IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA

BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 116/PAN/2025
Assessment Year : 2016-17

Navanirman Multipurpose
Co-op. Credit Society Ltd.,
Laxmi Nagar, Hindalaga,
Dist. Belagavi.-591108
PAN : AACAN0420G .... *Appellant*

V/s

The Income Tax Officer,
Ward-2, Belagavi. .... *Respondent*

Appearances

Assessee by : Mr Pramod Vaidya ['Ld. AR']
Revenue by : Ms Rijjula Uniyal ['Ld. DR']
Date of conclusive Hearing : 07/08/2025
Date of Pronouncement : 18/08/2025

ORDER

PER G. D. PADMAHSHALI;

By captioned appeal the assessee impugns DIN & Order 1074658686(1) dt. 18/03/2025 passed by National Faceless Appeal Centre, Delhi ['Ld. NFAC/CIT(A)' hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] which in turn arisen out of order of assessment dt. 15/02/2024 passed u/s 147 r.w.s. 144 of the Act by National Faceless e-Asstt Centre, Delhi ['Ld. AO' hereinafter] anent to assessment year 2016-17 ['AY' hereinafter].

2. **Tersely stated facts of the case are that;** the assessee is a multipurpose co-operative society which did not file any return of income. On the basis of information that, the assessee made huge cash deposits, vide notice u/s 148(b) of the Act the assessee was called upon to show cause as to why its case be not re-opened for assessment u/s 148 of the Act. Upon the assessee's failure to showcase convincing reasons behind non-filing of return and disclosing income arising out of /from cash deposited into bank accounts, the case after recording reasons and obtaining prior approval from competent authority was re-opened vide notice dt. 24/03/2023. In response thereto the assessee filed its return on 29/03/2023 declaring therein total income at NIL after claiming deduction of ₹4,10,045/-u/s 80P(2) of chapter VI-A of the Act. The said ITR vide notice dt. 22/08/2023 issued u/s 143(2) of the Act selected for scrutiny to examine the eligibility for deduction, wherein deduction claimed u/s 80P(2) of Chapter VI-A was denied for defaulting in filing of return within the time limit prescribed u/s 139(1) r.w.s. 80A(5) of the Act.

3. Aggrieved by denial of deduction the assessee unsuccessfully contested the dispute in first appeal before the Ld. NFAC/CIT(A). Dissatisfied by the actions of tax authorities below the assessee instituted the present appeal with substantive grounds which collectively are directed against the denial of deduction u/s 80P(2) of the Act.

4. The Ld. Senior AR Mr Vaidya before us argued that, the provisions of section 80A(5) and 80AC(ii) are not applicable to the year under consideration. To buttress the proposition the Ld. AR relied on the decision of Ld. Co-ordinate bench in the case of *'Rajashree Shahu Co-Op. Credit Society'* in ITA No 19/PAN/2024 dt. 04/06/2024 whereby the 80P(2) disallowance made by the Revenue for belated filing of return was vacated in view of the decision of Hon'ble Kerala High Court in the case *'Chirakkal Service Co-op. Bank Ltd. Vs CIT'* [2016, 68 taxmann.com 298 (Ker)].

5. *Per contra,* the Ld. DR Uniyal sought our attention to para 5 of the Ld. Co-ordinate bench's decision and pressing into service subsequent decision of Hon'ble Kerala High

Court in *'Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs CIT'* [2023, 152 taxmann.com 347 (Kel)] argued that, the decision of Ld. Co-ordinate bench relied by the assessee in view of the subsequent decision stands reversed, hence cannot be applied. The denial of deduction owning to operation of section 80A(5) of the Act since has been upheld by the Hon'ble Kerala High Court (supra), therefore assessee deserves no relief. The Ld. Ms Uniyal further argued that, in a similar facts & circumstance of the present case of non-filing of return & subsequent claim made in return filed u/s 148 of the Act, following former judicial precedent (supra), the Bengaluru Bench confirmed the denial in *'Sri Kalabhairaveshwara Multi-Purpose Co-Op. Society Ltd. Vs ITO'* [ITA No. 1344/Bang/2024 dt. 17/10/2024.]

6. We have heard the rival party's submission on limited issue of applicability of provisions of section 80A(5) of the Act and subject to rule 18 of ITAT Rules, 1963 perused the material placed on records and considered the facts in the

light of settled position of law and judicial precedents relied upon which are forewarned to the parties present.

7. The solitary issue arising for our consideration is *as to whether claim of deduction u/s 80P(2) of the Act can be allowed to assessee where the said claim for deduction was made first time in the belated return of income filed pursuant to notice issued u/s 148 of the Act.* The Revenue denied the claim for deduction u/s 80P of the Act by application of provisions of section 80A(5) of the Act and in view of the ratio laid in *'Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs CIT'* (supra). Whereas, the appellant assessee has set its case on twofold premise that, (i) since the claim for deduction is made in the return of income filed pursuant to notice issued to it u/s 148 of the Act therefore requirement of section 80A(5) of the Act is fulfilled. (ii) denial of deduction for belated filing of return is not applicable since provisions of section 80AC(ii) of the Act came into statute & applicable w.e.f. 01/04/2018 therefore has no applicable for the year under dispute.

8. We note that, the subject matter under adjudication is no-more *res integra* in view of decision of Ld. Co-Ordinate bench rendered in 'Sri Kalabhairaveshwara Multi-Purpose Co-Op. Society Ltd.' (supra) wherein the it was vide para 7-10 held that;

> ***7. We have heard the rival submissions and perused the material on record. The solitary issue that is arising for our consideration is whether claim of deduction under section 80P of the Act can be allowed in the facts of this case. The claim of deduction under section 80P of the Act has been denied for the reason that assessee has not filed the return of income within the due date prescribed under section 139(1) of the Act. The issue is no longer res integra. The Hon'ble Kerala High Court in the case of Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT (supra) has decided the issue in favour of the Revenue. The relevant finding of the Hon'ble Kerala High Court reads 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 precondition 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.

8. On identical facts, the Bangalore Bench of the Tribunal in the case of Madhu Souharda Pathina Sahakari Niyamitha Vs. ITO in ITA No.969/Bang/2023 (Order dated 02.01.2024), by following the judgment of Hon'ble Kerala High Court in the case of Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs. CIT (supra) has decided the issue in favour of the Revenue. The relevant finding of the Bangalore Bench of the Tribunal reads as follows:

"7. Considering the rival submissions, we note that the during the impugned assessment year, the assessee has received interest of Rs.3,57,185 on deposits with DCC and earned profit at Rs.26,00,809 inclusive of interest income, but did not file return of income u/s. 139(1) or 139(4). Notice u/s. 142(1) was issued by the AO to the assessee for filing return of income on 09.03.2018 within 08.04.2018. Further notice u/s. 142(1) and show cause notice was issued to the assessee, but the assessee did not file the return of income except written submissions. Accordingly the AO denied deduction u/s. 80P as per section 80A(5) and completed the assessment u/s. 144 of the Act.

8. Section 80A(5) of the Act reads as under:-

"(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. It is clear from the above section that for claiming deduction under Chapter VIA under the head, "Deductions to be made in computing total income", which covers section 80P also, the assessee has to file return of income. However, the assessee did not file return of income at all and therefore the assessee is not eligible for deduction u/s. 80P of the Act. The Hon'ble Kerala High Court in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT [2023] 152 taxmann.com 347 (Kerala) has held as under:-

"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."

10. Respectfully following the above judgment, we hold that the assessee is not eligible for deduction u/s. 80P of the Act." ***(Emphasis supplied)***

9. Adopting the former reasoning laid by the Ld. Co-ordinate bench(supra), we reject substantive grounds raised and reliance placed by the appellant assessee as meritless.

10. **The appeal in result stands DISMISSED.**

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

-S/d-	**-S/d-**
PAVAN KUMAR GADALE	**G. D. PADMAHSHALI**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Panaji/Dt: 18th August 2025

Copy of the Order forwarded to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned
4. PCIT Concerned
5. DR, ITAT, Panaji Bench, Panaji
6. Guard File

By Order,
Sr. Private Secretary / AR ITAT, Panaji.