

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 431/NAG/2024  
(Assessment Year : 2017-18)**

<b>Shri Sant Narhari Nagari Shahkar Pat Sanstha Maryadit</b> , R.No. 1/2 Nagar Palika Shivaji Chowk, Pauni, Bhandra-441910.  <b>PAN: AAKTS 3987 N</b>  (Appellant)	Vs.	<b>ITO, Ward-2, Bhandara</b>          (Respondent)
--	-----	--

**Present for:**

Assessee by : Shri Kapil Hiranji, Ld. Advocate  
Revenue by : Shri Surjit Kumar Saha, Ld. Sr.D.R.

Date of Hearing : 25.06.2025  
Date of Pronouncement : 23.09.2025

**ORDER**

This appeal has been preferred by the Assessee against the order dated 15/03/2024 impugned herein passed by the ADDL/JCIT (Appeals)-1, Surat (in short, 'Ld. Commissioner') u/sec. 250 of the Income Tax Act, 1961 (in short, 'Act') for the A.Y. 2017-18.

**2.** At the outset, it is observed that there is a delay of 87 days in filing the instant appeal, on which the Assessee has claimed that entire appellate proceedings before the Ld. Commissioner were conducted in a faceless manner and online. Further, the elections of the Assessee society were due in the month of February, 2024 which were subsequently postponed due to National General Elections, causing disruption in the day to day working of the Assessee society and, therefore, the Assessee becoming aware about the order being passed by the Ld. Commissioner, the Assessee immediately filed the appeal without any further delay. The delay occurred was neither intentional nor malafide because of the aforesaid reasons.

**3.** On the contrary, learned Departmental Representative (DR) refuted the claim of the Assessee.

**4.** Having considered the reasons stated by the Assessee which are supported with duly sworn affidavit, as genuine, *bonafide* and unintentional, the delay is condoned.

**5.** Coming to the merits of the case, it is observed that the Assessing Officer (AO) vide assessment order dated 30/09/2019 has made the disallowance of Rs. 48,093/- u/sec. 40(a)(ia) of the Act and Rs. 2,28,435/- on account of disallowance of provision for bad debts.

**6.** The Assessee being aggrieved, challenged the said disallowances by filing first appeal before the Ld. Commissioner, however, of no avail, as the Ld. Commissioner affirmed the said disallowances.

7. Heard the parties and perused the material available on record. In the instant case, the Assessee has admittedly not filed any return of income, however, paid agent commission of Rs.1,60,312/- without deducting tax at source thereon as per section 194H of the Act, and consequently the AO disallowed 30% of such commission paid u/sec. 40(a)(ia) of the Act, and added back to the total income of the Assessee, on which Assessee has claimed that it is a cooperative society being engaged in providing credit facilities to its members and its books were duly audited under Maharashtra Cooperative Societies Act, 1960 and therefore, the entire income earned by the Assessee is eligible for deduction u/sec. 80P of the Act. The Assessee under bonafide belief that no taxable income arose due to full deduction u/sec. 80P of the Act and, therefore, did not file its return of income. The Assessee somehow during demonetization period had deposited cash of Rs. 12.50 Lac.

The Assessee further claimed that the denial of deduction claimed u/sec. 80P of the Act by citing section 80A(5) of the Act due to non-filing of the return, is unsustainable as the said provision is applicable where the return is filed, but claim is not made. Further, section 80A(5) applies only in the cases, where the return is filed without claiming deduction under Chapter VIA and it has no application where no return is filed as the case of the Assessee.

The Assessee in support of such claim also relied on the judgment passed by the Tribunal at Bangalore in the case of *M/s. Prathamika Krishi Pattina Sahakara Sangha Ltd. v. ITO* in ITA No. 614/Bang/2021, dated 13/06/2022, wherein the Hon'ble Coordinate Bench of the Tribunal has held that section 80P(5) applies only when return is filed without claiming deduction, in case of non-filing of return, section 80A(5) is not attracted. Further, section 80AC of

the Act which mandates filling of return for claiming certain deduction, is not applicable to the claims u/sec. 80P of the Act.

