IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Inturi Rama Rao, Accountant Member
&
Shri Prakash Chand Yadav, Judicial Member

ITA No.213/Coch/2024 : Asst.Year 2015-2016

Kadavathur Service Co-operative Bank Limited, Kadavathur Talassery, Kannur – 670 676 **PAN : AACAK3432B**	v.	The Assistant Commissioner of Income-tax, Ward – 2 Kannur.
(Appellant)		(Respondent)

Appellant by :Sri.Arun Raj, Advocate
Respondent by :Smt.Leena Lal, Senior AR

Date of Hearing : 18.11.2024		**Date of Pronouncement : 29.11.2024**

O R D E R

Per Prakash Chand Yadav, JM :

The present appeal of the assessee is arising from the order of the learned Commissioner of Income-tax (Appeals) having DIN& Order No.ITBA/APL/S/250/2023-24/1060637248(1) dated 08th February, 2024 and relates to assessment year 2015-2016.

2. The short facts giving rise to the filing of the present appeal are that the assessee is a primary agricultural credit cooperative society. The assessee filed its return of income claiming deduction of section 80P of the Act. The deduction claimed by the assessee has been disallowed by the Assessing Officer /CPC on the ground that the assessee has filed the return of income u/s.139(4) of the Act, meaning thereby the

assessee has filed belated return, and hence, not entitled for the deduction u/s.80P of the Act.

3. Aggrieved with the order of the CPC, the assessee filed an appeal before the learned CIT(A) and contended that the 80P deduction may kindly be granted to the assessee. However, the ld.CIT(A) relying upon the provisions of sec.80AC of the Act, dismissed the appeal of the assessee.

4. Now the assessee has come up in appeal before us. At the outset, the learned Counsel for the assessee has contended that the assessee is entitled for deduction u/s.80P of the Act in view of the judgment of the Hon'ble Kerala High Court in *Chirakkal Service Co-operative Bank Ltd. v. CIT [(2016) 384 ITR 490 (Ker.)].* The learned Counsel for the assessee further argued that provisions of sec.80AC are applicable with effect from 1st April, 2018 and since the impugned assessment year is A.Y. 2015-2016, the provisions of sec.80AC are not applicable.

5. The learned Departmental Representative appearing on behalf of the Revenue relied upon the judgment of the Hon'ble Kerala High Court in the case of *Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT reported in (2023) 459 ITR 730 (Ker.).*

6. We have heard the rival submissions and perused the material available on record. We are of the view that the assessee is not entitled for deduction of 80P in the light of the

judgment of the Hon'ble jurisdictional High Court in the case of *Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham (supra)*, wherein the High Court has observed as under:

> *"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 80(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).*
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> *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.*
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> *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 pre-condition for obtaining the deduction cannot be condoned either by the statutory authorities or by the courts.

13. It is in the backdrop of the aforesaid discussion that we must consider the findings of a Division Bench of this Court in Chirakkal Service Co-operative Bank Ltd. [supra]. The findings therein, that appear to suggest that a claim for deduction under section 80P can be entertained even if it is made in a return filed beyond the time permitted under the IT Act, ignores the perspective that sees the requirement of the claim for deduction being made in a valid return as a pre-condition for obtaining the benefit of the statutory deduction. The said findings also fly in the face of the express statutory provisions that requires the claim to be made in a return filed by the assessee, by which term is meant a valid return under the Act, and therefore have necessarily to be seen as per incuriam. We also find that the subsequent amendments to section 80AC by the Finance Act 2018 fortifies the view that we have taken for, it makes the claim for deduction under section 80P conditional on filing a return within the due date prescribed under section 139(1) of the IT Act. In other words, the pre-condition for claiming the deduction under section 80P of the IT Act has now been made more stringent by reducing the time available to an assessee for making the claim.

14. Before parting with these cases, we must also address the arguments of the learned counsel for the appellant/assessee relying on the provisions of section 139(8)/(9) and section 234A of the IT Act. A reading of the provisions of section 139(8) and (9) of the IT Act clearly reveals that even under those provisions, the restrictions placed with regard to the accrual of interest on amounts assessed on an assessee is with regard to the date of filing of a return within the time prescribed under the IT Act. Under section 234A of the IT Act, however, although the provision suggests that even a return filed beyond the time prescribed under any of the provisions of the IT Act can have the effect of limiting the accrual of interest on the amounts assessed against an assessee, we have to see the said provision as permitting a filing of a belated return for the limited purpose of conferring a specific benefit of limiting the accrual of interest, on an assessee, and for no other purpose.We cannot accept the contention of the appellant/assessee that the said provisions which are intended for a specific purpose and are not general in nature,

> *have to be seen as manifesting a statutory scheme that enables the Department to act upon a belated return for allowing the claim of an assessee for deduction under section 80P of the IT Act.*
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> *In the light of the aforesaid discussion, we find that the above questions of law have to be answered in favour of the Revenue and against the assessee."*

7. Perusal of the above judgment of the Hon'ble jurisdictional High Court in *Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham (supra)*would show that the Hon'ble jurisdictional High Court has declared the judgment of *Chirakkal Service Co-operative Bank Ltd. (supra)* as *per incuriam.* However the entire decision of Nileshwar is rendered in a case where the return of income had been filed after the expiry of dates prescribed under 139(4) of the Act. However, in the present case the assessee has filed the ROI within the time prescribed in section 139(4). Therefore, the facts of the present case are on different footing with that of *Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham (supra)*, accordingly we restore the matter to the file of AO with a direction that if the return of income has been filed with in the time allowed under section 139(4), as applicable to the impugned year then the deduction of section 80P is to be allowed to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 29th day of November, 2024.

Sd/-	**Sd/-**
(Inturi Rama Rao)	**(Prakash Chand Yadav)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cochin; Dated : 29th November, 2024.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT, Cochin.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin