IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.356/LKW/2023
Assessment Year: 2019-20

Shramik Vikas Sahkari Shrram Samvida Samiti Ltd, 135-K-2, Nankari, IIT Kanpur	v.	The Assessing Officer Circle 1(1)(1) Kanpur
TAN/PAN:		
(Appellant)		(Respondent)

Appellant by:	Shri Rakesh Garg, Advocate		
Respondent by:	Shri Sanjeev Krishna Sharma, Sr. D.R.		
Date of hearing:	25	07	2024
Date of pronouncement:	30	08	2024

O R D E R

This appeal has been filed by the assessee against the order dated 12.10.2023 passed by the learned Commissioner of Income Tax (Appeals), Mumbai (hereinafter called "the ld. CIT(A") in short) for the assessment year 2019-20.

2. The brief facts of the case are that the assessee is a Co-operative Society. The assessee filed its return of income for the captioned year, declaring the income at Rs.21,61,640/- on 30.11.2019, i.e. after the due date for filing of the Income Tax Return in terms of section 139(4) of the Income Tax Act, 1961 (hereinafter called "the Act"). While filing the return of income, the assessee duly claimed deduction under section 80P(ii)(vi) of the Act. However, the Centralized Processing Center (hereinafter

called "the CPC") determined the total income of the assessee-society at Rs.21,61,640/- without allowing the assessee's claim of deduction under section 80P of the Act.

2.1 Thereafter, the assessee approached the ld. First Appellate Authority challenging the failure of the CPC to grant statutory deduction under section 80P(ii)(vi) of the Act. However, the ld. CIT(A) observed that for making claim of deduction under section 80P of the Act, the assessee was either required to file the revised return or if time for revision was not available, make a claim before the competent authority for condonation of delay. The ld. CIT(A) observed that since the assessee had neither revised the return of income nor made any application for condonation of delay, the ld. CIT(A) was not empowered to condone either the delay or allow any claim of deduction. The ld. CIT(A) further noted that even as per the provisions of section 80AC (ii) of the Act, no deduction under any provisions of Chapter VIA was to be allowed w.e.f. 1.4.2018 unless the assessee had filed the return of income on or before the due date specified under section 139(1) of the Act and since in the instant case, the assessee had filed the return of income belatedly, i.e. beyond the due date, even by virtue of section 80AC of the Act, the claim of deduction was inadmissible. With the above observations, the ld. CIT(A) dismissed the appeal of the assessee.

2.2 Now the assessee has approached this Tribunal challenging the dismissal of its appeal by raising the following grounds:

> *1. Because the CIT(A) has erred on facts and in law in upholding the order of the AO denying deduction u/s 80P of the Income-tax Act, 1961, thereby taxing the entire surplus of Rs.21,61,640/-, such denial being contrary to facts and the provisions of law be allowed and the income taxed be deleted.*
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> *2. Because the CIT(A) has erred on facts and in law in holding that since the return of income was not filed within the statutory time u/s.139(1), the assessee society was not eligible for deduction u/s 80P overlooking the fact that the return of income filed was accompanied by a late fee of Rs.5000/- as per the provisions of section 234F and as such being a valid return, the deduction claimed should have been allowed.*
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> *3. Because on a proper interpretation of the provisions of section 234F, read with section 139, once fee for late filing of return is deposited, the return of income stands regulated, making it a valid return, thereby deduction u/s 80P being allowable, the CIT(A) was not justified in denying the claim, the deduction under section 80P be allowed.*
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> *4. Because the CIT(A) has wrongly held that since the return was not filed within the time u/s.139(1) and no deduction u/s.80P was claimed, the assessee society was not eligible for deduction u/s.80P when read with section 80AC, the defect of late filing being removed the deduction claimed ought to have been allowed.*
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> *5. Because in the return filed deduction u/s.80P was claimed, the CPC was not justified in denying the deduction and the CIT(A) has wrongly interpreted that the assessee society was not eligible for the said deduction, overlooking the settled case laws that CIT(A) has all the powers to admit and entertain fresh claim, if an assessee is entitled for the same, the order of the CIT(A) being legally unsustainable, the deduction claimed be allowed.*

6. Because the CIT(A) has failed to appreciate that as per the provisions of section 143(1) under which the return was originally processed, does not permit such variations both on its own and without giving an opportunity to the assessee, the processing of return itself being against the provisions of law making the intimation issued u/s 143(1) is without jurisdiction, the order passed by CIT(A) be quashed/set aside, the deduction as claimed u/s.80P in the return of income and as allowable to the assessee, be allowed.

3.0 The ld. authorized representative of the assessee submitted that the deduction had wrong been denied. The ld. authorized representative of the assessee placed reliance on the order of the Rajkot Bench of the ITAT in ITA No.186/RJT2022 in the case of Ambaradi Seva Sahkari Mandali Ltd. Vs. DCIT (CPC), Bengaluru and other group cases, wherein vide order dated 10.02.2023, the Rajkot Bench had held that even when the assessee has not filed its return of income in terms of section 139(1) of the Act, the assessee would be eligible for claim of deduction under section 80P of the Act notwithstanding the provisions of section 80AC(ii) of the Act. Reliance was also placed on the orders of ITAT Delhi Bench in the case of Sahakari Ganna Vikas Samiti, Sambhal vs. ITO-2(5), Chandausi in ITA No.2090/DEL/2022, vide order dated 19.7.2023, of ITAT Chandigarh Bench in the case of The Sard Dogri Co-operative Agri Services Society Limited, Kangra vs. DCIT (CPC), Bangaluru in ITA No.716/CHD/2022, vide order dated 5.6.2023 and ITAT

Raipur Bench in the case of Parv Buildcon, Kanker vs. DCIT (CPC), Bengaluru in ITA No.357/PRP/2023, vide order dated 11.1.2024 for the same proposition.

4.0 The ld. Sr. D.R. submitted that the lower authorities had rightly denied the claim of deduction under section 80P of the Act inasmuch as the return of income had been filed belatedly and, therefore, the provisions of section 80AC(ii) of the Act would be attracted and no claim of deduction would be allowable.

5.0 I have heard the rival submissions and have also perused the material on record. There is no dispute regarding the facts of the case. The assessee has filed the Return belatedly. The assessee has relied on certain judicial precedents, viz. the orders of the ITAT Rajkot Bench, Delhi Bench, Chandigarh Bench and Raipur Bench (supra), wherein the assessees were allowed the benefit of deduction under section 80P of the Act in cases where the return had been filed belatedly. In the above mentioned judicial precedents, the above mentioned Benches of the Tribunal have held that the provisions of section 80AC of the Act would not be a bar for allowing the benefit of claim of deduction under section 80P of the Act even if the return of income was filed belatedly. It is seen that the issue before me is squarely covered in favour of the Assessee by order of ITAT Delhi Bench in ITA No.2090/DEL/2020 in the case of Sahkari Ganna

Vikas Samiti, Chandausi, Sambal vs. ITO, Chandausi, vide order dated 19.07.2023 wherein it has been held as under:

> *"5. We have carefully considered the rival submissions. The denial of benefit of deduction under Section 80P of the Act in response of belated return is in issue. In the instant case, the return was filed belatedly under Section 139(4) of the Act. While drawing the intimation under Section 143(1) of the Act, the CPC, Bengaluru has denied the claim of deduction under Section 80P of the Act owing to ROI filed after due date. The assessee sought rectification thereof under Section 154 of the Act which was reported. The CIT(A) in the first appeal also refused to entertain rectification of mistake towards aforesaid deduction claimed under Section 80P of the Act. Hence, in this appeal.*
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> *6. We find that the issue is no longer res integra. The identical issue has come up before the Co-ordinate Bench of Tribunal in the case of Kishorepur Paschimanchal SKUS Limited (supra) wherein after taking note of provisions of Section 80AC of the Act and provision of Section 143(1) and subsequent amendment thereto, it was concluded that such adjustments under Chapter VI-A was not permissible under Section 143(1) of the Act in response of assessment years prior to A.Y. 2021-22.*
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> *7. The relevant operative para of the order of the decision rendered by the Co-ordinate Bench is reproduced hereunder:*
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> > *"7. We have heard rival contentions and perused the materials available on record. It is apparent from the order of the ld. CIT(A) that Sahakari Ganna Vikas Samiti vs. ITO the amendment in Section 143(1) made by Finance Act, 2021 which is not applicable for the present Assessment Year 2019-20. However, the same was not considered by the Ld. CIT(A).*

7.1. The Co-ordinate Bench of this Tribunal in Lunidhar Seva Sahakari Mandali Ltd. (supra) considered the above amendment and held as follows:

> *"7. We have heard the rival contentions and perused the material on record. In the instant facts, admittedly the assessee did not file return of income within the time permissible under section 139(1) of the Act. However, the assessee filed its return of income belatedly on 30-11-2020 and claimed deduction of Rs. 2,22,704/- under section 80P of the Act. The issue for consideration before us is that whether once the return of income is filed beyond the prescribed date under section 139(1) of the Act, can the deduction under section 80P of the Act be denied to the assessee, by way of adjustment under section 143(1) of the Act. On going through the statutory provisions, we observe that 80AC of the Act provides that no such deduction under section 80P of the Act shall be allowed to an assessee unless he furnishes a return of his income on or before the due date specified under section 139(1) w.e.f. assessment year 2018-19 onwards. However, section 143(1)(a)(v) of the Act provides 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. This amendment has been introduced w.e.f. 1-4-2021. Accordingly, the above amendment would not apply to the impugned assessment year. Further, section 143(1)(ii) of the Act permits adjustment in case of an incorrect claim, if such incorrect claim is apparent from any information in the return. However, Explanation to the aforesaid section specifies the following cases where the claim made in the return of income can be said to be "incorrect" 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 Sahakari Ganna Vikas Samiti vs. ITO
(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.

7.1 A joint reading of the above provisions makes it evident that the claim of deduction under section 80P of the Act cannot be allowed the assessee, if the assessee does not file its return of income within the due date stipulated under section 139(1) of the Act w.e.f. assessment year 2018-19 onwards. However, we also note that amendment has been introduced in section 143(1)(a)(v) of the Act to provide that the claim of deduction under section 80P of the Act can be denied to the assessee, in case the assessee does not file its return of income within the time prescribed under section 139(1) of the Act with effect from 01-04-2021 and does not apply to the impugned assessment year i.e. assessment year 2019-20 relevant to financial year 2018-19. Accordingly, in our considered view, denial of claim under section 80P of the Act would not come within the purview of prima facie adjustment under section 143(1)(a)(v) of the Act, for the simple reason that the section was not in force during the period under consideration i.e. assessment year 2019-20.

7.2 The second issue for consideration is that whether the case of the assessee would fall within the purview of prima facie adjustment

under section 143(1)(a)(ii) (an incorrect claim, if such incorrect claim is apparent from any information in the return). In our view, the scope of the adjustments that can be made under the said provision has been elaborated in the Explanation to the aforesaid section, which 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) (an incorrect claim, if such incorrect claim is apparent from any information in the return).

7.3 We note that in the case of Chirakkal Service Co-Operative Bank Ltd. Kannur v. CIT 2016] 68 taxmann.com 298 (Kerala), the Kerala High Court held that a return filed by assessee beyond period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can also be accepted and acted upon for entertaining claim raised under section 80P provided further Sahakari Ganna Vikas Samiti vs. ITO proceedings in relation to such assessments are pending in statutory hierarchy of adjudication in terms of provisions of Act. In the case of ASR Engg. & Projects Ltd. [2019] 111 taxmann.com 49 (Hyderabad - Trib.), the ITAT held that to be eligible to make claim under section 80-IA or any other section of Chapter VI A, assessee should have filed return of income under section 139(1) and even if it did not make claim for deduction in original return and subsequently file revised return making such claim, its claim for deduction under section 80-IA is maintainable. Therefore, where assessee had filed return

under section 139(1), it was entitled to claim deduction under section 80-IA even if such claim was not made in original return but subsequently in revised return filed in response to notice issued under section 153A. In the case of Lanjani Co-Operative Agri Service Society Ltd. (CPC) v. DCIT [2023] 146 taxmann.com 468 (Chandigarh - Trib.), the ITAT held that the enabling provisions of sub-clause (v) of section 143(1) providing for disallowance of deduction under section 80P due to late filing of return having been introduced by Finance Act, 2021 effective from 1-4-2021, disallowance of deduction claimed under section 80P during relevant years 2018-19 and 2019-20 on grounds of late filing of return was unjustified.

7.4 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.

8. In the result, appeal of the assessee is allowed."

7.2. Consistent with the view taken by the Tribunal under identical circumstances, we have no hesitation in holding that the assessee cannot be denied the deduction u/s. 80P of the Act on the ground that the return of income was not filed within the due date prescribed u/s. 139(1) of the Act under proceedings made u/s. 143(1) of the Act for the Assessment Year 2019-20. Thus the intimation u/s 143(1) dated 28/09/2020 is invalid in law and thereby quashed.

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

8. In the light of observations towards impermissibility to make adjustments towards deduction claimed under Section 80P of the Act prior to the amendment carried out in Section 143(1)(a)(v) of the Act effective prospectively from 01.04.2021 i.e. A.Y. 2021-22, we are of the view that CPC, Bengaluru has committed prima facie error in making adjustments to the returned income on account of deduction claimed under Section 80P of the Act while drawing intimation under Section 143(1) of the Act. We, thus, find merit in the plea of the assessee seeking rectification of the apparent error. Consequently, we set aside the order of the CIT(A) and direct the designated authority/CPC, Bengaluru to restore the deduction claimed under Section 80P of the Act made by the assessee."

6.0 Accordingly, respectfully following the same, I direct the Assessing Officer to allow the claim of the assessee.

7.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 30/08/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:30/08/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order
Assistant Registrar