

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

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND**

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA Nos.478/RJT/2024

(निर्धारणवर्ष / Assessment Year: (2018-19)

(Physical Hearing)

Shri Dhoraji Nagrik Sharafi and Grahak Sahkari Mandali Ltd. C/o. Sarda & Sarda, Sakar, 1 st Floor, Dr. Radha – Krishnan Road, Opp. Rajkumar College, Rajkot- 360001	Vs.	Income Tax Officer Ward – 1(2)(1), Rajkot.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAAD7775Q		
(Appellant)		(Respondent)

Appellant by : Shri Vimal Desai, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. CIT-DR

Date of Hearing : 03/03/2025

Date of Pronouncement : 02/06/2025

आदेश / ORDER

Per Dr. A. L. Saini, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2018-19, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals), which in turn arises out of an order passed by Assessing Officer, under section 143(1) of the Income Tax Act, 1961. (herein after referred to as “the Act”), dated 25.06.2019.



2. Grounds of appeal raised by the assessee are as follows:

(1).The intimation order u/s 143(1) of the Act, is bad in law.

(2).The Learned Assessing Officer has erred in law as well as on facts in disallowing the deduction of Rs. 10,90,840/-, claimed u/s 80P of the Act. The Ld. CIT(A) has erred in law as well as on facts in confirming the same.

3. Succinctly, the factual panorama of the case is that assessee, before us, is a Co-operative Society and society engaged in the banking and financial activities during the year and consideration. The assessing officer (CPC) vide intimation u/s. 143(1)(a) of the Act, dated 25.06.2019 has denied deduction under section 80P for the reason that the assessee did not file return of income within the time limit prescribed under section 139(1) of the Act. The assessee e-filed its return of income for assessment year 2018-19 on 20.03.2019, declaring the total income at Rs. NIL after claiming the deduction u/s. 80P of the Act of Rs.10,90,836/-. The said return was processed u/s. 143(1) of the Act, vide intimation dated 25.06.2019 by the CPC, Bangalore and claim of deduction of Rs.10,90,836/-u/s. 80P of the Act, was denied on the ground that the return of income was not filed within the due date. Accordingly, the total income of the assessee was assessed at Rs.10,90,836/-and the tax payable was determined at Rs.4,33,302/-.

4. Aggrieved by the action of the assessing officer, (CPC, Bangalore), the assessee carried the matter in appeal before the learned CIT(A), who has just reiterated the findings of the assessing officer, (CPC, Bangalore), and confirmed the action of the assessing officer. Therefore, assessee knocked the door of the Tribunal, and hence is in further appeal before us.

5. Shri Vimal Desai, learned Counsel for the assessee, vehemently argued that under the processing u/s. 143(1) of the Act, only apparent and prima-facie adjustments prescribed there under can be made. The disallowance of deduction



claimed u/s. 80P of the Act, does not fall within the purview of adjustments prescribed u/s 143(1) of the Act. Since, because the return was filed beyond the time prescribed u/s. 139(1) of the Act, the said adjustment does not fall in the scope of Section 143(1) of the Act, as there is neither an arithmetical error nor an incorrect claim apparent from the records. The Id Counsel also submitted that the provisions of Section 80AC of the Act was amended, w.e.f. Assessment year (A.Y.) 2018-19, to provide that deductions under Part-C of Chapter VI-A shall not be allowed where return of income was filed after the due date u/s 139(1) of the Act. However, there was no corresponding amendment in the provisions of Section 143(1) of the Act, and the Section 143(1) nowhere prescribes the disallowance of deduction claimed u/s. 80P of the Act (which falls under Part-C of Chapter VI-A) where return was filed after due date u/s 139(1) of the Act. In view of the above, it was submitted that the adjustment made by the CPC, Bangalore regarding disallowance of deduction u/s 80P of the Act, in the intimation u/s 143(1) of the Act, dated 25.06.2019, is outside the scope of Section 143(1) of the Act and hence, without jurisdiction. The Ld. Counsel pointed out that the enabling sub-clause (iv) of 143(1)(a) has been brought into the statute book only by the Finance Act 2021 with effect from 01.04.2021 i.e., A.Y. 2021-22 onwards. Therefore, the Assessing Officer(CPC) cannot disallow deduction u/s. 80P while processing the return of income by invoking sub-clause (i) and (ii) of 143(1)(a) of the Act. The learned Counsel further stated that Tribunal has power to condone the delay in filing the return of Income, and matter may be restored back to the file of the jurisdictional assessing officer to examine the claim of the assessee under section 80P of the Act, and allow the claim of the assessee in accordance with law.

