

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH: BANGALORE**

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 1740/Bang/2024
Assessment Years: 2019-20

Shree Revanasiddeshwara Pattina Sahakari Sangh Niyamit Rampur, 1 st Hosur, Bagalkot, Rampur S.O., Bagalkot – 587 207.	Vs.	The Income Tax Officer, Ward – 1 & TPS, Bagalkot.
PAN – ABLAS 2094 K		
APPELLANT		RESPONDENT

Assessee by	:	Shri Pranav Krishna, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Dept.

Date of hearing	:	13.01.2025
Date of Pronouncement	:	24.01.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Addl/JCIT(A)-11, Mumbai, dated 21/06/2024, vide DIN No. ITBA/NFAC/S/250/2024-25/1065923389(1) for the assessment year 2019-20.

2. The only issue raised by the assessee is that the learned CIT(A) erred in denying the benefit of deduction under section 80P(2)(a)(i) of the Act due to the delay in filing the return of income.

3. The necessary facts are that the assessee in the present case filed its return of income on 23/11/2020, after the extended due date for filing the original return of income on 31/10/2019, claiming a deduction under section 80P(2)(a)(i) of the Act amounting to Rs. 14,71,631/-. However, the CPC denied the deduction claimed by the assessee in the intimation generated under section 143(1) of the Act, dated 08/02/2021, stating that the assessee had not claimed such a deduction under the appropriate schedule in the Income Tax return.

4. Aggrieved, the assessee preferred an appeal to the learned CIT(A), who observed that the assessee had claimed the benefit of deduction under a different schedule, BP-5(c), of the return of income. The learned CIT(A) acknowledged that not claiming the deduction under section 80P(2)(a)(i) of the Act in the correct schedule of the Income Tax return amounted to an apparent mistake that could have been corrected. Thus, the learned CIT(A) held that the assessee could not be denied the benefit of deduction under section 80P(2)(a)(i) of the Act merely because the claim was made under the incorrect schedule of the Income Tax return.

4.1 However, the learned CIT(A) noted that the assessee had not filed its return of income within the due date, and therefore, it could not be allowed the benefit of deduction under section 80P of the Act due to the restriction under section 80AC of the Act.

4.2 Nevertheless, the learned CIT(A) also observed that the assessee could seek condonation from the CBDT for the delayed filing of the Income Tax return under section 119(2)(b) of the Act, as per Circular

No. 13/2023, dated 26/07/2023, by filing an application before the competent authority. Consequently, the learned CIT(A) dismissed the appeal of the assessee.

5. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before me.

6. The learned AR fairly agreed that under section 119(2)(b) of the Act, the CBDT has delegated the power to the competent authority to condone the delay in filing the return of income, thereby allowing the benefit of deduction under section 80P(2)(a)(i) of the Act. Accordingly, the learned AR submitted that the assessee, vide letter dated 07/10/2024, had filed a petition under section 119(2)(b) of the Act seeking condonation of the delay in filing its return, which is currently pending for disposal. The learned AR, therefore, requested that the issue be restored to the file of the AO with a direction to decide the matter based on the outcome of the petition filed under section 119(2)(b) of the Act.

7. On the other hand, the learned DR contended that if the condonation petition filed by the assessee for the delayed filing of the return of income is accepted by the competent authority, the appeal would become infructuous and should therefore be dismissed at this stage.

7.1 The learned AR, in his rejoinder, contended that this Tribunal, in the case of Gangaparameshwari Co-operative Credit Society Ltd. (ITA No. 267/Bang/2024), vide order dated 15.03.2024, involving identical

facts and circumstances, had set aside the issue to the file of the AO for fresh adjudication after considering the decision of the competent authority under section 119(2)(b) of the Act. Thus, the learned AR prayed for the issue to be restored to the file of the AO.

8. I have examined the facts of the case and the submissions of both parties. It is an undisputed fact that the assessee in this case filed its return of income beyond the due date/extended due date specified under section 139(1) of the Act. Consequently, the assessee is not entitled to the benefit of deduction under section 80P of the Act due to the restriction under section 80AC of the Act. However, the CBDT, through Circular No. 13/2023, dated 26/07/2023, has provided that the assessee can seek condonation of the delay under section 119(2)(b) of the Act to claim the benefit under section 80P of the Act. In simple terms, if the condonation petition filed by the assessee before the competent authority is accepted, the assessee will be eligible for the deduction under section 80P of the Act. In the present case, the condonation petition filed by the assessee is still pending. Therefore, I am of the view that this appeal does not require adjudication at this stage, as the outcome depends on the decision of the competent authority on the condonation petition, as per Circular No. 13/2023, dated 26/07/2023, read with section 119(2)(b) of the Act.

8.1 In similar circumstances, this Tribunal, in the case of Gangaparameshwari Co-operative Credit Society Ltd. (supra), restored the issue to the file of the AO for fresh adjudication after considering the competent authority's decision under section 119(2)(b) of the Act.

Accordingly, following the same principle, I set aside the issue to the file of the AO for necessary adjudication as per the provisions of the law.

8.2 Regarding the delay in filing the appeal before me, I note that a separate adjudication is unnecessary. Even if I dismiss the appeal due to the delay, but the assessee's condonation petition under section 119(2)(b) of the Act is accepted, the issue will still be decided in the assessee's favor. Therefore, I condone the delay in filing the appeal.

8.3 At the time of the hearing, the learned AR did not make any submissions regarding the additional ground of appeal. Therefore, the same is dismissed as infructuous. The appeal is partly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is hereby partly allowed for statistical purposes.

Order pronounced in court on the 24th day of January, 2025.

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 24th January, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore