



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.2432 and 2433/PUN/2024

Assessment Years : 2015-16 and 2016-17

Sanchar Gramin Bigarsheti, Sahakari Patsanstha Maryadit, Arvi, Junnar-412401 Maharashtra PAN-AAGAS3985H	V/s	ITO, Ward-8, Pune
Appellant		Respondent

Assessee by	:	Shri Sharad Shah & Shri Rohit S Tapadiya
Revenue by	:	Shri Vinod Pawar
Date of hearing	:	26.12.2024
Date of pronouncement	:	06.01.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeals filed by the assessee pertain to the assessment years 2015-16 and 2016-17 and are directed against the separate orders of National Faceless Appeal Centre, Delhi dated 27.09.2024 passed u/s.250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') which inturn are arising out of respective assessment orders.



2. Since identical grounds have been taken by the assessee in these appeals I proceed to dispose of the appeals by this consolidated order for the sake of convenience.

3. Succinctly, the facts of the case common to both the appeals are that the assessee stated to be a Cooperative Society engaged in the business of lending and procuring funds from its members and deriving interest from the investments made in banks. The assessee society has not filed the income-tax returns for the A.Yrs. 2015-16 and 2016-17. Based on the information available with the Assessing Officer that the assessee society deposited cash to the tune of Rs.1.37 crore and Rs.74.13 lakh respectively, statutory notices u/s.148/143(2) and 142(1) were issued to which the assessee made partial compliance. Pursuant to the filing of returns by the assessee society in response to notice u/s.148 and based on the details furnished by the assessee, the Assessing Officer culminated the proceedings disallowing the deduction claimed by the assessee u/s.80P of the Act at Rs.16,72,077/- and Rs.18,01,924/- respectively for the assessment years under consideration.



4. Aggrieved assessee preferred appeals but failed to get any relief. Now the assessee is in appeal before the Tribunal raising the following common grounds :

“On facts and in law, without prejudice to each other :

1. The Ld. AO erred in (CIT-A erred in confirming) making the disallowance of claim of Rs.16,72,077/- u/s 80P(2)(a) (i)/ 80(2)(d) of the IT Act.

2. The L.d. CIT(A) ought to have appreciated the fact that claim u/s 80P(2)(a)(i) was claimed by filing return of income in response to notice u/s 148 which was the first return of income filed by the assessee for the assessment year.

3. The Ld. CIT(A) ought to have appreciated the fact that Sec 80AC was amended from A.Y. 2018-19 and applicable prospectively.

4. The appellant craves for to leave, add, alter, modify, delete above grounds of appeal before or at the time hearing, in the interest of natural justice.”

5. The common contention of the assessee in the instant appeals is that section 80AC of the Act is not applicable in relation to claim of deduction u/s.80P of the Act for the A.Yrs. 2015-16 and 2016-17.

6. At the outset, Ld. Counsel for the assessee submitted that the condition of filing the income-tax return before the due date as provided u/s.139(1) of the Act was brought into the statute vide amendment made through Finance Act, 2018 w.e.f. 01.04.2018 in section 80AC of the Act. Prior to this, even if the assessee had not furnished the income-tax return, then also it is eligible for



deduction u/s.80P of the Act. In support, reliance was placed on the decision of Coordinate Bench of the Tribunal, Nagpur in the case of *Krushvi Vibhag karmachari Vrund Sahakari Pat Sanstha Maryadit Vs. ITO reported in (2022) TTJ (Nag) 243.*

7. On the other hand, ld. Departmental Representative supported the orders of the lower authorities.

8. I have heard both the sides and perused the record placed before me. So far as the issue of applicability of section 80AC of the Act claiming deduction u/s.80P of the Act for the A.Yrs. 2015-016 and 2016-17 is concerned, I notice that the assessee which is a Cooperative Society did not file the income-tax returns u/s.139(1) of the Act and only after serving the notice u/s.148 of the Act, the assessee has furnished the income-tax returns claiming deduction u/s.80P of the Act. Before going into the merits of claim of deduction u/s.80P of the Act as to whether the assessee is eligible or otherwise, I note that prior to the amendment brought in by the Finance Act, 2018 w.e.f. 01.04.2018 read as under :

“Deduction not to be allowed unless return furnished.

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 80-IC [or section 80-ID or section 80-IE], 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.]”



9. Perusal of section 80AC of the Act shows that there is no mention about section 80P of the Act. Subsequently, after the amendment brought in w.e.f. 01.04.2018 the amended section 80AC reads as under :

“Deduction not to be allowed unless return furnished.

80AC. Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after—

(i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;

(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes",

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.”

10. From perusal of the above provision, it clearly indicates that it was only from 01.04.2018 furnishing of income-tax return u/s.139(1) of the Act was made mandatory for claiming deduction u/s.80P of the Act. Since the case of the assessee pertain to A.Yrs. 2015-16 and 2016-17 the amendment brought in by the Finance Act, 2018 w.e.f. 01.04.2018 will not be applicable to the assessee and therefore even if the income-tax return was not furnished by the assessee society u/s.139(1), for the purpose of computing the total income, the assessee is eligible for deduction u/s.80P of the Act.



My view is fortified by the decision of Coordinate Bench, Nagpur in the case of *Krushvi Vibhag karmachari Vrund Sahakari Pat Sanstha Maryadit Vs. ITO (supra)* and the finding of the Tribunal reads as under :

“5. I have heard both the sides and scanned through the relevant material on record. It is an undisputed fact that the assessee did not file return of income for the year under consideration either originally or pursuant to notice u/s 148. Computation of income was filed during the course of assessment proceedings in which the deduction u/s 80P was claimed. Whereas, the authorities below have canvassed a view that the assessee violated section 80A(5) and hence the deduction was not available; the assessee has made out a case that section 80A(5) does not apply where no return is furnished and rather it is section 80AC which would govern the case and because of omission of section 80P in the list of sections given in section 80AC, the deduction should be granted. In order to appreciate the contention of the ld. AR, it would be apposite to reproduce section 80AC, before its substitution by the Finance Act, 2018 w.e.f 1.4.2018, which reads as under:

– Where in computing the total income of an assessee of any 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 80-IC or section 80-ID or section 80-IE, 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.”

6. On going through the above provision, it is crystallized that the requirement of filing return before the time u/s 139(1) is sine qua non for claiming deduction under the six sections (80-IA or 80- IAB or 80-IB or 80-IC or 80-ID or 80-IE). In other words, if a return is filed belatedly u/s 139(4) or under any other section, claiming deduction under any of the six sections, the writ of the section 80AC will operate to prevent its granting. This section does not deal with granting or non-granting of deduction under any other sections of Part C of Chapter VI-A, including section 80P. Thus, to infer that since section 80AC does not cover section 80P, the latter



section is immune from any other statutory requirement, is wholly incorrect. In fact, section 80AC is alien to deduction under any section except the specified six sections.

7. *Now, I turn to section 80A(5), which has been pressed into service by the AO for denying the benefit of deduction u/s 80P of the Act, which runs as under:*

'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.'

8. *This section provides that where an assessee fails to make a claim in his return of income for any deduction, amongst others, the sections enshrined in Part C to Chapter VI-A (including section 80P and six sections as given in section 80AC), then the deduction shall not be allowed. A perusal of the mandate of section 80A(5) divulges that the claiming of deduction under various sections of part C of Chapter VI-A in the return of income is essential. The reference in this provision is only to return of income, without any further qualification. The return may be u/s 139(1) or 139(4) or any other relevant section.*

9. *On a conjoint reading of sections 80A(5) and 80AC, it gets manifest that claiming of deduction under various sections of Part C of Chapter VI-A in the return of income is essential. However, an additional requirement for claiming deduction under sections 80-IA or 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE is that such deduction must be claimed in a return filed u/s 139(1) of the Act. In one sense, section 80AC is an exception to section 80A(5), making the mandate of the latter section more stringent in the prescribed cases. Whereas other deductions of Part C of Chapter VI-A, including section 80P, can be claimed in the return filed under any section, including section 139(4); the six deductions as referred to in section 80AC must necessarily be claimed in the return filed u/s 139(1) only. Ex consequenti, the contention that since section 80P is not covered under section 80AC, the deduction under this section becomes automatically allowable without adhering to the requirement of section 80A(5), is bereft of force and hence dismissed.*



10. Now I advert to the requirements of section 80A(5), which stipulates that no deduction under other sections including 80P shall be allowed if the assessee fails to make such a claim in the return of income. Thus, there are twin conditions, viz., first, claiming deduction u/s 80P and second, claiming such deduction in the return of income. There is no dispute on the first condition, which has been satisfied in this case as the assessee did claim the deduction albeit during the course of assessment proceedings. The whole controversy revolves around the second condition, which says that the claim should be made in the return of income. The assessee in the extant case did not file any return of income, but made a claim of the deduction in computation of income filed during the course of the assessment proceedings. The moot question is whether the requirement of making a claim in the return of income is a mandatory or a directory requirement. If it is held as mandatory, then the claim must be made in the return of income, failing which the benefit of deduction would be lost. Au contraire, if it is held as directory, then the claim made either in the return of income or in any manner before the conclusion of assessment proceedings, as is the case under consideration, would validate the entitlement.

11. The Hon'ble Supreme Court in CIT vs. G.M. Knitting Industries (P.) Ltd. (2015) 376 ITR 456 (SC) came across a situation in which the assessee claimed additional depreciation in Form 3AA but the Form was not furnished along with the return of income. Such Form was submitted during the course of assessment proceedings. The AO denied the claim on the ground that the Form 3AA was required to be statutorily filed along with the return of income. The view of the AO was reversed by the Tribunal as well as the Hon'ble High Court by holding that even if the Form was filed during the course of assessment proceedings, it amounted to sufficient compliance. The Hon'ble Supreme Court, taking note of the judgment in CIT Vs. Shivanand Electronics (1994) 209 ITR 63 (Bom), approved the view of the Hon'ble High Court having the effect that the requirement of filing Form 3AA was a necessary ingredient for claiming additional depreciation, but the timing of filing the Form was a directory requirement, which was fulfilled on filing it even during the course of assessment proceedings. The Hon'ble Bombay High Court in Shivanand Electronics (supra) dealt with the requirement of filing audit report for the purpose of claiming deduction u/s 80J, which required that the report should be filed "along with return of income" under s. 80J(6A). It held that such requirement of filing the audit report along with the return of income was not mandatory, but directory in the sense that if assessee complied with the same before completion of assessment, deduction under s. 80J, on the basis of such report, was allowable.



12. Recently, the Hon'ble Supreme Court was confronted with the claim of benefit u/s 10B in *Pr.CIT vs. Wipro Limited (2022) 446 ITR 1 (SC)*. The assessee furnished original return taking the benefit of section 10B and did not carry forward the loss. Thereafter, a revised return was filed foregoing the claim of deduction u/s 10B. The AO rejected the withdrawal of exemption under Section 10B by holding that assessee did not furnish the necessary declaration in writing before due date of filing return of income, which was an essential requirement for not claiming the benefit of section 10B. The Hon'ble High Court decided the issue in favour of the assessee by holding that the requirement of filing the declaration was mandatory but filing it along with the return of income u/s 139(1) was a directory requirement. The matter was brought by the Revenue before the Hon'ble Supreme Court. The assessee, inter alia, relied on the judgment of the Apex Court in *G.M. Knitting Industries (supra)*. Their Lordships held that the requirement of filing the report in support of deduction u/s 10B was not a directory but a mandatory requirement. It further held that both the conditions of - filing the declaration and filing it before the time limit u/s 139(1) - were mandatory and had to be cumulatively satisfied. Rejecting the reliance on *G.M. Knitting Industries (supra)*, the Hon'ble Supreme Court held that that decision was relevant in the context of deduction provisions and not the exemption provisions as given under Chapter III of the Act. As the Hon'ble Summit Court in *Wipro Limited (supra)* was dealing with section 10B, falling under Chapter III of the Act, it held qua *G.M. Knitting Industries (supra)* that: 'Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VI-A of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VI-A, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VI-A shall be applicable while considering the claim under Section 10B (8) of the IT Act.'

13. On going through the judgments in *G.M. Knitting Industries (supra)* in juxtaposition to *Wipro Limited (supra)*, the principle which emerges is that the fulfillment of requirement of making a claim for exemption under the relevant sections of Chapter III in the return of income is mandatory, but when it comes to the claim of a deduction, inter alia, under the relevant sections of Chapter VI-A, such requirement becomes directory. In the latter case, the making of a claim even after the filing of return but before completing the assessment, meets the directory requirement of making a



claim in the return of income. The instant case involves deduction u/s 80P and hence, would be governed by the principle laid down in G.M. Knitting Industries (supra), as per which the making of a claim of deduction is mandatory but the timing is directory. Even if the claim is made during the course of assessment proceedings, such a claim has to be allowed. In view of the foregoing discussion, I am satisfied that the authorities below were not justified in rejecting the assessee's claim of deduction u/s 80P only on the ground that such a claim was not made in the return but during the course of assessment proceedings. The impugned order is ergo set aside and the matter is remitted to the file of the AO for examining the claim of deduction u/s 80P on merits."

11. Respectfully following the above decision, I find the case of the assessee is squarely applicable on the issue raised in the instant two appeals. I hereby decide the issue in favour of the assessee and Ground of Appeal Nos.2 and 3 are allowed in favour of the assessee.

12. Now coming to the quantum of deduction u/s.80P of the Act, I observe that both the lower authorities denied the deduction on account of the following three reasons :

- (a) That the assessee society has not provided with the Copy of Registration Certificate;*
- (b) Even if return of income was not furnished, the society should have got its accounts audited; and*
- (c) The details of interest income has not been provided*

13. As far as the first two observations of the lower authorities are concerned, I notice that the assessee has furnished the paper book before this Tribunal and page 25 of the paper book is the Registration Certificate of the Society and the same is dated 13.10.1995. So far as the Audit Report is concerned, copy of



audited Balance sheet for both the years have also been furnished. Admittedly, these details were not furnished before the Id.CIT(A)/NFAC and have been filed before the Tribunal for the first time.

14. So far as the details of Interest income is concerned, my attention was drawn to pages 10 and 36 of the paper book where the assessee has provided the details of interest income. In both these sheets, I notice that the assessee has provided the details of interest income of Rs.57,05,656/- and Rs.64,95,412/- for the A.Yrs. 2015-16 and 2016-17 respectively. These details also contain the detail of interest received from the members, penal interest on loan given to members, interest on Fixed Deposit and bank balance held with Cooperative Banks – PDCC (claimed to be a Cooperative Bank), Sharad Sahakari Bank, Bank of Baroda and HDFC Insurance Scheme. The Id. Authorized Representative was fair enough to accept that the interest received from Scheduled Bank and from HDFC Insurance Scheme is not eligible for deduction u/s.80P of the Act. So far as the interest income received from Cooperative Banks, he referred to the catena of decisions of this Tribunal wherein in the interest received from Cooperative Banks have been held to be eligible for deduction u/s.80P of the Act.



15. With the above discussion, observations and considering the submissions of Ld. Counsel for the assessee, I deem it fit to restore the issue of the quantification of deduction u/s.80P of the Act for A.Y. 2015-16 and A.Y. 2016-17 to the file of Jurisdictional Assessing Officer after taking into consideration that the assessee society is eligible for deduction u/s.80P of the Act for the interest income earned from its members, Cooperative Banks and Cooperative Societies. Common Ground of appeal No.1 raised for the A.Yrs. 2015-16 and A.Y. 2016-17 are allowed for statistical purposes.

16. In the result, the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced on this 06th day of January, 2025.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे/Pune; दिनांक / Dated : 06th January, 2025

Satish



आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “(SMC)” बेंच, पुणे/ DR, ITAT, “(SMC)” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune