

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

**Before Shri Inturi Rama Rao, Accountant Member
&
Shri Sandeep Singh Karhail, Judicial Member**

ITA No.820/Coch/2024 :Asst.Year 2017-2018

Eramalloor Service Co-operative Bank Limited No.1175 Eramalloor P.O. Cherthala – 688 537. PAN :AAA AE6961H.	v.	The Income Tax Officer Ward -1 &TPS Alappuzha.
(Appellant)		(Respondent)

Appellant by : Sri.C.A.Jojo, Advocate
Respondent by :Smt.Leena Lal, Sr.AR

Date of Hearing :24.03.2025	Date of Pronouncement : 27.03.2025
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ORDER

Per Sandeep Singh Karhail, JM :

1. The assessee has filed the present appeal against the impugned order dated 22/07/2024, passed under section 250 of the Income Tax Act ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["learned CIT(A)"], for the assessment year 2017-18.
2. The solitary grievance of the assessee is against the denial of deduction under section 80P of the Act.
3. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a primary agricultural credit

society registered under the Kerala Co-operative Societies Act. For the year under consideration, the assessee did not file its original return of income. Based on the information that the assessee has made cash deposits in his bank account maintained with district co-operative banks during the demonetization period and no return of income is filed by it, notice under section 142(1)(i) of the Act was issued to the assessee directing it to file the return of income. However, the assessee failed to furnish the return of income either under section 139, on or before 31/03/2018, and also failed to furnish the return of income in response to the notice issued under section 142(1) of the Act. Accordingly, the Assessing Officer ("AO") proceeded to complete the assessment to the best of his judgment on the basis of material available on record under section 144 of the Act. From the material available on record, it was observed that the assessee has earned net loss of INR 21,08,382, whereas after adjusting the various provisions and reserves debited and credited to the profit and loss account, the net profit comes to INR 20,92,423. Since the assessee failed to file its return of income under section 139, despite issuance of notice under section 142(1) of the Act, the AO, by placing reliance upon the decision of the Hon'ble Jurisdictional High Court in ITA No. 273 of 2015, concluded that the claim for deduction under section 80P of the Act can only be considered only when the assessee has filed its return of income. The AO, by referring to the provisions of section 80A(5) of the Act, held that since the assessee has not made any claim of deduction

under Chapter-VIA, which includes deduction under section 80P of the Act, in the return of income, no such deduction shall be allowed. Accordingly, the AO, vide order dated 11/12/2019, passed under section 144 of the Act, computed the total income of the assessee at INR 20,92,423, without granting the deduction under section 80P of the Act.

4. In its appeal before the learned CIT(A), the assessee submitted that it could not file the return of income for the year under consideration due to the delay in getting the departmental audit report. Further, the assessee claimed that it was under a bona fide belief that the assessee being a co-operative society, its income is exempt under section 80P of the Act, hence, the return of income is not necessary.

5. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on the basis that the claim of deduction under section 80P of the Act was never made by the assessee through filing of return or by filing a belated return through condonation of delay process, and therefore, the assessee lost its opportunity to make a valid claim for deduction. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative ("learned AR") submitted that the assessee being a co-operative society is not required to file its return of income, and thus the filing of

return of income is optional. The learned AR further submitted that the assessee filed its annual return of income on 11/02/2019.

7. On the other hand, the learned Departmental Representative the issue in question is covered in favour of the Department by the judgment of the Hon'ble Kerala High Court in the case of Nileshtar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v/s CIT, reported in (2023) 459 ITR 730 (Kerla).

8. We have considered the submissions of both sides and perused the material available on record. In the present case, it cannot be disputed that the assessee neither filed its return of income under section 139(1) of the Act nor filed the same in response to the notice issued under section 142(1) of the Act. During the hearing, the learned AR submitted that the assessee filed its return of income on 11/02/2019, which is also beyond the time permissible for filing the belated return under section 139(4) of the Act. Therefore, it is apparently an invalid return. Thus, in the present case, it is ostensible that no valid return was filed by the assessee claiming deduction under section 80P of the Act. Accordingly, the lower authorities denied the claim of the assessee under section 80P of the Act on the basis of the provisions of section 80A(5) of the Act, which reads as follows: –

"(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."

9. We find that the issue of whether the assessee is entitled to claim deduction under section 80P of the Act in the absence of a return of income is no longer res integra and has been decided in favour of the Revenue by the Hon'ble Jurisdictional Kerala High Court in Nileshtar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham (supra). The relevant findings of the Hon'ble High Court, in the aforesaid decision, are reproduced as follows:-

"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 pre-condition 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 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.*

14. *Before parting with these cases, we must also address the arguments of the learned counsel for the appellant/assessee relying on the provisions of section 139(8)/(9) and section 234A of the IT Act. A reading of the provisions of section 139(8) and (9) of the IT Act clearly reveals that even under those provisions, the restrictions placed with regard to the accrual of interest on amounts assessed on an assessee is with regard to the date of filing of a return within the time prescribed under the IT Act. Under section 234A of the IT Act, however, although the provision suggests that even a return filed beyond the time prescribed under any of the provisions of the IT Act can have the effect of limiting the accrual of interest on the amounts assessed against an assessee, we have to see the said provision as permitting a filing of a belated return for the limited purpose of conferring a specific benefit of limiting the accrual of interest, on an assessee, and for no other purpose. We cannot accept the contention of the appellant/assessee that the said provisions which are intended for a specific purpose and are not general in nature, have to be seen as manifesting a statutory scheme that enables the Department to act upon a belated return for allowing the claim of an assessee for deduction under section 80P of the IT Act.*

In the light of the aforesaid discussion, we find that the above questions of law have to be answered in favour of the Revenue and against the assessee, and we do so. Thus, these I.T. Appeals are disposed by answering the substantial questions of law raised therein, in favour of the Revenue and against the assessee."

10. Accordingly, respectfully following the decision of the Hon'ble Jurisdictional High Court cited supra, we do not find any infirmity in the impugned order in rejecting the claim of the assessee under section 80P of the Act. Hence, the same is upheld, and the grounds raised by the assessee are dismissed.

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

Order pronounced on this 27th day of March, 2025.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(Sandeep Singh Karhail)
JUDICIAL MEMBER

Cochin; Dated : 27th March, 2025.
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