

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

**श्री वीरवल्ली दुर्गा राव, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI VEERAVALLI DURGA RAO, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.199/VIZ/2024
(निर्धारणवर्ष/ Assessment Year: 2017-18)**

The P.A.C.S NOH 1002 PACS Velvadam, Velvadam Post Mylavaram, Krishna District – 521230 Andhra Pradesh [PAN: AABAP8170G]	v.	Income Tax Officer – Ward – 3(5) C.R. Building Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri ASRSS Sivaprasad, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	10.06.2025
घोषणा की तारीख/Date of Pronouncement	:	12.06.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order of Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1060602731(1) dated 07.02.2024 for the A.Y. 2017-18 arising out the order

passed under section 144 of Income Tax Act, 1961 [hereinafter in short “the Act”] dated 26.12.2024.

2. At the outset, it is noticed from the appeal record that there is a delay of 28 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. Authorised Representative [hereinafter “Ld.AR”] drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the petition which is as under:

“1. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi passed an order u/s 250 of the income Tax Act, 1961 for previous year 2016-17 relevant to assessment year 2017-18 u/s 144 of the income Tax Act, 1961 vide DIN: ITBA/NFAC/S/250/2023-24/1060602731(1) dated 07-02-2024.

2. Aggrieved by the addition made in the order u/s 250 of the Act, I am preferring an appeal before Honourable INCOME TAX APPELLATE TRIBUNAL, VISHAKAPATNAM for which due date of filing the appeal is 06-04-2024.

3. I have paid appeal fee of Rs, 10,000/-vide challan No. 00969 on 02-05-2024.

4. I am a covid affected person and suffering from long ill-health. Now-a days I am suffering from severe tooth problem and mouth part is affected. Due to my irregular health condition, I could not file the appeal by the specified due date i.e. 06-04-2024:

5. I request Honourable Income Tax Appellate Tribunal, Vishakhapatnam to condone the delay of 28 days in filing the appeal and oblige for which act of kindness I will be very grateful.”

3. On perusal of the contents of the affidavit filed by the assessee as well as the submissions of the Ld. AR, we find that the assessee is prevented by a

reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 28 days. Therefore, we hereby condone the delay of 28 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Brief facts of the case are, assessee is a society rendering services and providing credit facilities to its members. Assessee has not filed return of income under section 139(1) of the Act. Ld. Assessing Officer [hereinafter in short "Ld.AO"] issued notices under section 142(1) of the Act dated 09.03.2018 & 12.09.2019 requiring the assessee to file its return of income and to furnish information. In response, assessee filed its Return of Income on 19.11.2019 for the A.Y. 2017-18 admitting a total income of Rs.Nil after claiming the deduction of Rs.38,55,203/- under section 80P of the Act. Assessee furnished Trading Account, Profit & Loss Account, Income and Expenditure Account and Balance Sheet as on 31.03.2017. After considering the submissions of the assessee, Ld. AO treated the return as invalid since the return is filed beyond due date i.e., after 31.03.2018. Ld. AO completed the assessment by making an addition of Rs.38,55,203/- by disallowing the claim made by the assessee under section 80P(2)(a)(i) of the Act.

5. On being aggrieved, assessee filed an appeal before Ld. CIT(A). Ld.CIT(A) after considering the submissions of the assessee sustained the order of the Ld. AO.

6. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

“1. Both in law and in Facts of the case, the order made by the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi is bad in law, arbitrary, contrary to the provisions of law and against the principles of natural justice.

2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi, erred in sustaining the order of the Income Tax Officer, Ward 3(5), Vijayawada by confirming the disallowance of deduction claimed u/s 80P amounting to Rs. 38,55,203/-

3. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi is wrong in appraising that the return filed by the assessee is an invalid return since the same is not filed u/s 139(1) or 139(4) of the Act without considering that the return is required to be filed u/s 139(1) w.e.f AY 2018-19 only.

4. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi ought to have taken into consideration that provisions of sec 80A(5) are applicable only when the assessee fails to make a claim for deduction u/s 80P in the return of income filed.

5. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi is not justified in upholding the decision of ITO though resorting to best judgement u/s 144 by ITO is wrong since the assessee complied with terms of notice issued u/s 142(1), and made a claim for deduction u/s 80P in the return of income filed.

6. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi is wrong in treating the return filed as non-est and invalid since there is no watermark of "INVALID" on the Acknowledgement of ITR and the return is filed in response to the notice which is accepted by the portal.

7. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi ought to have taken into consideration that the assessee complied with pre-condition of claiming the deduction u/s 80P in the return of income filed.

8. *For these reasons and those which may be urged at the time of hearing of appeal and on the facts and circumstances of the case the disallowance of deduction claimed u/s 80P amounting to Rs. 38,55,203/- shall be deleted.*

9. *The appeal craves leave to add to alter, amend, modify, substitute, delete, and /or rescind all or any of the grounds of appeal on or before the final hearing, if the necessity so arises.”*

7. The only issue emanating from the grounds raised by the assessee is with respect to disallowance of deduction claimed by the assessee under section 80P of the Act.

8. At the outset, the Learned Authorized Representative [Ld. AR] argued that the assessee is a Society and claimed deduction under section 80P of the Act for the AY 2017-18. Ld.AR submitted that Ld. CIT(A) erred in appraising that the return filed by the assessee is an invalid return since the same is not filed under section 139(1) or 139(4) of the Act without considering that for the purpose of claiming deduction u/s 80P, the return of income is required to be filed u/s 139(1) w.e.f A.Y.2018-19 only. The Ld. AR further submitted that as per section 80P(2)(a)(i) of the Act, the assessee is entitled for deduction as the assessee is carrying on the business of providing credit facilities to its members. The Ld. AR further submitted that section 80A(5) cannot be applied in the instant case due to the fact that it does not mention within which period the return should be filed. The Ld.AR further submitted that section 80AC(ii) which was inserted w.e.f. 1/4/2018 specifies that “any Deduction is admissible under

any provisions of this Chapter under heading “C-deductions in respect of certain incomes” no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139 of the Act. The Ld. AR argued that since the heading “C-deductions in respect of certain incomes” has been segregated from the other deductions it has to be applied to the instant case also. The Ld. AR further argued that as per the Finance Act, 2018 which came into effect w.e.f 01/04/2018, the substitution to section 80AC is only applicable from the assessment year commencing on or after 01/04/2018 i.e., AY 2018-19 and not applicable to the earlier assessment years ie., A.Y. 2017-18 as in the case of the assessee. Therefore, the assessee is entitled to claim deduction under section 80P(2)(a)(i) of the Act.

9. Per contra, the Ld. DR submitted that the assessee has not filed a valid return of income in accordance with the provisions of section 139(1) or 139(4) of the Act in order to claim deduction under section 80P of the Act. The Ld. DR further submitted that as per section 80A(5) of the Act when no valid return of income is filed, the assessee has failed to make a claim of deduction under section 80P(2)(a)(i) of the Act, and therefore no deduction is permissible under the Act. She also placed reliance on the decision of the Jurisdictional ITAT wherein SMC Bench in the case of Maruthi Primary Agricultural Cooperative Credit Society Limited v. ITO in ITA No. 151/VIZ/2022 dated 28.02.2024 has

held that deduction under section 80P of the Act is inadmissible in the absence of filing the return of income. She pleaded that the order of the revenue authorities be upheld. Ld. DR strongly relied on the orders of the Ld. Revenue Authorities.

10. We have heard both the sides and perused the material available on record as well as the orders of the Revenue Authorities. It is an admitted fact that the assessee has failed to file the return of income U/s. 139(1) of the Act. Further, in response to notice under section 142(1) of the Act issued on 09.03.2018 & 12.09.2019, assessee belatedly filed the return of income on 19.11.2019 by claiming deduction under section 80P of the Act amounting to Rs.38,55,203/-. The Ld. AO while invoking the provisions of section 80A(5) and 80AC of the Act observed that the assessee has not filed the return of income on or before the due date of filing the return of income under section 139(1) of the Act and therefore disallowed the deduction claimed by the assessee. The Ld. AO arrived at this conclusion by treating the return of income filed belatedly as invalid and non-est. Section 80A(5) and Section 80AC of the Act are reproduced herein below for reference:

“80A(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.

11. On a plain reading of section 80A(5) of the Act, it is clear that the assessee should make a claim in the return of income for claiming deduction under “Certain income under the Chapter heading "C". However, the section does not specify that whether the deduction is allowable if the return of income is filed belatedly. The only condition is that the assessee should make a claim while filing the return of income. In the case on hand the assessee has made a claim for deduction u/s 80P while filing the return of income on 19.11.2019, in response to notice u/s 142(1) of the Act.

12. Section 80AC of the Act is reproduced below for ready reference: -

“80AC. Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after—

(i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;

(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes",

no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.”

13. Similarly, from the AY 2018-19 section 80AC(ii) was introduced to allow the deduction under certain income under Chapter heading "C-Deductions in respect of certain incomes", unless the return of income for such assessment year has been filed on or before the due date specified under section 139(1) of the Act. This condition was not applicable for the AY 2017-18. In the instant

case, the assessee filed the return of income for AY 2017-18, belatedly on 19.11.2019 during the course of assessment proceedings. Further, the amendment to section 80AC was considered prospective by various judicial pronouncements. It can be observed from the provisions of section 80A(5) of the Act, which can be made applicable to the instant case, only when the return of income is filed by an assessee and deduction under Chapter-VIA of the Act is not claimed while filing the return of income. The provisions of section 80AC of the Act contemplate denial of deduction of certain provisions of Chapter-VIA of the Act if the return of income is not filed by the assessee on or before the due date specified under sub-section (1) of section 139 of the Act. These provisions, introduced from the AY 2018-19 in our opinion, is prospective and hence do not apply to the deduction under section 80P of the Act in the instant case for the impugned assessment year. Therefore, we are of the considered view that the Revenue is not justified in not entertaining the deduction under section 80P of the Act made by the assessee while filing the return of income for AY 2017-18 on 19.11.2019. Accordingly, we direct the Ld. AO to consider the claim of the assessee under section 80P as made in the return of income filed on 19.11.2019. The reliance placed by the Ld.DR in the case of *Maruthi Primary Agricultural Cooperative Credit Society Limited v. ITO* (supra) cannot be applied to the instant case as assessee has filed its return of income manually before the Ld.AO and hence the facts are distinguishable. Therefore, this issue

is set aside to the record of the Ld.AO for examination of the claim of deduction under section 80P on merits.

14. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th June, 2025.

Sd/-
(वीरवल्ली दुर्गा राव)
(VEERAVALLI DURGA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER
Dated: 12.06.2025
Giridhar, Sr.PS

Sd/-
(एस बाला कृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee : **The P.A.C.S NOH 1002**
PACS Velvadam, Velvadam Post
Mylavaram, Krishna District – 521230
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 3(5)**
C.R. Building
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam