

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Shri Ramit Kochar, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos. 884 & 885/Ahd/2024  
Assessment Year 2018-19 & 2019-20**

Dared Seva Sahkari Mandali Ltd., Dared , Vallbhipur, Bhavnagar- 364310, Gujarat PAN: AABAD0211E (Appellant)	v.	Assessment Unit, Bhavnagar [ITO, Ward-1(1), Aayakar Bhawan, Jashonath Chowk, Nakubaug, Bhavnagar-364001, Gujarat] (Respondent)
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**Assessee by: Shri Bansi Thakrar, A.R.  
Revenue by: Shri Santosh Kumar, Sr. D.R.**

Date of hearing : 24-07-2024  
Date of pronouncement : 20-08-2024

**आदेश/ORDER**

**PER : RAMIT KOCHAR, ACCOUNTANT MEMBER:-**

These two appeals in ITA Nos. 884 & 885/Ahd/2024 for assessment years 2018-19 & 2019-20 respectively, both filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad has arisen from the separate appellate

orders both dated 28.03.2024 passed by Ld. CIT(A), NFAC, Delhi u/s. 250 of the Income-tax Act, 1961 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1063573997(1) and ITBA/NFAC/S/250/2023-24/1063574322(1) for assessment year 2018-19 and 2019-20 respectively , which in turn has arisen from the separate assessment order(s) firstly dated 29.03.2023 passed by learned Assessing Officer u/s 147 read with Section 144B for assessment year 2018-19 & secondly dated 09-01-2024 passed by the Assessing Officer u/s. 147 r.w.s. 144B of the Income-tax Act 1961 for assessment year 2019-20. Since both these appeals raises similar issues, they were heard together and are disposed off by this common order.

2. The grounds of appeals raised by assessee in Memo of Appeal filed with the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad for assessment year: 2018-19, & 2019-20 reads as under:-

**ITA No. 884/Ahd/2024 A.Y. 2018-19**

*“1. The Assessment Unit, Income Tax Department erred in issuing an assessment order at NIL and falling to allow deduction u/s 80P in the computation sheet.”*

*2. The Assessment Unit, Income Tax Department erred in issuing a notice of demand of Rs. 2,58,357/- when the assessment order has been passed at Nil variation.”*

**ITA No. 885/Ahd/2024 A.Y. 2019-20**

*“1. The Assessment Unit, Income Tax Department erred disallowing deduction u/s 80P to the tune of Rs. 3,99,833/-”*

3. First, we will take up assessee appeal for assessment year 2018-19. From the NMS information, the Assessing Officer observed that the assessee has deposited cash of Rs. 5,31,61,730/- and has time deposit of Rs. 21,81,997/. The Assessing Officer observed that assessee has not filed return of income for the year under consideration. Vide above information, the AO was of the view that the income chargeable to tax has escaped assessment for the impugned assessment year. The assessment of the assessee was reopened by the AO u/s 147/148 of the 1961 Act. Notice u/s. 148 dated 25-03-2022 was issued by the AO to the assessee. The assessee filed return of income in pursuance to notice u/s 148, declaring Nil Income Thereafter , notices were issued by the AO u/s. 142(1) of the Act. The assessee submitted its reply during reassessment proceedings. The assessee is engaged in the business of credit co-operative society that is accepting deposit from members as well as taking loan from co-operative banks and providing credit facilities to its members during the year under consideration. The assessee is also selling fertilizer, pesticides and seeds to farmers for agricultural activity. The Assessing Officer assessed income u/s. 147 r.w.s. 144B of the Act assessing total income of assessee at ‘ Nil’ , but vide computation sheet issued by the Assessing Officer which was part of the assessment order , the deduction u/s. 80P of the Act of Rs. 3,92,061/- was denied to the assessee. and notice of demand u/s 156 of Rs. 2,58,357/- was raised by the AO , vide reassessment order dated 29.03.2023 passed by the AO u/s 147 read with Section 144B of the 1961 Act.

4. Assessee being aggrieved by the aforesaid reassessment order filed first appeal with the Id. CIT(A) , and the Id. CIT(A) dismissed the appeal of the

assessee on the ground that assessee has not filed return of income u/s. 139(1) of the Act. The assessee filed return of income on 25-01-2023 in response to the notice issued u/s. 148 of the Act. The assessee has claimed deduction u/s 80P to the tune of Rs. 3,92,061/- . Since return of income was filed u/s. 148 and is not original return filed u/s. 139(1), the claim of the assessee was not considered by the Assessing Officer.

4.2 The CIT(A) referred to the decision of Hon'ble Tribunal in the case of M/s. Nileshwar Rangkallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Pallikkara, Nileshwar vide ITA No. 120 of 2019, dated 14-03-2023 , in which the Tribunal has held as under:-

*“11 On a consideration of the rival submissions and on a perusal of the statutory provisions, we find that a reading of Section 80A(5) and Section 80AC of the IT Act as they stood prior to 1.4.2018, when the latter provision was amended by Finance Act 2018, would reveal that the statutory scheme under the IT Act was to admit only such claims for deduction under Section 80P of the IT Act as were made by the assessee in a return of income filed by him. That return can be under Sections 139(1), 139(4), 142(1) or Section 148 and to be valid, had to be filed within the due date contemplated under those provisions. Under Section 80A(5), the claim for deduction under Section 80P could be made by an assessee in a return filed within the time prescribed for filing such returns under any of the above provisions. The amendment to Section 80AC with effect from 1.4.2018, however mandated that for an assessee to get a deduction under Section 80P of the IT Act, he had to furnish a return of his income for such assessment year on or before the due date specified in Section 139(1) of the IT Act In other words, after 1.4.2018, even if the assessee makes his claim for deduction under Section 80P in a return filed within time under Sections 139(4), 142(1) or Section 148, he will not be allowed the deduction, unless the return in question was filed within the due date prescribed under Section 139(1). Thus, it is clear that the statutory scheme permits the allowance of a deduction under Section 80P of the IT Act only if it is made in a return recognised as such under the IT Act, and after 1.4.2018, only if that return is one filed within the time prescribed under Section 139(1) of the Act. As the return in these cases, for the assessment years 2009-10 and 2010-11, were admittedly filed after the dates prescribed under Sections 139(1) and 139(4) or in the notices issued under Section 142(1) and Section 148, the returns were indeed non-est and could not have been acted upon by the Assessing Officer even though they were filed before the completion of the assessment.*

*12. There is yet another aspect of the matter. The requirement of making the claim for deduction in a return of income filed by the assessee can be seen as a statutory pre-condition for claiming the benefit of deduction under the IT Act. It is trite that a provision for deduction or exemption under a taxing Statute has to be strictly construed against the assessee and in favour of the Revenue. Thus viewed, a failure on the part of an assessee to comply with the precondition for obtaining the deduction cannot be condoned either by the statutory authorities or by the courts.”*

4.3 The Id. CIT(A) held that claim of deduction u/s. 80P claimed by the assessee in the return of income not filed u/s. 139(1) of the Act cannot be allowed, and since the assessee has filed return of income belatedly beyond the due date prescribed u/s 139(1) , the claim of deduction u/s 80P cannot be allowed. The appeal of the assessee was dismissed by the Id. CIT(A) .

5. Aggrieved , the assessee has filed appeal with Tribunal . It was submitted by Id. Counsel for the assessee that return of income was not filed by the assessee within the due date prescribed u/s. 139(1), however return of income was filed in pursuance to notice issued by the AO u/s. 148 which was filed beyond the due date prescribed u/s 139(1). It was submitted that the assessee has claimed deduction u/s. 80P but the same was denied to the assessee. The return of income was not filed within the due date prescribed u/s. 139(1) of the Act. The Id. counsel for the assessee submitted that it is a belated return of income which is filed beyond the due date prescribed u/s 139(1), and was filed in pursuance to notice issued by the AO u/s 148. The Id. counsel for the assessee relied upon the judgment and order dated 15<sup>th</sup> February, 2016 of Hon’ble Kerala High Court in the case of *The Chirakkal Service Co-operative Bank Ltd. vs. v. CIT vide ITA No. 212 of 2013* , wherein

Hon'ble Kerala High Court has allowed the deduction even in the case of belated return of income, by holding as under:-

*“20. Here, questions would arise as belated returns filed beyond to the whether period stipulated under section 139(1) or section 139(4) as well as following sections 142 (1) and 148 proceedings could be considered for exemption. If those returns are eligible to be accepted in terms of law, going by the provisions of the statute and the governing binding precedents, it goes without saying that the claim for exemption will also stand effectuated as a claim duly made as part of the returns so filed, for due consideration.”*

5.2 The ld. counsel has also relied upon the decision of ITAT, Rajkot Bench in the case of *Lunidhar Seva Sahkari Mandali Ltd. v. The Assessing Officer*, in ITA No. 202/Rjt/2022 has decided the issue vide order dated 22.02.2023, by holding as under:-

*“We note that the instant case, there was a delay in filing the return of income by the assessee for the assessment year 2019-20 and return of income was filed within due date permissible u/s 139(4) of the Act, in which the claim for deduction u/s 80P of the Act was made. Therefore, looking into the totality of facts, we are of the view that claim of deduction u/s 80P of the Act cannot be denied to the assessee only on the basis that the assessee did not file return of income its return of income within due date u/s 139(1) of the Act, in light of the discussion and judicial precedents highlighted above.”*

5.3 Thus, it was prayed by ld. counsel for the assessee that deduction u/s. 80P be allowed to the assessee. The ld. Sr. D.R. on the other hand, submitted that law is very clear on the subject and no deduction can be allowed to the assessee keeping in view the amended provision of the Statute i.e. 80AC of the Act, which was substituted by Finance Act, 2018 w.e.f. 01.04.2018.

6. We have considered rival contentions and perused the material on record. The assessee has claimed that it is engaged in the business of activities of Credit Co-operative society wherein it is accepting deposits from its members

as well as taking loan from Co-operative Banks and providing credit facilities to its members during the year. Apart from this, the society is also selling Fertilizers , Pesticides and seeds to farmers for agricultural activities. The assessee did not file its return of income originally u/s 139(1) of the 1961 Act. As per NMS information shows that the assessee has deposited cash of Rs. 5,31,61,730/- and Time deposits of Rs. 21,81,977/-. Based on the above, the AO has reasons to believe that the income of the assessee has escaped assessment. It led to reopening of the assessment by invoking provisions of Section 147 of the 1961 Act. The notice u/s 148 was issued by the AO. The assessee filed its return of income in pursuance to notice issued by the AO u/s 148. The AO issued notices u/s 142(1) during reassessment proceedings. The assessee filed its replies. The AO passed the reassessment order dated 29.03.2023 u/s 147 read with Section 144B of the 1961 Act, wherein income assessed was Nil, while in the computation of income, the deduction of Rs. 3,92,061/- u/s 80P was denied to the assessee, and notice of demand u/s 156 of the 1961 Act was issued raising demand of Rs.2,58,357/- against the assessee. The said computation of income and notice of demand u/s 156 were part of the reassessment order, as could be seen from the assessment order at para 6 of the reassessment order:-

*“6. Assessed u/s 147 read with section 144B of the Income Tax Act,1961. Computation of income and demand notice u/s 156 of the Act is attached.”*

It is an admitted fact that the assessee never filed its return of income u/s 139(1) of the 1961 Act, and the only return of income filed by the assessee was return of income filed in pursuance to notice issued by the AO u/s 148 of the 1961 Act. The assessee never claimed deduction u/s 80P in the return of

income to be filed u/s 139(1) as the assessee never filed such return of income. It is equally true that computation of income and notice of demand u/s 156 are part of the assessment order, and the AO has not expressly stated in the body of the assessment as to disallowing of the deduction u/s 80P, but the claim of assessee for deduction u/s 80P in the return of income filed in pursuance to notice issued by the AO u/s 148 was ex-facie incorrect claim filed by the assessee keeping in view substituted provision 80AC which was substituted by Finance Act, 2018 w.e.f. 01.04.2018 , as the said return of income filed was not filed within the due date prescribed u/s 139(1). Thus, it could be irregularity on the part of the AO that there is no mention in the assessment order about the said disallowance u/s 80P, but it duly found mentioned in Computation of income and consequentially vide demand raised by the AO in notice of demand u/s 156, which are integral part of the assessment order. Thus, it is a case wherein ex-facie wrong claim dehors the substituted provisions of Section 80AC is raised by the assessee. Thus , non mention of the disallowance of deduction u/s 80P in the body of assessment could be an irregularity on the part of the AO w.r.t. this ex-facie wrong and incorrect claim of deduction u/s 80P, but it could not be extended to the level that the disallowance of deduction u/s 80P as was made by the AO could be quashed, as the assessee has not filed the said claim of deduction u/s 80P in the return of income filed within the due date as prescribed u/s 139(1) of the 1961 Act and hence the said claim of deduction is an ex-facie incorrect filed by the assessee in the return of income filed in pursuance to notice u/s 148 which is return of income filed belatedly beyond the due date prescribed u/s 139(1) and thus being the ex-facie wrong claim filed by the assessee keeping in view the substituted provisions of Section 80AC. The law was amended by Finance

