

**IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR "SMC" BENCH :: NAGPUR**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.17/NAG/2023
Assessment Year: 2018-19**

The Somalwar Academy Education Societies Employees Co-op. Credit Society Mar, Somalwar High School, Khamla, Nagpur-440025 PAN: AAHAT 6111 F (Appellant)	Vs.	DCIT (CPC), Bangalore (Respondent)
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Present for:

Assessee by : Shri K.P. Dewani, Ld. Advocate
Revenue by : Shri Anand Nagrale, Ld. Sr. D.R.

Date of Hearing : 20.06.2025
Date of Pronouncement : 18.09.2025

O R D E R

This appeal has been preferred by the Assessee against the order dated 17/11/2022 impugned herein passed by the National Faceless Appeal Centre (NFAC)/Commissioner of Income Tax (Appeals), Delhi (in short, 'Ld. Commissioner') u/sec. 250 of the Income Tax Act, 1961 (in short, 'Act') for the A.Y. 2018-19.

2. In the instant case, the Assessee by filing its return of income for the assessment year under consideration on dated 26/03/2019 claimed the deduction of Rs. 7,46,340/- u/sec. 80P of the Act, which was disallowed by the CPC vide intimation/order dated 04/07/2019 u/sec. 143(1) of the Act and, therefore, the Assessee challenged the said disallowance/addition by filing the first appeal before the Ld. Commissioner, however, of no avail, as the Ld. Commissioner vide impugned order confirmed the aforesaid addition/disallowance by dismissing the appeal of the Assessee mainly on the reason that the return of income was not filed within the due date prescribed u/sec. 139(1) of the Act.

3. Assessee being aggrieved, challenged the impugned order by filing the instant appeal and claimed that prior to 01/04/2021, there was no enabling provision to make the adjustment u/sec. 143(1)(a)(v) of the Act and therefore, the authorities below would not have disallowed the deduction claimed by the Assessee. The Assessee in support of its claim, relied on various judgments.

4. On the contrary, learned Departmental Representative (in short, 'DR') refuted the claim of the Assessee by relying on the judgment passed by the Hon'ble Jurisdictional High Court in the case of EBR Enterprises vs. Union of India & another in Writ Petition No. 1415/2019 decided on 04/06/2019 wherein the applicability of

the provision of section 80A(5) of the Act and claiming the deduction u/sec. 80-IB(10) of the Act in filing of return of income later on but not before filing of original return of income were under challenge. The Hon'ble High Court refused to entertain the writ petition of the Assessee by holding that our duty would be to enforce the provision contained in sub-section (5) of section 80A of the Act, as it is stands in the statute book.

5. Heard the parties and perused the material available on record. In the instant case, the due date for filing the original return of income was 30/05/2018, however, the Assessee filed the return of income on 26/03/2019 and, therefore, the return filed by the Assessee can be treated as belated return u/sec. 139(4) of the Act. The Hon'ble Kerala High Court in the case of *Chirakkal Service Co-op. Bank Ltd. vs. CIT* [2016] 68 taxman.com 298 (Ker.) has held as under:

"That the return filed by the Assessee beyond the period stipulated u/sec. 139(1) or 139(4) or 142(1) or 148 can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of Income Tax Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could not be treated as non-est in law and invalid for the purpose of deciding expection u/sec. 80P of the Act."

6. Coming to the instant case, admittedly, the return filed by the Assessee on dated 26/03/2019 as against the due date for filing

return i.e. 30/09/2018 which was further extended upto 31/10/2018 was available before the CPC while processing the return of income u/sec. 143(1) of the Act on dated 04/07/2019 and, therefore, in view of the judgment of the Hon'ble Kerala High Court referred to above, this Court is inclined to allow the appeal of the Assessee and consequently direct the AO to examine the claim of the Assessee on merit and to determine the tax liability accordingly.

7. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on 18.09.2025.

**sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Vr/-

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Senior Private Secretary,
ITAT, Nagpur.