

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'DB-A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.661/Hyd/2022**
(निर्धारण वर्ष/Assessment Year: 2018-19)

Andhra Pragathi Farmers Service Coop. Society, Ramadurgam PAN:AAAAR1876J (Appellant)	Vs.	Income Tax Officer Ward – 1 ADONI (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.A. Sai Prasad, CA	
राजस्व द्वारा/Revenue by:	Shri Srinath Sadanala, DR	
सुनवाई की तारीख/Date of hearing:	02/04/2025	
घोषणा की तारीख/Pronouncement:	03/04/2025	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal by the assessee is directed against the order dated 21/09/2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. Earlier this appeal of the assessee was disposed of by this Tribunal vide order dated 17/10/2023 and thereafter, the said order was recalled in the M.A No.10/Hyd/2024 vide order

dated 04/03/2025 for fresh adjudication of the appeal of the assessee. The relevant observation of the Tribunal in order dated 4/3/2025 in M.A. No.10/Hyd/2024 in para 4 to 8 reads as under:

“4. We have considered the rival submissions as well as carefully perused the orders of the authorities below as well as the impugned order of this Tribunal. For the A.Y 2018-19, the assessee has raised the following grounds of appeal:

1	The order of the learned First Appellate Authority is not correct either in law or on facts and in both.
2.	The learned First Appellate Authority is not justified in confirming the action of the Assessing Officer denying deduction u/s 80P(2) amounting to Rs. 1,00,66,122/- in the proceedings u/s 154.
3.	The learned First Appellate Authority is not justified in confirming the Assessing Officer’s action denying deduction u/s 80P(2) on the ground that the appellant filed belated return of income.
4	The learned First Appellate Authority failed to appreciate the fact that there is delay in statutory audit report by State Co Operative Department and hence, the delay in filing the return of income is due to circumstances beyond the control of the appellant.
5	The appellant craves leave to add, amend or alter any of the above grounds of appeal at the time of hearing of appeal.

5. Thus, the assessee has challenged the jurisdiction of the Assessing Officer to disallow the deduction u/s 80P(2) while passing the order u/s 154 of the Act. This Tribunal vide composite order dated 17/10/2023 disposed of the appeals of the assessee for the A.Y 2016-17 and 2018-19. The grounds raised for the ay 2016-17 are reproduced by the Tribunal in Para 2.1 as under:

"1. The order of the learned First Appellate Authority is not correct, either in law or on facts and in both.

2. The learned First Appellate Authority is not justified in confirming the action of the Assessing Officer denying deduction u/s 80P(2) in the proceedings u/s 154. The issue involved is debatable and hence cannot be subject matter of adjustments u/s 154.

3 The learned First Appellate Authority is not justified in confirming the action of the Assessing Officer denying deduction u/s 80P(2) in respect of interest received on deposits made in Nationalised Banks amounting to Rs. 6,77,560/-."

6. Thus, the grounds raised by the assessee for the A.Y 2016-17 are also arising from the order passed by the Assessing Officer u/s 154 of the I.T. Act, 1961 and to that extent the grounds for the A.Ys 2016-17 and 2018-19 are identical except the fact that for the A.Y 2018-19, the Assessing Officer has disallowed the claim of the assessee only on the ground that there was a delay in filing the return of income. Since the Assessing Officer already allowed the claim of the assessee u/s 80P(2) while passing the assessment order u/s 143(3) dated 3/3/2021, therefore, a rectification order dated 8/9/2021 u/s 154 of the Act was passed by the Assessing Officer to disallow the claim of deduction u/s 80P of the I.T. Act, 1961 as under:

Accordingly, the rectification application was created on ITBA . In computation, the deduction U/s 80P did not allowed and therefore a ticked has been raised. As verified from this office records, the assessee has filed its Return of Income on 20-12-2018, which is after the extended due date of filing of return U/s 139(1) of the Income Tax Act, is 31-10-2018. Therefore, the issue has been forwarded to the Addl. Commissioner of Income-Tax, Kurnool for necessary instruction / directions on the orders passed by the NeAC/ReAC. Accordingly, the Addl. Commissioner of Income-Tax, Kurnool gave directions that, "the assessee filed belated return of income, and as per Sec.80AG(ii) the claim of deduction u/s.80P is not allowable".

7. Thus, the sole reason for disallowing the claim of deduction u/s 80P in the order passed u/s 154 is delay in filing the return of income u/s 139(1) of the Act. Now the assessee has filed the order dated 13/12/2023 of the CIT whereby the delay in filing the return of income for the A.Y 2018-19 has been condoned. The relevant part of this order in para 6 and 7 are reproduced as under:

6. Therefore, I proceed to examine the merits of application on the touchstone of the conditions laid down in the circular. The main reason, stated by the assessee, for delay in filing of return for the A.Y. 2018-2019 is that there was a delay of receipt of audited report and audited financial statement from the assistant registrar of the state of Andhra Pradesh. The statutory audit as required under the AP Co-operative Societies Act was conducted on 31.10.2018 and the due date for filing return of income u/s.139 (1) for AY.2019-20 (tax audit) is 30.09.2018. Further, it is noticed that date of receipt of Co-operative Audit was on 14.11.2018 and the assessee filed return under 139(4) on 14.12.2018. It is informed by the assessee that delay of 30 days was due to operational difficulties. The requirements for Condonation u/s 119(2)(b) of the Act as per circular i.e. delay caused due to circumstances beyond the control of the assessee with appropriate documentary evidence and In the present case delay in furnishing return of income was caused due to delay in getting the accounts audited by statutory auditors and delay of 8 days after the audit is operational and negligible.

7. In view of the above discussion and after careful consideration of the matter, the applicant's application seeking Condonation of delay under section 119(2)(b) of the Act in filing Income-tax return for A.Y. 2018-2019 is hereby accepted and delay is condoned

8. Thus, in view of the subsequent development of condonation of delay in filing the return of income, the matter requires reconsideration. Accordingly, in the facts and circumstances of the case, as discussed above, we recall the impugned order of the Tribunal for the A.Y 2018-19 for fresh adjudication of the appeal of the assessee. The Registry is directed to fix the appeal of the assessee for hearing in ordinary course.

3. Thus, this appeal was listed for fresh hearing and adjudication. The learned AR of the assessee has submitted that the Assessing Officer has disallowed deduction u/s 80P(2) of the I.T. Act, 1961 while passing the order u/s 154 of the Act on the ground that the assessee has filed the return of income belatedly. He has pointed out that the learned CIT vide order dated 13/12/2023 has condoned the delay in filing the return of income for the year under consideration and therefore, the reason for disallowing the claim u/s 80P(2) is no more in existence once the

delay in filing the return of income has been condoned by the learned CIT. Thus, the learned AR has submitted that the impugned order of the authorities below are liable to be set aside and the claim of deduction u/s 80P(2) be allowed.

4. On the other hand, the learned DR has not disputed the fact that the delay in filing the return has been condoned by the learned CIT vide order dated 13/12/2023.

5. Having considered the rival submission and careful perusal of the relevant record, we find that the Assessing Officer denied the claim of deduction u/s 80P(2) of the Act on the ground that there is a delay in filing the return of income for the year under consideration. The assessee approached the competent authorities i.e. the learned CIT for condonation of delay in filing the return of income which has been condoned vide order dated 13/12/2023. The relevant part of the order of the learned CIT has been reproduced by the Tribunal while passing the order dated 4/3/2025 deciding the Miscellaneous Application which is again reproduced in the foregoing part of this order. Thus, in view of the fact that the delay in filing the return of income has already been condoned by the competent authority, the very ground on which the claim of the assessee u/s 80P(2) was denied is no more in existence. Accordingly, in the facts and circumstances of the case, we set aside the impugned order of the learned CIT (A) and allow the claim of the assessee u/s 80P(2) of the I.T. Act, 1961.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 3rd April, 2025.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 3rd April, 2025

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward-1 Adoni
3	Pr. CIT - Kurnool
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order