilha Prathamik Shikshak Sahakari Pathpedi Limited, H.No.1555, Main Road, Shivaji Chowk, Alibaug, Raigad- 402201. PAN : AAAAR6651H	Vs.	ITO, Ward-3, Panvel.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Akhilesh Srivastava

Date of hearing : 04.07.2024
Date of pronouncement : 05.08.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 10.11.2023 passed by Ld CIT(A)/NFAC for the assessment year 2019-20.

2. The facts of the case, in brief, are that the assessee is employee's cooperative credit society registered under the

Maharashtra Co-operative Societies Act, 1960 and engaged in the activity of providing credit facilities to its members and accepting deposits from its members. The assessee filed its return of income on 21.09.2019 declaring total income of Rs.4,30,090/- after claiming deduction of Rs.84,09,344/- u/s 80P of the IT Act, 1961. The Return of Income was processed by the CPC and an Intimation order u/s 143(1) was issued on 03.01.2021 by making prima-facie adjustment by disallowing the claim of Rs.84,09,343/- made u/s 80P(2)(f) of the IT Act. Aggrieved by the above intimation order of CPC, a rectification application u/s 154 of the IT Act was filed on 15.12.2021 for rectification of the order of CPC, which was rejected by the AO vide order dated 28.12.2021 by stating that the claim to allow deduction u/s 80P has been disallowed by the CPC. Therefore, there is no mistake apparent from the record, the application of assessee is hereby rejected. Being aggrieved with this order, the assessee preferred first appeal before LD CIT(A)/NFAC, who vide impugned order dated 10-11-2023, after considering the reply of the assessee, dismissed the appeal of the assessee.

3. Being aggrieved with this first appeal order the assessee preferred second appeal before this Tribunal.

4. LD AR submitted before us that the summery order passed u/s 154 of the IT Act by the AO as well as the first appeal order passed by LD CIT(A)/NFAC is not correct. It was submitted that before making any prima-facie adjustment or disallowance the AO/CPC is bound to issue a communication to the assessee to submit his response, but in the instant case no such communication was issued to the assessee & the claim was disallowed. Therefore, the assessee was deprived from the opportunity to reply or make any correction in the return if it was so required. But in the intimation the deduction claimed was directly disallowed without making any communication with the assessee, which was a pre-requisite for the CPC, which is a prima-facie error needs to be rectified u/s 154 of the IT Act. It was therefore submitted before the bench that the order passed by LD CIT(A)/NFAC & also passed by the CPC may kindly be set aside & CPC be directed to communicate to the assessee regarding proposed prima-facie adjustment. It was further submitted that however the deduction u/s 80P of Rs.84,09,344/- was

rightly claimed in the return, but due to an inadvertent error by the junior advocate in the schedule of deduction it was mentioned as deduction u/s 80P(2)(f) of the IT Act. It was submitted that the assessee being a credit cooperative society is entitled to claim deduction u/s 80P2(a)(i) & 80P(2)(d) of the IT Act regarding interest income earned during the course of business as well as on deposits from other cooperative societies. Secondly, the assessee being a credit cooperative society is also entitled to claim deduction u/s 80P(2)(c)(ii) of the IT Act of Rs.50,000/- regarding other income of cooperative society. It was therefore submitted before the bench that even on merits of the case the assessee cooperative society is entitled to claim deduction under the abovementioned sections & therefore for the typographical error made by the junior counsel the assessee must not suffer.

5. LD DR relied on the orders passed by subordinate authorities & requested to confirm the same.

6. We have heard LD counsels from both the sides & perused the material available on record. We find that by an inadvertent error in the return the deduction u/s 80P(2)(f) was mentioned instead of u/s

80P(2)(a)(i) & 80P(2)(d) of the IT Act. And the CPC, Bengaluru while processing the return made prima-facie adjustment of Rs.84,09,344/- by rejecting the deduction claimed u/s 80P(2)(f) of the IT Act. We also find that in the light of section 143(1) of the IT Act, the CPC, Bengaluru was required to communicate to the assessee before making any prima-facie adjustment. In this regard, we reproduce relevant portion of section 143(1) of the IT Act as under :-

“[143. Assessment.—

[(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

*(i) any arithmetical error in the return; ****

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

[(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made;]”

7. From the perusal of above section & its proviso it becomes crystal clear that the CPC was obliged to communicate to the assessee before making any prima facie adjustment/disallowance or addition. In this regard LD DR was directed by the bench to confirm the fact that whether CPC issued any communication to the assessee before making prima-facie adjustment/addition u/s 143(1) of the IT Act or not. In reply LD DR submitted after confirming from the AO that NO communication was made by CPC with the assessee, while making impugned prima-facie adjustment. This itself is the mistake apparent on the face of the record which needs to be rectified by the CPC. In such kind of situation and in the light of section 143(1) & its proviso, we do not hesitate to set-aside the orders passed by all the subordinate authorities & accordingly, we direct the CPC Bengaluru to communicate/intimate to the assessee before making proposed adjustment/disallowance & also issue fresh

intimation u/s 143(1) of the IT Act for the period under consideration only after considering the response of the assessee, if any, in this regard.

8. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in the open Court on 05th day of August, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th August, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.