The Assessee further relied on the judgment passed by the Coordinate Bench of the Tribunal at Nagpur in the case of *Krushvi Vibhag Karmchari Vrund Sahakari Pat Sanstha Maryadit vs. ITO* in ITA No. 182/NAG/2019, decided on 07/10/2022, wherein the Hon'ble Bench of the Tribunal observed that on a conjoint reading of sections 80A(5) and 80AC, it gets manifest that claiming of deduction under various section of Part C of Chapter VI-A in the return of income is essential, where an Assessee applies to make a claim in his return of income for any deduction.

**8.** On the contrary, learned DR relied on the order passed by the Coordinate Bench of the Tribunal at Pune in the case of *Solapur District M.S.K. Samiti H Master T and N T Path Mydt Pandharpur vs. ITO* in ITA No. 804/PUN/2023 dated 08/03/2024 wherein the Hon'ble Tribunal, ultimately, held that in absence of return of income, the Assessee is not eligible for deduction u/sec. 80P of the Act.

**9.** Considering the contentions raised by the parties, contention of the Assessee seems to be plausible and therefore this Court is of the considered opinion that as the Assessee admittedly has not filed any return of income, therefore invocation of provisions of section 80A(5) of the Act was unwarranted. Even otherwise, the Assessee has claimed that certain payments were below the threshold u/sec. 194H of the Act and no tax liability existed for recipients and without prejudice, disallowance, if any, then it should be restricted and considered as an eligible business income deductible u/sec. 80P of the Act. Thus, on the aforesaid analyzation, this Court is of the

considered view that the addition is unsustainable, hence the addition/disallowance is deleted.

**9.** Coming to the **second addition /disallowance of Rs. 2,28,435/-** it is observed that the AO in the assessment proceedings had observed that the Assessee had made a provision of Rs. 2,28,435/- for bad debts, which was not allowed as eligible expenditure by the AO u/sec. 36(1)(viiia) of the Act.

The Assessee before the AO has claimed that provision was made in line with the accounting norms, deduction is alternatively allowable u/sec. 36(1)(viiia) of the Act. The Assessee further submitted that without prejudice, if any, such addition forms part of eligible business income for 80P deduction.

**10.** The AO has made the addition of 2,28,435/- by considering that the Assessee society was duty bound to file its return of income within the stipulated time and to declare income for the relevant year, therefore, it is clear default in its statutory duties and therefore it cannot escape the consequences of such failure.

**11.** The Assessee, being aggrieved, though challenged the said addition/disallowance as well, however, of no avail, as the Ld. Commissioner by holding as per proviso of section 36(vii)(a) of the Act, no deduction shall be allowed, unless such income has been disclosed in as income of business or profession in ITR. Accordingly, the addition made by the Ld. AO to the amount of Rs. 2,28,435/- on account of disallowance of bad debt is found in order and needs no interference.

**12.** This Court has given thoughtful consideration to the peculiar facts and circumstances on the issue under consideration and deem it appropriate to remand this issue to the file of Ld. AO as there is no clear cut finding on this issue, has been arrived at by the Ld. AO.

**13.** Thus, in the aforesaid circumstances, the Assessee's appeal is allowed in part for statistical purposes.

**14.** In the result, Assessee's appeal is allowed in part for statistical purposes.

**Order is pronounced 23.09.2025 as per rule 34(5) of the Income Tax {Appellate Tribunal} Rule 1963.**

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

vr/-

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

//True Copy//

By Order

Senior Private Secretary  
ITAT, Nagpur.

		Date	Initial		
1.	Draft dictated on	18/09/2025			Sr.PS
2.	Draft placed before author	23/09/2025			Sr.PS
3.	Draft proposed & placed before the second member				JM/AM
4.	Draft discussed/approved by Second Member				JM/AM
5.	Approved Draft comes to the Sr.PS/PS				Sr.PS
6.	Date of pronouncement				Sr.PS
7.	File sent to the Bench Clerk				Sr.PS
8.	Date on which file goes to the Head Clerk				
9.	Date of dispatch of Order				