IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

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

ITA No.269/Coch/2024 : Asst.Year 2016-2017
ITA No.270/Coch/2024 : Asst.Year 2017-2018

West Kallada Service Co-operative Bank Limited No.4002 West Kallada, Kunnathur PO Kollam – 691 500. **PAN : AAABW0154H.**	v.	The Income Tax Officer Ward 2 Kollam.
(Appellant)		(Respondent)

Appellant by : Sri.Raja Kannan, Advocate
Respondent by : Smt.Leena Lal, Senior AR

Date of Hearing : 21.11.2024		**Date of Pronouncement : 10.12.2024**

O R D E R

Per Prakash Chand Yadav, JM :

These two appeals filed by the assessee are arising from the order of the learned Commissioner of Income-tax (Appeals) dated 9th February, 2024 and relates to the assessment years2016-2017 and 2017-2018.

2. The brief facts of the case are that the assessee is a primary agricultural co-operative credit society registered under the Kerala Co-operative Societies Act, 1969. It has claimed deduction u/s.80P of the Income-tax Act, 1961. However, could not file the income-tax return for the impugned assessment year within the time limit prescribed u/s.139(1) or 139(4) of the Act. The case of the assessee has been reopened

u/s.148 of the Act vide notice dated 30th January, 2020. In response to the notice u/s.148, the assessee could not file any return of income. Thereafter, the Assessing Officer issued notice u/s.142(1) of the Act dated 27th September, 2020. In response to this notice, the assessee filed return of income for both the assessment years, i.e., Asst.Years 2016-2017 and 2017-2018 on 29th January, 2021. In these returns the assessee has claimed deduction of sec.80P amounting to Rs.10,65,965 and Rs.16,43,014 and for 2016-17 & A.Y. 2017-2018 respectively. The AO took a view that the deduction of sec.80P is not allowable to the assessee since the assessee has not filed any return of income under the provisions of sec.139.

3. Aggrieved with the order of the AO, the assessee fled appeal before the ld.CIT(A) and claimed deduction of sec.80P relying on the judgment of the Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Ltd. v. CIT (2016) 384 ITR 490 (Ker.). The ld.CIT(A) relying upon the judgment of the Hon'ble jurisdictional High Court in the case of *Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT* reported in 459 ITR 730, dismissed the appeal of the assessee.

4. Aggrieved with the order of the CIT(A), the assessee has come up in appeal before us. The learned Counsel for the assessee relied upon the judgment of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)* and claimed for the deduction of sec.80P of the Act.

5. The learned Departmental Representative relied upon the judgment of the Hon'ble jurisdictional High Court in the case of *Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham (supra)* and contended that the lower authorities are correct in dismissing the claim of the assessee vis-à-vis deduction of sec.80P.

6. After considering the rival submissions, we observe that the assessee has raised six grounds of appeal. Ground No.6 is general in nature and in Ground No.1, the assessee has challenged the jurisdiction of the AO u/s.147. However, at the time of hearing, no arguments with respect to the jurisdiction of the AO u/s.147 has been addressed to us. Therefore, this ground is dismissed as not pressed. In rest of the grounds, the only issue is whether the assessee is entitled for deduction u/s.80P or not. We observe that provisions of sec.80A(5) are as under:-

> **"80A(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."

7. While interpreting sec.80A(5), the Hon'ble jurisdictional High Court in the case of *Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham (supra)*, for assessment years 2009-2010 and 2010-2011 has observed as under:-

"11. 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 80A(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). 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.

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 precondition 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 ***The Chirakkal Service Cooperative 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."*

8. Perusal of para 13 of the above judgment would clearly provide that the judgment in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)* has been held to be *per incuriam* by the Hon'ble jurisdictional High Court, therefore, reliance placed by the learned Counsel of the assessee on the judgment of *Chirakkal Service Co-operative Bank Ltd. (supra)*is of no help. Respectfully following the verdict of the Hon'ble jurisdictional High Court in the case of *Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham (supra)*, we hereby dismiss both the appeals of the assessee.

9. In the result, the appeals filed by the assessee are dismissed.

Order pronounced on this 10th day of December, 2024.

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

Cochin; Dated : 10th December, 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