IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH

BEFORE SHRI INTURI RAMA RAO, AM

ITA No. 846/Coch/2024
Assessment Year: 2008-09

The Perinjanam Service Co-op. Bank Ltd. ..... Appellant
Perinjanam P.O., Thrissur 680686
[PAN: AACAP7392K]

vs.

The Income Tax Officer ..... Respondent
Ward – 2(5) Thrissur

Appellant by: ------- None -------
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 05.02.2025
Date of Pronouncement: 24.02.2025

O R D E R

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-13, Mumbai [CIT(A)], dated 14.05.2024 for Assessment Year (AY) 2008-09.

2. Brief facts of the case are that the assessee is a primary agricultural credit co-operative society registered under the provisions of the Kerala Co-operative Societies Act, 1969. The appellant had not filed return of income u/s. 139(1) of the Income Tax Act, 1961 (the Act) for AY 2008-09. Therefore , a notice u/s. 148 of the Act calling for the return of income was issued to the appellant on 27.03.2015. The appellant did not comply with the notice. Therefore, the Income Tax Officer, Ward-2(5)

Thrissur (hereinafter called "the AO") completed the assessment vide order dated 15.02.2016 passed u/s. 144 r.w.s. 147 of the Act at a total income of Rs. 9,66,650/-.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO.

4. Being aggrieved, assessee is in appeal before this Tribunal.

5. When the appeal was called nobody appeared on behalf of the assessee despite due service of notice of hearing. Therefore, we proceeded to dispose of the appeal after hearing the learned Sr. DR.

6. The learned Sr. DR submits that the issue in the appeal is squarely covered against the assessee by the decision of the Hon'ble Kerala High Court in the case of Nileshwar Range Kallu Chethu Vyavasaya Thozihilali Sahararana Sangham [2023] 459 ITR 730 (Ker) overruling its earlier decision in the case of Chirakkal Service Co-operative Bank Ltd. v. CIT[2016] 384 ITR 490 (Ker).

7. The solitary issue that arises for my consideration is whether or not the CIT(A) was correct in law in confirming the action of the AO denying deduction u/s. 80P of the Act as no valid return of income was filed by the assessee. Admittedly, in the present case the assessee has not filed valid return of income either under the provisions of section 139 of the Act or in response to the notice u/s. 142(1) issued by the AO. The provisions of sub-section 80A(5) mandates that in order to claim a deduction under the section specified under Chapter VI-A, a claim is required to be made in the return of income. The issue in the present case

is settled against the assessee by the decision of the Hon'ble Jurisdictional High court in the case of Nileshwar Range Kallu Chethu Vyavasaya Thozihilali Sahararana Sangham [2023] 459 ITR 730 (Ker) wherein it was held 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.
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> 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 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 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."

Respectfully following the decision of the Hon'ble Jurisdictional High Court (supra) I hold that the assessee co-operative society is not entitled for deduction u/s. 80P(2)(i)(a) of the Act, as no valid return of income was filed by the assessee society and the decision of the Hon'ble Jurisdictional High court prevails over the coordinate bench's decision of this Tribunal. Thus, I do not find any merit in the appeal filed by the assessee.

8. In the result, the appeal of the assessee stands dismissed.

Order pronounced in the open court on 24th February, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 24th February, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin