

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 944/मुं/2022 (नि.व 2018-19)
ITA NO.944/MUM/2022(A.Y 2018-19)

Janki Vaishali Co-operative Housing Society Limited,
Plot No.1521, Janki Vaishali,
Juhu Church Road, Janki Kutir,
Juhu, Mumbai 400 049.

PAN: AACAJ-4400-A

..... अपीलार्थी /Appellant

बनाम Vs.

The Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre,
Delhi.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Manoj Mahimkar

प्रतिवादी द्वारा/Respondent by : Ms. Beena Santosh

सुनवाई की तिथि/ Date of hearing : 03/08/2022

घोषणा की तिथि/ Date of pronouncement : 31/10/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 10/03/2022 for the Assessment Year 2018-19.

2. The assessee in appeal has assailed the findings of the CIT(A) in disallowing assessee's claim of deduction u/s 80P(2)(d) of the Income Tax Act, 1961 [in short 'the Act'] on the pretext that the assessee had not filed return of income within due date as specified u/s. 139(1) of the Act .

3. Shri Manoj Mahimkar appearing on behalf of the assessee submitted that assessee is a Co-operative housing Society. During the period relevant to the assessment year under appeal, the assessee has earned interest income of Rs.2,96,681/- from deposits with Co-operative Banks. The assessee claimed deduction of the aforesaid amount under the provisions of section 80P (2) (d) of the Act . The return of the assessee was processed u/s. 143(1) of the Act disallowing assessee's claim of deduction u/s. 80P(2)(d) of the Act. Aggrieved by the order/ intimation dated 31/05/2019 u/s 143(1) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of assessee on the ground that the due date for filing of return of income for Assessment Year 2018-19 was 31/10/2018, whereas, the assessee filed return of income on 24/12/2018. Since, the appeal has been filed beyond due date the benefit of section 80P of the Act cannot be allowed to the assessee.

The Id. Authorized Representative for the assessee submitted that a perusal of section 80AC as it was applicable to the Assessment Year 2018-19 would show that the said section had no application in respect of deduction claimed u/s 80P of the Act. The provisions of section 80AC of the Act were only applicable in respect of deduction claimed u/s 80IA, section 80IAB, section 80IB, 80IC, 80ID and 80IE of the Act. The provisions of section 80AC were amended by the Finance Act, 2018 w.e.f. 01/04/2018 to include all deductions claimed under Chapter- VIA under heading "C – Deductions in respect of certain incomes". The Id. Authorized Representative for the assessee pointed that the reasons given by CIT(A) for disallowing assessee's claim of deduction u/s 80P would not hold good in the light of the provisions of section 80AC of the Act as applicable to the Assessment Year under appeal.

4. Per contra, Ms. Beena Santosh representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. Departmental Representative submits that the assessee had filed return of income beyond due date, hence, the assessee is not eligible for deduction u/s 80P in the light of provisions of section 80AC of the Act.

5. Both sides heard, orders of authorities below examined. Undisputedly, assessee filed return of income on 24/12/2018 i.e. beyond the due date for filing return of income u/s. 139(1) of the Act for the Assessment Year 2018-19. The solitary reason for denying benefit of deduction u/s 80P of the Act is that the return filed by the assessee for the impugned assessment year is beyond the due date.

6. The Id. Authorized Representative for the assessee has brought to the notice of Bench that the provisions of section 80AC of the Act as applicable to Assessment Year under appeal contained no restriction of due date for filing return of income for claiming deduction u/s 80P of the Act. The provisions of section 80P of the Act prior to amendment are reproduced herein below:

“Deduction not to be allowed unless return furnished.

80AC. *Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, 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, 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.”*

The aforesaid provisions were substituted by the Finance Act, 2018 w.e.f. 01/04/2018 by the following provisions:

“ Deduction not to be allowed unless return furnished.

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.”*

A bare perusal of the un-amended provision would show that there was no restriction for claiming deduction u/s 80P of the Act even if the return was filed beyond due date as specified u/s. 139(1) of the Act. The restriction was applicable only to the specified sections mentioned in section 80AC of the Act. The scope of section was enlarged by the Finance Act 2018 to include all deductions admissible under Chapter-VIA under the heading “C-Deduction in respect of certain incomes” The substituted section w.e.f. 01/04/2018 would be applicable to assessment year 2018-19 and in respect of deductions claimed u/s. 80P of the Act, as well. Since, in the impugned assessment year substituted provisions of section 80AC would be applicable, the CIT(A) has rightly rejected the appeal of assessee.

7. In the result, impugned order is upheld and appeal by the assessee is dismissed.

Order pronounced in the open Court on Monday the 31st day of October, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 31/10/2022
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai