

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“J (SMC)” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI SANDEEP SINGH KARHAIL, JM**

**I.T.A. No. 2605 /Mum/2024  
(Assessment Year: 2021-22)**

<b>The Premier Co-operative Credit Society Ltd.</b> Kohinoor City, Hutatma Gurunath Varde Marg, off LBS Road, Kurla, Mumbai-40070. <b>PAN : AAHAT3877E</b>	Vs.	<b>ITO, Ward-41(1)(3),</b> Kautilya Bhavan, Bandra Kurla Complex, Bandra, Mumbai-400051.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Shri Deven Patil & Shri Milind Sheth, CA

**Revenue/Respondent by** : Shri Sridhar G. Menon, Sr. DR

**Date of Hearing** : 08.08.2024

**Date of Pronouncement** : 20.08.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)'] dated 10.04.2023 for Assessment Year (AY) 2019-20. The assessee through various grounds is contending denial deduction under section 80P of the Income Tax Act (the Act) in the intimation under section 143(1)(a) for the reason that the assessee has filed belated return.

2. The assessee is a co-operative credit society and filed the return of income for AY 2019-20 on 29.07.2020 declaring a total income of Nil after claiming deduction under section 80P of the Act. The return was processed under section 143(1)(a) of the Act whereby the deduction claimed by the assessee under section 80P was denied assessing the income of the assessee at Rs. 17,35,347/-. The reason for denial of deduction as mentioned in the intimation under section 143(1)(a)(ii) is that the return was not filed within due date. Aggrieved the assessee filed further appeal before the CIT(A) who confirmed the said addition.

3. The ld. AR submitted that the deduction under section 80P could not be denied under section 143(1)(a)(ii) since it was not a claim wrongly made by the assessee in the return of income. The ld. AR further submitted that the amendment to section 143(1)(a)(v) to deny the deduction under Chapter-VIA for belated filing of return was brought into statute w.e.f. 01.04.2021 and therefore the AO could not deny the said benefit to the assessee for AY 2019-20. With regard to the provisions of section 80AC which states that the deduction under Chapter-VIA would not be allowed if the return is not filed within the due date under section 139(1) the ld. AR submitted that though the said amendment is effective from 01.04.2018 the same could not be done in the intimation under section 143(1)(a) since the consequential amendment is brought into the said section only from 01.04.2021. Accordingly, the ld. AR argued that the AO is not correct in denying the deduction under section 80P of the Act in the intimation under section 143(1)(a)(ii).

4. The ld. DR submitted that the provisions of section 80AC are very clear that unless the assessee files the return of income within the due date specified under section 139(1) the deduction under Chapter-VIA cannot be allowed. The ld. DR

drew our attention to the Finance Bill, 2021 where it has been stated that the amendment to section 143(1)(a)(v) is brought to give consequential effect carried out in section 80AC vide Finance Act, 2018. The Id. DR therefore, submitted that the amendment to section 143(1) is consequential and therefore, is effective from when section 80AC was amended i.e. 01.04.2018. Without prejudice, the Id. DR submitted that the disallowance in assessee's case is made under section 143(1)(a)(ii) which says that an incorrect claim which is apparent from the information in the return can be disallowed. The Id. DR argued that the return being filed belatedly is apparent in the return itself in which the assessee has incorrectly made the claim under section 80P and therefore the disallowance made under section 143(1)(a)(ii) justified. The Id. DR submitted that explanation to section 143(1) defines an "incorrect claim apparent from any information in the return" to mean an item which is inconsistent with another entry of the same or some other item is such return which very much fits the assessee's case where the return is filed belatedly.

5. We heard the parties and perused the material available on record. The issue for consideration before us is that whether when the return of income is filed beyond the prescribed date u/s. 139(1) of the Act, can the deduction u/s. 80P of the Act be denied to the assessee, by way of adjustment u/s. 143(1)(a) of the Act. Section 80AC has been amended w.e.f. 01.04.2018 to provide that –

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

(i) \*\*\*

(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 above amended provisions it is clear that an assessee cannot claim deduction u/s.80P after 01.04.2018 if the return of income is not filed within the due date prescribed u/s.139(1). In assessee's case it is an admitted fact that the return of income is filed belatedly on 29.07.2020 claiming the deduction u/s.80P for an amount of Rs. 17,35,347/- which has been denied in the intimation u/s.143(1)(a). Though as per the provisions of section 80AC, the assessee is denied the deduction u/s.80P it is also important to examine whether the same can be done u/s.143(1)(a). In this regard we will look at the provisions of section 143(1)(a) for the relevant AY which reads as under

**143.** (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 <sup>68</sup>[or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) **disallowance of deduction claimed under <sup>69</sup>[section 10AA](#) or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", 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:

\*\*\*\*\*

*Explanation.*—For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) \*\*\*\*\*

7. In the given case the applicable clauses for making the disallowance u/s.80P is either 143(1)(a)(ii) or 143(1)(a)(v). An amendment is brought into section 143(1)(1)(v) w.e.f. 01.04.2021 to provide that disallowance of deduction claimed under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" (which includes deduction under section 80P of the Act), can be made if the return is furnished beyond the due date specified under sub-section (1) of section 139. Prior to the amendment the deduction could be denied only for sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE. The year under consideration is AY 2019-20 and therefore the section prior to the amendment is what is applicable to assessee, that does not cover the deduction u/s.80P. The amended clause is not applicable to assessee's case since the same is effective only from 01.04.2021. Accordingly it is clear that the denial of deduction u/s.80P could not be done u/s.143(1)(a)(v).

8. Now coming to whether the deduction can be denied u/s.143(1)(ii) which permits an adjustment in case of an incorrect claim, if such incorrect claim is apparent from any information in the return. The explanation to section 143(1) specifies what is to be construed as an "incorrect claim apparent from any information in the return" as extracted above, from the perusal of which it is clear

that, the scope of the adjustments that can be made under the said provision does not include denial of deduction claimed by the assessee in case the assessee does not furnish its return of income within the date stipulated under section 139(1) of the Act. The Explanation to the said section specifically provides for cases/instances when the claim made by the assessee could be said to be "incorrect". Therefore, in our considered view, the case of the assessee would also not fall within the purview of prima facie adjustment under section 143(1)(a)(ii).

9. In this regard it is relevant to notice the decision of the Chandigarh Bench of the Tribunal in the case of Lanjani Coopertative Agri Service Society Ltd vs DCIT (CPC) (2023 146 Taxmann.com 468 where a similar issue is considered to hold that -

*14 .1 On consideration of the above when read alongwith the arguments advanced before the CIT(A) on behalf of the assessee which have been reiterated before the ITAT, I find that on facts the case of the assessee is allowable. The AO/CPC Bangalore at the relevant time though considering the amended section 80AC was exercising the powers as vested by the section 143(1) of the Act as it then stood. AT the relevant point of time, the provisions of section 143(1) of the Act were as under:*

*143. (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, 80-1 A, 80-1 AB, 80- IB, 80- IC, 80-1D or section 80-1E 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:

14.2 It is a matter of fact that sub-clause (v) of section 143(1)(a) was amended by the Finance Act, 2021 wherein instead of reference to Sections 10AA, 80-1A, 80-1AB, 80-1B, 80-1C, 80-1D or section 80-1E, the provision instead makes a mention of section 10AA or under any of the provisions of Chapter VI-A under the head 'C-Deductions in respect of certain incomes'. Accordingly, the enabling provisions to address the amendment in section 80-AC by Finance Act, 2018 came into play only in 2020-21 assessment year. Thus, no doubt section 80AC as amended by the Finance Act, 2018 mandated that even for claiming deduction claimed u/s. 80P, the return of income was to be filed before the due date as specified under sub-section (1) of section 139. However, for the AO to insist upon the compliance by way of making a disallowance, the power was vested in the said Authority only vide Finance Act, 2021. Hence, in the absence of the enabling provisions, the CPC Bangalore lacked the jurisdiction to make this disallowance in the order u/s. 143(1). Accordingly, on facts, I find that the appeal of the assessee has to be allowed.

14.3 Before parting, it may also be relevant to refer to the decision of the Apex Court dated 30-7-2018 in the case of Dilip Kumar & Co. (*supra*) relied upon by the Id. Sr. DR. On a reading therefrom, it is seen that the issue for consideration before the Hon'ble Court was whether the denial of benefit of Customs Notification No. 20/1999 was justified to the party who pleaded that the benefit of concessional rates for import of animal feed should also be

*available to Import which admittedly contained chemical ingredients for animal feed. The concessional rate of duty under the extent Notification was being considered. The order of denial by the Customs Officer was reversed by Commissioner of Customs. This order was confirmed by Customs Excise & Service Tax Tribunal (CESTAT) which led to the filing of the appeal before the Hon'ble High Court and then the Apex Court. It is in that background that the Hon'ble Court held that exemption notification should be interpreted strictly and the burden of proving that the case comes within the parameters of the exemption clause or exemption notification would be on the assessee. In such circumstances, in case there is ambiguity, the Notification must be interpreted in favour of the Revenue. In the facts of the present case, there is no ambiguity. It is a case of absence of enabling provision. Hence, the ratio laid down therein has no applicability to the facts of the present case.*

*14.4 It is also necessary to refer to the decision of the Hon'ble Madras High Court in the case of Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. (supra) (cited supra). A perusal of the same shows that the issue for consideration before the Hon'ble High Court in the Writ Jurisdiction invoked by the assessee was very fact specific. The assessee therein was canvassing that u/s. 143(1)(a) for considering hence, the decision is distinguishable. Further, before the Hon'ble High Court, the amendment carried out in Section 143(1)(a) by the Finance Act 2021 was neither argued nor referred to for consideration of the Hon'ble Court.*

*14.5 It is further seen that the decision of the Apex Court in the case of B.C. Srinivasa Shetty (supra) fully supports the view taken. The Court therein at page 299 has held as under:*

*“.....The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantify it.....” (Emphasis supplied)*

*14.6 In the facts of the present case, admittedly the provision enabling the AO to pass an order relying upon sub-clause (5) of Section 143(1)(0) was not on the Statute for 2018-19 assessment year. Accordingly, for the detailed reasons hereinabove, setting aside the impugned order, the appeal of the assessee is allowed.”*

10. In view of these discussions and considering the above decision, in our considered view denying the deduction under section 80P for the reason that the assessee did not file the return within due date through an intimation under section 143(1)(a) prior to 01.04.2021 is not tenable. According we direct the AO to allow the deduction under section 80P to the assessee.

11. In the result, the appeal of the assessee is allowed.

*Order pronounced in the open court on 20-08-2024.*

*Sd/-*  
**(SANDEEP SINGH KARHAIL)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**