



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT  
MEMBER AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकरअपीलसं. / ITA No.1787/PUN/2024

निर्धारणवर्ष / Assessment Year:2023-24

Shri Datta Gramin Bigar Sheti Sahakari Patanstha Maryadit, Wale Galli, at post Nandre, Miraj, Sangli – 416312. PAN: AAGAS4028M	V s	The Income Tax Officer, Ward-(1), Sangli.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Narendra Joshi – AR
Revenue by	Smt. Shabana Parveen – Add.CIT(DR)
Date of hearing	06/11/2024
Date of pronouncement	07/11/2024

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], under section 250 of the Income tax Act, 1961 dated 27.06.2024 for A.Y.2023-24. The assessee has raised the following grounds of appeal :

“1. On the facts and in the circumstances of the case and law, Ld CIT(A) has erred in not allowing deduction under section 80P of the



*Act and failed to consider the fact that the appellant is registered under the Co-operative Societies Act and eligible for deduction under section 80P.*

2. *The Ld. CIT(A) on merits, erred in not allowing a deduction of Rs.4,92,541 not claimed by the appellant under section 80P of the Act in the return of income but claimed in the appeal filed*

3. *The Ld. CIT(A) failed to take into consideration that the denial of the deduction under section 80P would result in an excessive tax burden for the appellant who is otherwise eligible for deduction under section 80P of the Act causing undue hardship to the appellant*

4. *The appellant craves to leave, add/amend or alter any of the above grounds of appeal.”*

**Submission of ld.AR :**

2. Ld.Authorised Representative for the Assessee submitted that Assessee is a Co-operative Credit Society. Assessee was allowed deduction u/sec.80P for earlier years. For A.Y.2023-24, Assessee had filed Return of Income, however, due to the mistake of the Tax Practitioner, the deduction u/sec.80P of the Act was not claimed in the Return of Income. The assessee received order u/sec.143(1) of the Act dated 18.12.2023 in which there is no deduction allowed u/sec.80P of the Act. At that time assessee realized the mistake. Then assessee filed an appeal before the ld.CIT(A) and claimed deduction u/sec.80P. However, ld.CIT(A) has not allowed



deduction u/sec.80P and upheld the order u/sec.143(1) of the Act. The order of the ld.CIT(A) is bad in law. Ld.CIT(A) should have allowed deduction u/s.80P of the Act as ld.CIT(A)'s powers are Co-terminus with that of the Assessing Officer. Therefore, ld.AR pleaded that assessee should be allowed deduction u/sec.80P of the Act.

**Submission of ld.DR :**

3. The ld.DR for the Revenue relied on the order of the Assessing Officer and ld.CIT(A). Ld.DR submitted that assessee has admittedly not claimed deduction u/sec.80P in the Return of Income. Therefore, assessee is not eligible for deduction u/sec.80P of the Act.

**Findings & Analysis :**

4. We have heard both the parties and perused the records. It is an admitted fact that assessee had not claimed deduction u/sec.80P of the Act in the Return of Income.

4.1 Section 80A(5) of the Act is reproduced here as under :

***Deductions to be made in computing total income.***

*80A. (1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in [sections 80C to 80U](#).*



(2) *The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.*

(3) .....

(4) .....

(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.*

4.2 Thus, Section 80A(5) of the Act makes it very clear that deduction under Section 80P shall be allowed only if it is claimed in the Return of Income. In this case, admittedly assessee has not claimed any deduction u/sec.80P of the Act in the Return of Income.

4.3 The Hon'ble Supreme in the case of Pr.CIT Vs. Wipro Ltd., [2022] 288 Taxman 491 (SC) has observed as under :

*Quote“ ... in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee.”*

*Unquote.*

7.4 The Hon'ble Bombay High Court in the case of EBR Enterprises Vs. Union of India 415 ITR 139 (Bombay), dated 4<sup>th</sup> June, 2019 has held as under :

*Quote, “ 5. As per this provision, 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 the said Chapter - VI A under the heading "C.-Deduction in respect of certain incomes", no deduction would be allowed to him under the said provision. In plain terms, this Sub Section (5) of Section 80A of the Act imposes an additional condition for claim of deduction in relation to income under any of the provisions mentioned therein. Apart from the requirement of fulfillment of individual set of respective conditions for the purpose of claiming the concerned deduction, this plenary condition requires that the claim ought to have made in the return of income by the assessee and if the assessee fails to make such claim in the return of income, such deduction shall not allowed to him under the relevant provision. Admittedly, in the present case, the Petitioners had not raised any such claim in the return of income. In plain terms, the claim of the Petitioners under Section 80-IB (10) of the Act would be hit by Sub Section (5) of Section 80A of the act. ....*

.....

*What Sub Section (5) of Section 80A of the Act mandates is that, if the assessee fails to make a claim in his return of income for any deduction under the provisions specified therein, the same would not be granted to the assessee. This condition or restriction is not relatable to the Assessing Officer or the Income Tax Authority. This condition attaches to the claim of the assessee and has to be implemented by the Assessing Officer, CIT or the Appellate Tribunal as the case may be. There is no indication in Sub Section (5) of Section 80A of the Act as to why the restriction contained therein amounts to limiting the power of Assessing Officer but not that of Commissioner." Unquote.*



4.5 Thus, the Hon'ble Jurisdictional High Court categorically held that as per Section 80A(5) of the Act, to claim deduction under section 80P assessee had to make the claim of impugned deduction in the Return of Income. It means to claim Deduction under Chapter VIA under the heading "C.—Deductions in respect of certain incomes the Assessee has to claim the deduction in the Return of Income.

4.6 Therefore, respectfully following the Hon'ble Jurisdictional High Court and stricter interpretation principle laid down by the Hon'ble Supreme Court(supra), it is held that assessee is not eligible for deduction u/sec.80P of the Act as it has not claimed said deduction in the Return of Income. Accordingly, order of the Id.CIT(A) is upheld. Hence, grounds of appeal raised by the assessee are dismissed.

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

Order pronounced in the open Court on 7<sup>th</sup> November, 2024.

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 7<sup>th</sup> Nov, 2024/ SGR\*



**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.