Act, 2018 w.e.f. 01.04.2018, wherein Section 80AC was substituted effective from assessment year 2018-19. We are presently concerned with assessment year 2018-19, and substituted Section 80AC shall apply. The substituted Section 80AC reads as under:

***“80AC Deduction not to be allowed unless return furnished***

*Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after-*

- (i) The 1<sup>st</sup> day of April, 2006 but before the 1<sup>st</sup> day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80IB or section 80-IC or section 80-ID or section 80-IE;*
- (ii) the 1<sup>st</sup> 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.”***

Thus, as per substituted amended Section 80AC w.r.t. deduction falling under Chapter-VIA under the heading “C-Deductions in respect of certain incomes”, it is mandatory that return of income is to be filed on or before the due date prescribed u/s 139(1). Deduction u/s 80P falls within Chapter VIA-C, and is covered by 80AC(ii). The assessee did not file return of income on or before the due date as prescribed u/s 139(1), and it is only in the return of income filed in pursuance to notice u/s 148 which is filed beyond the due date prescribed u/s 139(1), the assessee filed said claim of deduction u/s 80P, which clearly is not admissible keeping in view substituted provisions of Section 80AC effective from assessment year 2018-19. The language of amended section 80AC is plain, clear and unambiguous, and literal reading of Section 80AC makes it very clear that claim of deduction u/s 80P is admissible

only when the claim of deduction u/s 80P is made in the return of income filed on or before the due date prescribed u/s 139(1). Our above view is strengthened by the order of Hon'ble Madras High Court in the case of *Veerappampalayan Primary Agricultural Co-operative Credit Society in W.P. No. 7038 of 2020, order dated 07.04.2021, Hon'ble Supreme Court Constitutional Bench judgment and order in the case of Commissioner of Customs(Imports) v. Dilip Kumar & Co. CA No. 3327/2007, dated 30.07.2018 and Hon'ble Calcutta High Court judgment and order in the case CIT v. Shelcon Properties Private Limited (2015)370 ITR 305(Cal.HC)*. Thus, we do not find any merit in the appeal filed by the assessee. The decision relied upon by the assessee either concerns its self with pre-amended Section 80AC or concerns itself with adjustment made u/s 143(1)(a) while processing of the return wherein disallowance u/s 80P was made. We are not presently concerned with these disallowances. However, we have observed that CBDT in exercise of its power 119(2)(b) of the 1961 Act has issued Circular No.13/2023 dated 26.07.2023 in F.No. 173/21/2023-ITA-1, to deal with the cases where deduction u/s 80P could not be granted owing to return of income being filed beyond the due date specified u/s 139(1), and its condonation by merits by the Competent Authority as specified in the aforesaid Circular. The assessee, if may so advised, can file such application for condoning of the delay before Competent Authority as prescribed under the aforesaid circular, which shall be disposed off by the Competent Authority on merit in accordance with law. The Competent Authority while disposing such application for condoning the delay shall consider that the assessee was pursuing alternate remedy with appellate forums viz. Id. CIT(A) and ITAT. Thus, the appeal of the assessee stand dismissed. We order accordingly.

7. In the result, appeal of the assessee in ITA no. 884/Ahd/2024 for assessment year 2018-19 stand dismissed, as indicated above.

8. The facts in the appeal in ITA no. 885/Ahd/2024 for assessment year 2019-20 are similar to the facts in the ITA No. 884/Ahd/2024 for assessment year 2018-19 except that the disallowance of deduction u/s 80P found duly mentioned by the AO in the body of assessment order for assessment year 2019-20 itself , and the appeal for assessment year 2018-19 stood adjudicated by us in preceding para of this order, and our decision in ITA no. 884/Ahd/2024 for assessment year 2018-19 shall apply mutatis mutandis to ITA no. 885/Ahd/2024 for assessment year 2019-20. The appeal of the assessee in ITA no. 885/Ahd/2024 for assessment year 2019-20 also stand dismissed. We order accordingly.

9. In the result, appeal of the assessee in ITA no. 885/Ahd/2024 for assessment year 2019-20 also stand dismissed.

10. In the result , appeals of the assessee in ITA no. 884 & 885/Ahd.2024 for assessment years 2018-19 and 2019-20 stand dismissed.

Order pronounced in the open court on 20-08-2024 At Ahmedabad

**Sd/-**  
**(T. R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 20 /08/2024**

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद