



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.351/LKW/2024
Assessment Year: 2019-20

Sahkari Ganna Vikas Samiti Limited C/o Ayyubi Chamber, Raniganj, Lakhimpur Kheri, U.P.-241001. PAN:AAWFS0887P (Appellant)	v.	ACIT Sitapur/CPC, Income Tax Deptt., Bengaluru-560500. (Respondent)
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Appellant by:	Shri Shubham Rastogi, C.A.
Respondent by:	Shri Sunil Kumar Rajwanshi, Addl. CIT(DR)
Date of hearing:	26 11 2024

ORDER

PER ANADEE NATH MISSHRA, A.M.:

1. This appeal has been filed by the assessee against the order of the Ld. CIT(A), Lucknow dated 29.03.2024 for the assessment year 2019-20. The grounds of appeal of the assessee are as under: -

“(1) That the Ld. C.I.T. (A), NFAC, erred on facts and in law in upholding the disallowance of Rs. 1,63,83,734/- u/s 80P of I. T. Act made by CPC Bengaluru u/s 143(1)(a)ii) of I. T. Act.

(2) That though Assessee Society submitted belated Return, but Ld. C.I.T.(A) failed to appreciate that Section 80AC of I. T. Act, gave power to insist upon the compliance of the said provision vested in the A. O. only on the amendment of Clause -(v) of Section 143(1)(a) vide Finance Act, 2021, hence in the present year, no disallowance should be made.

(3) The Ld. CIT (A), NFAC failed to appreciate that during A.Y.-2019-20 in the absence of the enabling provisions being clause(v) of Section 143(1)(a) of I. T. Act, the Ld. A. O. CPC lacked jurisdiction to make disallowance of claim for deduction u/s 80P in the Order u/s 143(1) dated 16.07.2020.

(4) The Ld. C.L.T. (A), NFAC, failed to appreciate that the case law of Hon'ble Madras High Court in the case of Veerapampalayam Primary Agricultural Co-operative Credit Society Ltd. relied upon is distinguishable from the facts of the Assessee's case, as the amendment carried out in section 143(1)(a)(v) by the Finance Act, 2021 was neither argued nor referred for consideration of the Hon'ble Court.

(5) That the present disallowance is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by him."

2. In this case, the assessee filed return of income on 01.11.2019, declaring total income of Rs. Nil. In the return of income, the assessee claimed deduction amounting to Rs.1,63,83,730/- under section 80P of the Income Tax Act, 1961 (hereinafter "the Act"). The return was processed by the Central Processing Centre (CPC) of Income Tax Department and vide intimation dated 16.07.2020, the assessee's claim for deduction under section 80P of the Act, amounting to Rs.1,63,83,735/-, was rejected. In the assessee's total income was determined at Rs.1,63,83,735/- as per serial no. 13 of the aforesaid intimation dated 16.07.2020. Aggrieved, the assessee filed appeal in the office of the Ld. CIT(A). Vide impugned appellate order dated 29.03.2024, the Ld. CIT(A) dismissed the assessee's appeal and confirmed the aforesaid addition of Rs.1,63,83,735/-. The Ld. CIT(A) was of the view that the assessee was hit by Section 80AC of the Act; as the assessee had not filed return of income within the time limit prescribed under section 139(1) of the Act. In the present case, the return was filed on 01.11.2019 whereas the due date of filing of return prescribed under section 139(1) of the Act was 31.10.2019. As the return was filed after due date of filing of return prescribed under section 139(1) of the Act, the return filed by the assessee was treated by the Ld. CIT(A) as belated return and he was of the view that the assessee was hit by Section 80AC

of the Act, as far as the assessee's claim under section 80P of the Act was concerned. Aggrieved again, the assessee has filed this present appeal in Income Tax Appellate Tribunal (ITAT). In the course of appellate proceedings in ITAT, a paper book containing the following particulars was filed from the assessee's side: -

S No.	PARTICULARS
1-	Written Submission
2-	Case Laws
(i)	Copy of order reported in 149 Taxmann.com 28 in case of Lunidhar Seva Sahkari Mandali Limited Vs Assessing Officer (CPC).
(ii)	Copy of order reported in 146 taxmann.com 468 (Chandigarh-Trib.) IN THE ITAT CHANDIGARH BENCH 'SMC' in the appeal of Lanjani Co-Operative Agri Service Society Ltd. (CPC)v.Deputy Commissioner of Income-tax, CPC*
(iii)	Copy of Order reported in THE INCOME TAX APPELLATE TRIBUNAL "A (SMC)" BENCH, KOLKATA I.T.A. No. 716/Kol/2022 Assessment Year: 2019-2020.
(iv)	Copy of Order reported in THE INCOME TAX APPELLATE TRIBUNAL DELHI BENCH 'G', NEW DELHI INITA No.2090/Del/2022 (Assessment Year : 2019-20) in the appeal of Sahakari Ganna Vikas Samiti, Sikri Gate Chandausi, Sambhal vs. ITO-2(5), Chandausi Uttar Pradesh.
3-	Copy of ITR Acknowledgement of A.Y. 2019-20
4-	Copy of Memorandum explaining the Provisions of Finance Bill.

3. At the time of hearing before us, the Assessee was represented by Shri Shubham Rastogi, Authorized Representative ("AR") and Revenue was represented by Shri Sunil Kumar Rajwanshi, Sr. Departmental Representative ("DR"). The Ld. AR for the Assessee drew our attention to Section 143(1)(a) of the Act and he submitted that enabling provision for disallowing claims under Chapter VIA of the Act, which includes claim under Section 80P of the Act; was legislated w.e.f. 01.04.2021. He also contended that the present appeal pertains to assessment year 2019-20, and therefore, the aforesaid amendment which is effective from 01.04.2021 does not have any application for the present case. He further submitted that, therefore, Section 80AC of the Act could not have been invoked in the present case. The Ld. AR also brought the written submissions and case laws forming part of the paper book to our attention in support of his

contentions. He also drew our particulars attention to the order of ITAT Delhi Bench in the case of Sahakari Ganna Vikas Samiti Vs. ITO-2(5) order dated 19.07.2023 in ITA. No.2090/Del/2022 for A.Y. 2019-20 (which has been co-authored by one of us i.e. by Hon'ble Vice President), the relevant portion of which is reproduced as under:-

"2. As per the grounds of appeal, the assessee has challenged the denial of deduction claimed under Section 80P of the Act while drawing intimation under Section 143(1) of the Act on the premise that the assessee has not filed the return of income within the due date specified under Section 139(1) of the Act for the A.Y. 2019-20 in question.

3. When the matter was called for hearing, the Learned Counsel submitted that the deduction has been denied taking shelter of Section 80AC(ii) of the Act. In this regard, it was submitted that the assessee has filed and uploaded the return which is belated by only one day on account of technical difficulties in the Income-tax site. It was further submitted that in the instant case, the intimation has been drawn under Section 143(1) of the Act which specifies the nature of adjustments under Section 143(1)(a) of the Act permissible for adjustments. Section 143(1)(a)(v) of the Act concerns disallowance of deduction under Chapter VI-A. Section 80P of the Act falls under "C.-Deductions in respect of certain incomes". The Learned Counsel pointed out that such disallowance under Section 143(1) of the Act is not permissible in view of the insertion/modification made which is made effective by the Finance Act 2021 from A.Y. 2021-22 whereas the present case concerns A.Y. 2019-20 where such amendment to Section 143(1)(v) of the Act authorising such denial was not in place. Learned Counsel also referred to the judgement of Co-ordinate Bench of Tribunal in the case of Kishorepur Paschimanchal SKUS Limited vs. ITO (ITA No.716/Kol/2022) order dated 22.05.2023 to buttress his stand. The Learned Counsel thus urged for suitable relief.

4. The Learned DR for the Revenue, on the other hand, relied upon the action of the Revenue authorities and submitted that in view of express provisions of Section 80AC of the Act applicable to A.Y. 2019- 20 in question, the Revenue authorities were fully justified in denying the deduction where the return was filed beyond the date specified under Section 139(1) of the Act. Learned DR thus submitted that no interference with the order of CIT(A) is called for.

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.

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.

7. The relevant operative para of the order of the decision rendered by the Co-ordinate Bench is reproduced hereunder:

"7. We have heard rival contentions and perused the materials available on record. It is apparent from the order of the Id. CIT(A) that 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

(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 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."

4. The Ld. AR for the Assessee also drew our attention to the written submissions filed by the assessee (referred to foregoing paragraph no. 1 of this order) relevant portion of which is reproduced as under: -

“1 It is prayed that Ld. CPC vide order u/s 143(1) dated 16.07.2020 disallowed the deduction u/s 80P(2)(a) by making adjustment u/s 143(1)(a)(ii)- Incorrect claim for reasons being return was not filed within due date. That the disallowance has been made merely because the return was filed beyond the due date specified u/s 139(1). The due date of filing ITR was 31.10.2019 but the ITR was filed on 01.11.2019 after the delay of merely 25 minutes and was uploaded at 009:25:43 hrs on 01.11.2019. Copy of acknowledgement for filing of ITR is at page – of the paper book.”

4.1 The Ld. Sr. DR for Revenue relied on the order of the Ld. CIT(A).

5. We have heard both the sides. We have perused the material on records. For the sake of clarity, the relevant provision under section 80AC of the Act and Section 143(1)(a) of the Act are reproduced as under: -

*“**80AC** Where in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80IC [or section 80-ID or section 80IE], 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.”*

*“**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).....

(ii).....

(iii)....

(iv)....

(v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading “C – Deduction in respect of certain incomes”, if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi).....

5.1 The assessee’s claim for deduction under section 80P of the Act falls under provisions of Chapter VIA of the Act. It is a fact that the amendment to Section 143(1)(a)(v) of the Act, enabling disallowance of deduction claimed Chapter VIA of the Act, was made by the Finance Act, 2021, w.e.f. 01.04.2021. The present case before us pertains to assessment year 2019-20 (previous year 2018-19). It can be readily inferred, therefore, that an assessee will not be hit by provisions of Section 80AC of the Act, having regard to the assessee claim for deductions under Chapter VIA of I. T. Act, while processing the return and making adjustments under section 143(1) of the Act. It follows accordingly that in the present case before us, the assessee’s claim for deduction under section 80P of the Act (which falls under Chapter VI-A of the Act) is not hit by Section 80AC of the Act while processing the return and making adjustments under section 143(1) of the Act. In coming to this conclusion, we take strength from the following precedents: -

- i. Sahakari Ganna Vikas Samiti, Sikri Gate Chandausi, Sambhal Vs. ITO-2(5), Chandausi Uttar Pradesh (supra).
- ii. (2023) 149 taxmann.com 28 (Rajkot-Trib) in the ITAT Rajkot Bench, Lunidhar Seva Sahkari Mandali Ltd Vs. Assessing Officer (CPC)
- iii. (2023) 146 taxmann.com 468 (Chandigarh-Trib) (SMC) in Lanjani Co-operative Agri Service Society Ltd (CPC) v Deputy Commissioner of Income Tax, CPC
- iv. Order dated 22/05/2023 of Income Tax Appellate Tribunal ‘A’ (SMC) Bench, Kolkata in ITA. No. 716/Kol/2022 Assessment Year: 2019-20 (Kishorepur Paschimanlal skus Limited v ITO).

6. Respectfully following the aforesaid judicial precedents and in view of the foregoing discussion and in the specific facts and circumstances of the present case before us, we direct the Assessing Officer to allow the assessee's claim under section 80P of the Act, amounting to Rs.1,63,83,734/-.

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

Order pronounced in the open Court on 28/11/2024.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 28/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

By order

//True Copy//

Assistant Registrar