6. On the other hand, learned DR for the Revenue submitted that as per section 80AC(ii) of the Income Tax Act, the deduction under section 80P of the



Act, cannot be allowed, if the return of income is not filed within the time allowed under section 139(1) of the Act, therefore, assessing officer (CPC) has rightly disallowed the deduction claimed by the assessee, under section 80P of the Act. Moreover, the assessee has not availed the benefit of the provisions of section 119(2) (b) of the Income tax Act, to file the petition for condonation of delay before the learned Principal Commissioner of Income Tax, who may condone the delay in filing the appeal, therefore, assessee`s appeal may be dismissed.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id.CIT(A) and other materials brought on record. We note that assessee e-filed its return of income for assessment year 2018-19 on 20.03.2019, declaring the total income at Rs. NIL after claiming the deduction u/s. 80P of the Act of Rs.10,90,836/-. The said return was processed u/s. 143(1) of the Act, vide intimation dated 25.06.2019 by the CPC, Bangalore claimed deduction of Rs.10,90,836/-u/s. 80P of the Act, which was denied on the ground that the return of income was not filed by the assessee within the due date prescribed under section 139(1) of the Act. We note that in assessee`s case under consideration the due date for filing of return of income under section 139(1) of the Income tax Act 1961, for assessment year 2018-19 was 31st October 2018, however, the assessee has filed the return of income on 28th February 2019, hence, there is a delay in filing the return of income, under section 139 (1) of the Act, by 120 days. We note that because of this minor delay, the assessee`s claim for deduction under section 80P of the Act, should not be denied. That is, merely because there was delay in filing return of income, the claim of the assessee which is otherwise allowable cannot be



denied on the reason of mere procedural lapse. We also find that the assessee filed return of income after due date prescribed u/s 139(1) of the Act, but before the time limit allowed u/s. 139(4) of the Act. Therefore, the claim of deduction u/s. 80P cannot be denied when the return was duly filed within the time allowed u/s. 139(4) of the Act. We note that ITAT Rajkot in case of Ambaradi Seva Sahkari Mandali Ltd. Vs. DCIT (CPC), Bengaluru, decision dated 10.02.2023 in ITA No. 203/Rjt/2022, where in it was held that mere belated filing of the return of income u/s. 139(4) of the Act does not disentitle deduction u/s. 80P of the Act. In this case, the CPC had denied the benefit of deduction u/s. 80P on the ground of belated filing of return of income while processing the return u/s. 143(1) of the Act. The Coordinate Bench of ITAT Rajkot in case of ALiudepur Seva Sahakari Mandali Ltd. Vs. ACIT(CPC), Bengaluru – decision dated 24.02.2023 in ITA No. 269/Rjt/2022, where in it was held that the provision of section 80P has been included in the adjustments of section 143(1)(a)(v) by the Finance Act, 2021 w.e.f. 01.04.2021. Therefore, the deduction u/s 80P cannot be denied in the proceedings u/s 143(1) of the Act, prior to assessment year (AY) 2022-23. Thus, the adjustment made by the CPC was out of the purview of section 143(1) of the Act.

8. It is true that neither the principle of *res judicata* nor the rule of estoppel is applicable to assessment proceedings. But the fact that the assessee, who has claimed genuine deduction under section 80P of the Act should not be denied on account of technicalities and procedure formalities. Such claim of the assessee may be examined by the jurisdictional assessing officer, and if he finds correct, the disallowance may be deleted. We note that if the person sought to be taxed comes within the letter of the law, he must be taxed. On the other hand, if the Revenue, seeking to recover the tax, cannot bring the citizen within the letter of the law, the citizen is free. Considering these facts and circumstances,



of the case, we restore this *lis* back to the file of the jurisdictional assessing officer to examine the claim of the assessee, in respect of deduction under section 80P of the Act, and if he finds that the assessee's claim is correct, he may allow the deduction under section 80P of the Act, in accordance with law. It is needless to say that the assessee will be at liberty to adduce any evidences as deemed relevant before the assessing officer at the time of assessment proceedings in consequence to this order and the Assessing Officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions, and then pass a speaking order which is fair and judicious.

9. In the result, the assessee's appeal is allowed for statistical purposes, in above terms.

Order is pronounced on 02 /06 /2025 in the Open Court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/ **Judicial Member**

Sd/-
(DR. A.L. SAINI)
लेखा सदस्य/ **Accountant Member**

Rajkot:

दिनांक/ Date: 02 /06 /2025