

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH: BANGALORE**

**BEFORE SHRI DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA Nos.1443&1444/Bang/2025
Assessment Years: 2018-19 & 2019-20

Karnataka Vidyutshakti Mandali Naukarara Sahakara Sangha Niyamitha Mescom Office Ublebyl Road Bhadravathi 577 301 Karnataka PAN NO : AACAK7107K	Vs.	ITO Ward-1 & TPS Shimoga
APPELLANT		RESPONDENT

Appellant by	:	Sri C.R. Vasanth Kumar, A.R.
Respondent by	:	Sri Ganesh R Ghale, D.R.

Date of Hearing	:	21.08.2025
Date of Pronouncement	:	21.08.2025

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Both these appeals of the assessee are arising from the orders of Id. CIT(A) dated 27.5.2025 having DIN & Order No.ITBA/NFAC/S/250/2025-26/1076487384(1) for the AY 2018-19 and DIN & Order No.ITBA/NFAC/S/250/202526/1076487458(1) for the AY 2019-29 and are related to denial of deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 (in short “The Act”). For the sake of convenience we are deciding these appeals by way of this consolidated order. We are taking assessment year 2018-19 as lead year.

2. Brief facts of the case as coming out from the orders of the authorities below are that the assessee is a Co-operative society could not file any income tax return for the impugned year. Thereafter, on the basis

of an information, the case of the assessee has been reopened u/s 148 of the Act dated 8.4.2022, requiring the assessee to file the return.

2.1. In response to this notice, the assessee filed its return of income claiming deduction u/s 80P(2)(a)(i) of the Act amounting to Rs.17,53,912/- . The ld. AO could not grant the deduction u/s 80P(2)(a)(i) of the Act by observing that assessee has not filed the regular return of income u/s 139(1) of the Act and hence not entitled for deduction u/s 80P of the Act.

3. Aggrieved with the order of AO, the assessee filed appeal before the ld. CIT(A) and contended that assessee is entitled for deduction u/s 80P of the Act, even though the assessee has not filed the return of income in time. Before CIT(A), the assessee has relied upon the judgement of Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Ltd. reported in 68 taxmann.com 298 (Ker.). However, the Ld CIT(A) dismissed the appeal of the assessee.

4. Feeling aggrieved with the order of Ld CIT(A) assessee has come up in appeal before us.

4.1 Ld Counsel for the assessee reiterated the arguments before us and relied upon the judgment of Chirakkal (supra).

5. Ld. D.R. appearing on behalf of the revenue pointed out that in view of the provisions of section 80AC & 80A(5) of the Act, the assessee is not entitled for deduction u/s 80P of the Act in as much as the assessee has not filed the return of income in time granted u/s 139(1) of the Act. Counsel for the revenue also relied upon the judgement of Hon'ble Kerala High Court in the case of Nileshtar Ranganthallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs. CIT reported in 459 ITR 730.

6. We have heard the rival submissions and perused the materials available on record. We observe that it is an undisputed fact that the assessee has not filed the return of income u/s 139(1) of the Act. The impugned years before us are assessment years 2018-19 & 2019-20.

Therefore, they are covered by the amendment brought by legislature in section 80AC of the Act w.e.f 1.04.2018. These provisions are interpreted by the Hon'ble Kerala High Court in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs. CIT cited (supra). For the sake of convenience, we reproduce the relevant observations of the Hon'ble Kerala High Court in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs. CIT cited (supra) as follows:

“10. We have considered the rival submissions of Sri. S. Arun Raj, the learned counsel appearing for the appellant/assessee and Sri. Christopher Abraham, the learned Standing Counsel for the Income-tax Department.

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.”

6.1 A perusal of the judgement of Hon'ble Kerala High Court in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs. CIT cited (supra) would show that in para 13 of the judgement Hon'ble High Court has categorically mentioned that judgement of Chirakkal Service Co-operative Bank Ltd. (supra) is *per incuriam*. Respectfully following the verdict of Hon'ble Kerala High Court, we do not find any force in the arguments of the assessee and hence dismiss these appeals.

7. In the result, both these appeals of the assessee are dismissed.
Order pronounced in the open court on 21st Aug, 2025

Sd/-
(Dipak P. Ripote)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 21st Aug, 2025.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.