

आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.136/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Konizerla Sri Tilak PACS,
1-126 Konizerla, Penugolanu
Post, Gampalagudem Mandal,
Krishna District, Andhr Pradesh.
PAN: AABAK2512K

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Ward-3(5),
Vijayawada.

(प्रत्यार्थी/ Respondent)

Sri C. Subrahmanyam, AR

Sri Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 18/07/2024

: 14/08/2024

ORDER

PER DUVVURU RL REDDY, Judicial 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"] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1060762337(1), dated 10/02/2024 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 for the AY 2017-18.

2. Briefly stated the relevant facts of the case are that the assessee is a Primary Agricultural Cooperative Credit Society Limited. As per the information available with the Department, the assessee has deposited cash of Rs. 8,69,688/- on 08/11/2016 in its account held with Krishna District Central Cooperative Bank, Gampalagudem Branch during the demonetization period. The Ld. AO during the assessment proceedings observed that the assessee did not file its return of income before the due date U/s. 139(1) of the Act and therefore a notice U/s. 142(1) of the Act calling for return of income was issued on 07/03/2018 and the same was served on the assessee on 16/03/2018. However, the assessee has not complied with the notice and the assessee has failed to file the return of income even by 31/03/2018 i.e., the last date to file the valid return of income. In such situation, the Ld. AO vide notices U/s. 142(1) of the Act dated 13/09/2019 intimated the assessee about the completion of assessment U/s. 144 of the Act keeping in view of the assessee's failure to file the return of income in response to notice U/s. 142(1) of the Act and also called for certain information for completion of the assessment. In response, the assessee has furnished the information viz., Trading Account, P & L Account, Income & Expenditure account and balance sheet

as on 31/03/2017 and claimed the entire profit of Rs. 27,47,952/- as deductible U/s. 80P of the Act on the profits earned out of its activities. On verification of the information furnished and evidences filed as above, the Ld. AO completed the assessment U/s. 144 of the Act as best judgment assessment based on the material available on record. While completing the assessment, the Ld. AO observed that the assessee's claim is not acceptable in view of the provisions of section 80A(5) of the Act. The Ld. AO further observed that since the assessee has not filed its return of income, the provisions of section 80A(5) of the Act are clearly applicable as the assessee has failed to make the claim of deduction U/s. 80P(2)(a)(i) of the Act. Hence, the Ld. AO brought to tax the net profit shown by the assessee in the P & L Account of Rs. 27,47,952/- as income from business for the AY 2017-18. The Ld. AO also initiated the penalty proceedings U/s. 270A & U/s. 271F of the Act since the assessee has filed the return of income as per the provisions of section 139 of the Act and made erroneous claim of deduction U/s. 80P of the Act. Thus, the Ld. AO determined the assessed income of the assessee at Rs. 27,47,952/- and made disallowance of deduction U/s. 80P of the Act amounting to Rs. 27,47,952/- and passed the assessment order U/s. 144 of the Act dated 26/12/2019.

Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC, considering the submissions and of the assessee and after discussing the relevant provisions of the Act, observed that *“the assessee had failed to file return of income for the year under consideration U/s. 139 or in response to the notice U/s. 142(1). Though evidently such failure by itself justifies invocation of provisions of section 80A(5) for denial of captioned deduction, merely for the sake of completeness it is reiterated that the details available on record do not show that the assessee has filed any return of income for the year under consideration. Under such circumstances, respectfully following the decisions of the Hon’ble High Court of Kerala no interference is called for in the action of the Ld. AO in denying the deduction of Rs. 27,47,952/- during the year under consideration as per the provisions of section 80A(5) of the Act.”* [Penultimate para of Para No.5 of the Ld. CIT(A)-NFAC’s order]. Thus, the Ld. CIT(A)-NFAC sustained the disallowance made by the Ld. AO and dismissed 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. *That under the facts and circumstances of the case the order passed U/s. 144 of the Act dated 26/12/2019 that was upheld by Ld. CIT(A) vide order U/s. 250 of the Act dated 10/02/2024 is contrary to the facts of the case and provisions of law.*
2. *The Ld. CIT(A) erred in denying the claim U/s. 80P of the Act and he ought to have considered the provisions of section 80AC of the Act as it stood at the relevant time, therefore the assessee is rightly entitled for the claim U/s. 80P(2)(a)(i) U/s. 80P(2)(a)(iv).*
3. *The Ld. CIT(A), NFAC disallowed the claim U/s. 80P(2)(a)(i) of the Act by erroneously applying the provisions of section 80A(5) of the Act which do not apply to the case of the assessee society. Instead, the Ld. CIT(A) ought to have examined the case from the perspective of Sec. 80AC of the Act as it stood at the relevant time.*
4. *The reliance placed by the Ld. CIT(A), while confirming the disallowance U/s. 80P(2)(a)(i) of the Act on certain legal decisions these are distinguishable since the facts are different in those cases.*
5. *For these and other reasons that are to be urged at the time of hearing the case the Hon’ble ITAT may delete the addition in the interest of justice.”*

4. At the outset, the Learned Authorized Representative [Ld. AR] argued that the assessee is a Primary Agricultural Cooperative Credit Society Limited and claimed deduction U/s. 80P of the Act for the AY 2017-18. The Ld. AR further submitted that as per section 80P(2)(a)(i) of the Act, the assessee is entitled for deduction as the assessee is carrying on the business of banking or providing credit facilities to its members. The Ld. AR further submitted that section 80A(5) cannot be applied in the instant case due to the fact that it does not mention within which period the return should be filed. The Ld. AR further submitted

that section 80AC(ii) which was inserted w.e.f. 1/4/2018 specifies that “any Deduction is admissible under any provisions of this Chapter under 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 of the Act. The Ld. AR argued that since the heading “C-deductions in respect of certain incomes” has been segregated from the other deductions it has to be applied to the instant case also. The Ld. AR further argued that as per the Finance Act, 2018 which came into effect w.e.f 01/04/2018, the substitution to section 80AC is only applicable from the AY commencing on or after 01/04/2018 i.e., AY 2018-19 and not applicable to the earlier assessment years i.e., AY 2017-18 as in the case of the assessee. Therefore, the assessee is entitled to claim deduction U/s. 80P(2)(a)(i) of the Act. The Ld. AR relied on the decision of the Mumbai Tribunal in ITA No. 1613/Mum/2021 (AY 2017-18), dated 05/09/2022 in the case of Saidatar Co-operative Credit Society Ltd vs. ITO, Ward-32(1)(1), Mumbai.

5. Per contra, the Ld. DR submitted that the assessee has not filed a valid return of income in accordance with the provisions of section 139(1) or 139(4) of the Act in order to claim deduction u/s. 80P of the Act. The Ld. DR further submitted that as per section 80A(5) of the Act when no

valid return of income is filed, the assessee has failed to make a claim of deduction u/s. 80P(2)(a)(i) of the Act, and therefore no deduction is permissible under the Act. The Ld. DR strongly relied on the orders of the Ld. Revenue Authorities.

6. I have heard both the parties perused the material available on record and the orders of the authorities below. Admitted facts are that the assessee has not filed its return of income U/s. 139 of the Act within the prescribed time limit for the impugned assessment year but has submitted trading account, P & L Account, income and expenditure account and balance sheet as on 31/3/2017 during the assessment proceedings only after issuance of show cause notice U/s. 144 of the Act. Therefore, the Ld. AO applied the provisions of section 80A(5) of the Act since the assessee has not filed a valid return of income as per the provisions of section 139 of the Act and disallowed the claim of deduction u/s. 80P of the Act. Section 80A(5) of the Act is extracted below for reference:

“Sec. 80A (5) Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder.’;”

7. As per sub-section (5) of section 80A of the Act it is imperative to the assessee to make a claim in its valid return of income for any deduction under any provisions of the Chapter under the heading “C-deduction in respect of certain incomes”. Since the assessee has failed to file its valid return of income within the prescribed time for the relevant assessment year claiming the deduction *prima facie* no deduction is permissible under the Act. Similarly, the assessee has not filed its valid return of income either U/s. 139(1) or U/s. 139(4) of the Act as observed by the Ld. AO as well as Ld. CIT(A)-NFAC and therefore, the Ld. AO held that the assessee failed to make the claim of deduction U/s. 80P(2)(a)(i) of the Act. I cannot appreciate the argument of the Ld. AR that the provisions of section 80AC are not applicable to the case of the assessee as the substitution came into effect from 01/04/2018 i.e., for the AY 2018-19 onwards because even after the substitution by Finance Act, 2018, to claim the deduction U/s. 80P(2)(a)(i) of the Act, the assessee has to file a valid return of income within the stipulated time as per the provisions of section 139 of the Act which is missing in the instant case. Further, on perusal of the case law relied on by the Ld. AR in the case of Saidatar Co-operative Credit Society Limited (supra), I find that there is no discussion about the applicability of the provisions of section 80A(5) which goes to the root of the matter. Further, on identical issue, the Division Bench of this Tribunal in the case of The Vatsavai Primary

Agricultural Cooperative Credit Society Limited vs. ITO in ITA No. 220/Viz/2021 (AY 2017-18) has observed as under:

“6. We have heard both the parties perused the material available on record and the orders of the authorities below. Admitted facts are that the assessee has not filed its return of income for the impugned assessment year but has submitted trading account, P & L Account, income and expenditure account and balance sheet as on 31/3/2017 during the assessment proceedings. Section 80A(5) of the Act is extracted below for reference:

“Sec. 80A (5) Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder.”

*7. As per sub-section (5) of section 80A of the Act it is imperative to the assessee to make a claim in its return of income for any deduction under any provisions of the Chapter under the heading “C-deduction in respect of certain incomes”. Since the assessee has failed to file its return of income claiming the deduction prima facie no deduction is permissible under the Act. Similarly, the assessee has filed return of income manually on 5/3/2022 which was sent by speed post to CPC, Bangalore on 15/3/2022. It is noticed from the submissions made by the Ld.AR that the return has been filed U/s. 139(4) of the Act. As per section 139(4) of the Act “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.**” It is noted from the paper book page no. 21 the assessee has filed its return of income for the AY 2017-18 on 5/3/2022 u/s. 139(4) of the Act. We are of the view that since the return of income has been filed after completion of the assessment, the return should have been held as invalid and hence the claim made by the assessee for deduction U/s. 80P(2)(a)(i) cannot be held as an admissible deduction under the Act. The decision of the Hon’ble Kerala High Court in the case of Chirakkal Service Cooperative Bank vs. CIT (supra) relied on by the Ld. AR cannot be accepted due to the fact that in that case, the assessee has filed the belated return within the due dates. Similarly, in the decision of Hon’ble Madras High Court in the case of CIT vs. Sri Vasavi Gold & Bullion Pvt Ltd (supra) there was a technical issue in the e-filing of the appeals. But in the instant case the assessee has never filed its return of income. We therefore are inclined to uphold*

the order of the Revenue Authorities and dismiss the appeal of the assessee.”

8. The above decision of this Tribunal on similar issue being Division Bench decision is binding on me. Therefore, I am of the view that since the return of income has not been filed in accordance with the provisions of section 139 of the Act, it was rightly held by the Ld. Revenue Authorities that the claim made by the assessee for deduction U/s. 80P(2)(a)(i) cannot be held as an admissible deduction under the Act. I am therefore inclined to uphold the orders of the Revenue Authorities and dismiss the appeal of the assessee.

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

Pronounced in the open Court on 14th August, 2024.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Dated :14/08/2024.
OKK - SPS

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Konizerla Sri Tilak PACS, 1-126 Konizerla, Penugolanu Post, Gampalagudem Mandal, Krishna District, Andhr Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-3(5), O/o. ITO, CR Building, 1st Floor Annex, MG Road, Vijayawada, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,

4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam