

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI KESHAV DUBEY, JM**

**ITA No. 565/Coch/2024
Assessment Year: 2018-19**

Vengola Service Co-op. Bank Ltd. Appellant
13/621 AB, Kunnathunadu
Vengola P.O., Ernakulam 683556
[PAN: AAAAV1709N]

vs.

The Income Tax Officer Respondent
Ward - 2, Aluva

Appellant by: Shri Lokanathan R., CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 06.01.2025
Date of Pronouncement: 28.01.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 12.01.2024 for Assessment Year (AY) 2018-19.

2. Brief facts of the case are that the appellant is a co-operative society registered under the Kerala State Co-operative Societies Act, 1969. Established wholly for the purpose of extending credit facilities to it's members for promoting agricultural and allied

activities. The return of income was filed on 30.03.2019 declaring total income of Rs. 66,620/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-2, Aluva (hereafter “the AO”) at a total income of R. 37,36,420/- by denying the claim for deduction u/s. 80P of the Income Tax Act, 1961 (the Act).

3. Being aggrieved, an appeal was filed before the CIT(A). who vide the impugned order dismissed the appeal of the assessee by observing as under: -

“In this case, the above provision 80AC(ii) applied for the relevant AY 2018-19 and based on which the ITD-CPC disallowed the entire claim of deduction u/s. 80P of Rs. 2,68,81,663/-. Unless the delay in return filing is condoned, the deduction u/s. 80P cannot be availed by the appellant. Therefore, in view of the above, the claim of the appellant is dismissed.”

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. We have heard the rival contentions of both the parties and perused the material available on record. At the outset we find that there is a delay in filing the present appeal by 91 days. The assessee filed a petition along with an affidavit praying for condonation of delay on the ground that the order passed by the CIT(A) was not served physically but through e-mail which was not received by the assessee. The

assessee came to know about the dismissal of the appeal only when he received a notice u/s. 270A of the Act dated 24.04.2024 from the NFAC. It is submitted that the delay occurred was not at all intentional and not with any malafide motive. Thus, he prayed that the delay be condoned in the interest of justice adopting a liberal view. Since, there is no material on record to disbelieve the averments made in the affidavit explaining the reasons for the delay in filing the present appeal, we condone the delay and admit the appeal for adjudication.

6. The CIT(A) has dismissed the appeal solely on the reason that the return of income was filed belatedly. This issue is no longer res integra, as it is covered by the judgement of the Hon'ble Jurisdictional High court in the case of Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT 459 ITR 730 wherein it is held as under: -

“ a reading of section 80A(5) and section 80AC of the Income-tax Act, 1961, as they stood prior to April 1, 2018, would reveal that the statutory scheme under the Act was to admit only such claims for deduction under section 80P of the Act as were made by the assessee in a return of income filed by him. That return could be under section 139(1), (4), 142(1) or 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 April 1, 2018, however, mandated that for an assessee to get a deduction under section 80P of the Income-tax Act, it 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 Income-tax Act. In other words, after April 1, 2018, even if the assessee

made its claim for deduction under section 80P in a return filed within time under section 139(4), 142(1) or 148, it would 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 Act only if it is made in a return recognised as such under the Act, and after April 1, 2018, only if that return is one filed within the time prescribed under section 139(1) of the Act. On the facts as the returns in these cases, for the assessment years 2009-10 and 2010-11, were admittedly filed after the dates prescribed under section 139(1) and (4) or in the notices issued under section 142(1) and section 148, the returns were non est and could not have been acted upon by the Assessing Officer even though they were filed before the completion of the assessment.(AY.2009-10, 2010-11).”

The Hon'ble High Court has also held that the view taken by it vide para 13 of its earlier decision in the case of Chirakkal Service Co-operative Bank Ltd. v. CIT [2016] 384 ITR 490 (Ker) is not a correct view. The relevant observation made by the Hon'ble Jurisdictional High Court is extracted as below: -

“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 Income-tax Act, ignores the perspective tht sees the requirement of the claim for deduction being made in a valid return as a precondition 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 Income-tax Act. In other words, the precondition for claiming the deduction under section 80P of the Income-tax Act has now been made more stringent by reducing the time available to an assessee for making the claim.”

5. In the light of the above decision the judgement in the case of Chirakkal Service Co-operative Bank Ltd. (supra) no longer hold the field. In view of the above legal position we find no merit in the grounds of appeal raised by the assessee.

In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 28th January, 2025.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 28th January, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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Assistant Registrar
ITAT, Cochin