

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.128/Ahd/2023
Assessment Year: 2019-20**

The Parabada Co-op. Milk Producers Society Limited,
15, Near Panchayat House,
Post: Parabada,
Taluka: Himatnagar,
Dist. Sabarkantha, Gujarat – 383 001.
[PAN – AAAAT 1278 N]
(Appellant)

vs. The Income Tax Officer,
Ward-1, Himatnagar.

(Respondent)

Assessee by : Shri Dhinal Shah &
Shri Bhadresh Gandhakwala, ARs
Revenue by : Shri V.K. Mangla, Sr. DR

Date of hearing : 08.05.2023
Date of pronouncement : 17.05.2023

ORDER

This appeal is filed by the Assessee against order dated 11.01.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2019-20.

2. The Assessee has raised the following grounds of appeal :-

“1. *The learned CIT(A) has not granted deduction of Rs.4,61,664/- under Section 80P on the ground that there is a delay in filing the return in as much as there is no provision in Section 80P to the effect that the deduction would not be allowed if the return is filed late.*”

3. The assessee is a Co-operative Milk Producers Society and filed return of income for A.Y. 2019-20 on 05.11.2019 as against extended due date i.e. 31.10.2019, claiming deduction under Section 80P of the Income Tax Act, 1961 amounting to Rs.4,61,664/-. The CPC, Bangalore while processing the said return, disallowed the entire claim of deduction of Rs.4,61,664/- claimed under Section 80P of the Act in the intimation under Section 143(1) of the Act on 16.04.2020 on the ground that the assessee's claim is not admissible as the return of income was filed belatedly.

4. Being aggrieved by the intimation under Section 143(1) of the Act dated 16.04.2020, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee filed return of income belatedly but it was not under Section 143(3) the intimation is, but the intimation was under Section 143(1)(a) of the Act wherein the adjustment in respect of Clause (b) of the said Section came w.e.f. 01.04.2021 and, therefore, deduction claimed under Section 80P or the Act should have been granted and not merely be rejected on the ground of late filing of the return. The Ld. AR further submitted that the Assessing Officer had no power under Section 143(1)(a)/(b) of the Act for A.Y. 2019-20 as the Section was introduced/effective from 01.04.2021. The Ld. AR relied upon the decision of Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Limited vs. DCIT (2022) 138 taxmann.com 571 (Madras) wherein the Hon'ble High Court held that the date of filing of a return of income would be apparent on the face of return and upon a perusal thereof, it would be clear as to whether the return is a valid return, having been filed within the statutory time limit, or a belated one. This is mechanical exercise and one that can be carried out by the CPC very much within the scope of section 143(1)(a)(ii) of the Act. The Ld. AR relied upon the decision solely on the issue of Section 80AC in respect of deduction need to be allowed unless furnished belatedly. The Ld. AR also relied upon the decision of Tribunal in case of Lanjani Cop-operative Agri Service Society Limited (CPC) vs. DCIT (2023) 146 taxmann.com 468 (Chandigarh Tribunal). The Ld. AR has also given Gist of submissions which are as follows:

- “01. The appellant is a Milk Producer Society and eligible for deduction under Section 80P of the Income Tax Act.*
- 02. The appellant filed income tax return on 05-11-2019 which was belated return [beyond the extended due date of filing the return on 31-10-2019].*
- 03. The CPC Bangalore by Order dated 16-04-2020 made an adjustment of Rs. 4,61,664 being deduction claimed under Section 80P on the ground that the return was not filed within the due date.*
- 04. This adjustment was challenged before CIT(A) by the appellant.*
- 05. The CIT(A) dismissed the appeal of the appellant on the ground that Section 80AC make is amply clear that any deduction that is claimed under Part-C of Chapter VI-A will be admissible only if the return of income is filed within the due date. In this case, the return was*

admittedly filed late. Further, this adjustment is a mechanical exercise and it can be carried out by the CPC very much within the scope of Section 143(1)(a)(ii) [Para No. 7.2 of the CIT(A) Order].

06. *The CIT(A) also relied upon the decision of Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. V/s. DCIT [2022] 138 taxmann.com 571 (Madras) [Para No. 7.3 of CIT(A) Order].*

07. *The appellant submitted the written submission to CIT(A) on misunderstanding of relevant provision for disallowance of deduction under section 80P [Para No. 6 of CIT(A) Order].*

However, this does not change the correct reason of non-granting of deduction under Section 80P from the grounds of appeal and also from the finding of the CIT(A).

08. *From 1st April, 2018, Section 80AC(ii) provides that the deduction under Chapter- C of Chapter- VI-A is not eligible for deduction if the return of income is not filed within the due date prescribed under Section 139(1). In the present case, admittedly the return was filed late.*

09. *Section 143(1)(a) allows Department to make an adjustment in relation to certain items in the return of income filed. Sub-clause (v) allows the Officer to disallow the claim under Chapter- VI-A, if the return is filed beyond the prescribed time under Section 139(1).*

10. *Section 143(1)(a)(v) for A.Y. 2019-2020 reads as under:*

"Disallowance of deduction claimed under Section 10AA, 80IA, 80IAB, 80ID, 80IC, 80ID or section 80IE if the return is furnished beyond the due date specified under sub-section (1) of section 139."

This sub-clause was amended from A.Y. 2021-2022 by Finance Act, 2021 which reads as under:

"The disallowance of deduction claimed under Section 10AA or under any of the provisions of chapter- VI-A under the heading "C- deductions in respect of certain income" if the return is furnished beyond the due date specified under sub-section (1) of section 139."

11. *From the above, it may please be seen that for the year under consideration, the CPC Bangalore was not having power under Section 143(1)(a)(v) to make any adjustment in relation to deduction under Section 80P as this sub-clause amended only from A.Y. 2021-2022 and for A.Y. 2019-2020 this powers were not there with CPC. Therefore, the CPC Bangalore has wrongly disallowed the deduction under Section 80P.*

12. *This view is confirmed by Chandigarh Bench in the case of Lanjani Co-Operative Agri Service Society Ltd. (CPC) V/s. DCIT [2023] 146 taxmann.com 468 (Chandigarh - Trib.) [Please refer Para No. 14.1 to 14.6 of the judgement].*

13. *The Hon'ble Chandigarh Bench has also distinguished the decision of Hon'ble Madras High Court relied by CIT(A) and that the Hon'ble Madras High Court judgement is not applicable on this facts [Para No.14.4 of Chandigarh Bench decision].*
14. *The learned CIT(A) made reference to Section 143(1)(a)(ii) in Para No. 7.2 of the order. It may please be noted that this provision is not applicable on the facts as it is not an incorrect claim as this is a Co.op. Society eligible for deduction under Section 80P and that it is an accepted principle of law that a specific provision under Section 143(1)(a)(v) would override the provisions of Section 143(1)(a)(ii).*
15. *In view of above CPC Bangalore has wrongly disallowed the claim under Section 80P of Rs.4,61,664/-."*

6. The Ld. DR relied upon the intimation order under Section 143(1) of the Act dated 16.04.2020. The Ld. DR further submitted that it is an admitted fact that the assessee filed return of income belatedly for beyond prescribed time limit. The assessee has linked the disallowance of deduction under Section 80P of the Act with carried forward losses and the assessee has not claimed set off of carried forward losses for 2019-20. The said contention of the assessee was not justifiable. The Ld. DR further submitted that Section 80AC(ii) of the Act making it clear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if the return of income is filed within the prescribed due date. The Ld. DR further submitted that Section 80AC of the Act was introduced/effective from A.Y. 2018-19 and, therefore, the assessee cannot take the plea that since the scope of Section 143(1)(a)(ii) w.e.f. 01.04.2021. The Assessing Officer does not have power. The Ld. DR filed written submission which is reproduced as under :-

*"2. In connection with the above, it is to submit that the undersigned was directed to attend SMC bench, ITAT, Ahmedabad on 08.05.2023 as Sr. DR. During the hearing the Hon'ble SMC bench directed the undersigned to prepare a note in case of **The Parabada Co. Op. Milk Producers Society Ltd. (ITA No. 128/Ahd/2023)** on disallowance of deduction u/s.80P r.w.s. 80AC. The note on the subject is as follows:*

- I. In the instant case, the assessee filed its return of income after the due date and claimed deduction u/s 80P which was disallowed by CPC, Bengaluru while passing the intimation u/s 143(1).*
- II. Assessee filed appeal before NFAC, Delhi against the order of CPC, Bengaluru claiming deductions u/s 80P(2). The assessee contented as below:*

- a) *The ACIT CPC has not granted deduction of Rs.4,61,664 under Section 80P on the ground that there is a delay in filing the return. In this connection, it may please be noted that there is no provision in Section 80P to the effect that the deduction would not be allowed if the return is filled late.*
- b) *We understand that the ACIT CPC has not granted deduction of Rs.4,61,664 under Section 80P in view of the provision of Section 80. Section 80 is produced as under:*
- "80. Notwithstanding anything contained in this chapter, no loss which has not been determined in pursuance of a return filed [in accordance with the provisions of subsection (3) of section 139], shall be carried forward and set off under sub-section (1) of section 72 or subsection (2) of section 73 [or subsection (2) of section 73A] or subsection (1) [or sub-section(3)] of section 74 [or sub-section (3) of section 74A]."*
- c) *From the above, it may please be seen that Section 80 prohibits the carried forward and set-off of losses. In the present case, the assessee has not claimed set off of carried forward losses of A.Y. 2019-20. The question of carried forward and set-off of losses may arise for A.Y., 2020-21 when the assessee claims the set-off of carry forward of losses. Therefore, the question of disallowance for A.Y. 2019-20 does not arise. In the present case, the assessee has claimed the regular loss of current year for A.Y. 2019-20, therefore the same should be allowed as deduction.*

3. *However, CIT(A) held that:*

- a) *The appellant has linked the disallowance of deduction u/s. 80P of the Act with carried forwarded of losses and stated that the assessee has not claimed set off of carried forward losses for A.Y. 2019-20. The question of carried forward and set-off of losses may arise for A.Y. 2020-21 when the assessee claims the set-off of carry forward of losses and, therefore, the question of disallowance for A.Y. 2019-20 does not arise. This contention of the Appellant is misplaced. Further, CIT(A) quoted section 80AC(ii) which specifies that to claim deduction return should be filed on or before the due date specified u/s. 139(1).*
- b) *The provisions of section 80AC(ii) make it amply clear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if the return of income is filed within the prescribed due date. Thus no claim under any of the provisions of Part C of Chapter VIA would be admissible in the case of a belated return. There is no dispute on this position. The date of filing of a return of income would apparent on the face of return*

and upon a perusal thereof, it would be clear as to whether the return is a valid return, having been filed within the statutory time limit, or a belated one. This is mechanical exercise and one that can be carried out by the CPC, very much within the scope of section 143(1)(a)(ii) of the Act.

- c) *Here I may refer to the decision of the Hon'ble High Court of Madras in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. DCIT [2022] 138 taxmann.com 571 (Madras) AY 2018-19 wherein the Hon'ble Court specially held that no claim under any provisions of Part C of Chapter VIA would be admissible in case of a belated return. In the present case, the return filed for the AY 2019-20 is belated return, therefore, as per ratio laid down by the Hon'ble Madras High Court, the CPC is justified in denying the assessee's claim of deduction u/s.80OP of the Act.*

4. *Before CIT(A), no other argument was put forth by Assessee. The adjustment made by CPC, Bengaluru has been rightly upheld by CIT(A). The same requested to be confirmed."*

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that though the decision of Hon'ble Madras High Court in case of Veerappampalayam Primary Agricultural Cooperative Credit Society Limited (supra) was referred in Paragraph no.18, the same has been commented in the finding of the Tribunal in paragraph no.14.4 thereby distinguishing but while looking at paragraph nos.8 & 9 of the decision of Hon'ble Madras High Court which is quoted as under, it appears that the Hon'ble Madras High Court has commented that the date of filing of the return of income would be apparent on the face of return and upon a perusal thereof, it would be clear as to whether the return is a valid return, having been filed within the statutory time limit, or a belated one. This is mechanical exercise and one that can be carried out by the CPC, very much within the scope of Section 143(1)(a)(ii) of the Act. The Ld. AR submitted that Section 143(1)(a)(v) which was introduced on 01.04.2021 cannot be applicable in A.Y. 2019-20 in the present assessee's case as the Assessing Officer does not have power related to Chapter-VIA Part-C wherein deduction under Section 80P has to be claimed. It is pertinent to note that the assessee has admitted that returns were filed belatedly. The assessee should have filed the return within the extended period of due date but the assessee failed to do so. The Assessing Officer thereby issued intimation under Section 143(1) of the Act and has categorically disallowed the deduction under Section 80P of the Act on the ground of belated returns. It appears in Part-A, Schedule 6A of the intimation that return is not within the due date but the fact remains that on merit also the

assessee has not taken cognisance of its claim. The decision of Hon'ble Madras High Court in fact is against the assessee and the decision of the Tribunal which has not taken into account Paragraph nos.8 and 9 of the observations made by the Hon'ble Madras High Court and thus cannot be applied in the present case. The relevant paragraph nos.8 & 9 of the decision of Hon'ble Madras High Court in case of Veerappampalayam Primary Agricultural Cooperative Credit Society Limited are reproduced as under :-

"8. The provisions of section 80AC(ii) make it clear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if the return of income in that case were filed within the prescribed due date. Thus no claim under any of the provisions of Part C of Chapter VIA would be admissible in the case of a belated return. There is no dispute on this position. The date of filing of a return of income would be apparent on the face of return and upon a perusal thereof, it would be clear as to whether the return is a valid return, having been filed within the statutory time limit, or a belated one. This is mechanical exercise and one that can be carried out by the CPC, very much within the scope of section 143(1)(a)(ii) of the Act.

9. The conduct of the petitioners is also relevant. Not only have the returns been filed belatedly but the petitioners have also chosen not to co-operate in the conduct of assessment. They are admittedly in receipt of the defect notices from the CPC, but have not bothered to respond to the same. The writ petitions have themselves been filed belatedly and after the elapse of more than six to eight months from the dates of impugned orders, in all cases. It is only when the Revenue has initiated proceedings for recovery by attachment of bank accounts have the petitioners approached this Court. This factor also strengthens my resolve that these are not matters warranting interference in terms of Article under section 226 of the Constitution of India, quite apart from the decision that I have arrived at on the legal issue."

8. Here also the assessee filed return belatedly and Section 80AC(ii) of the Act is inapplicable in present case. The CIT(A) was right in denying the claim of assessee that of deduction under Section 80P of the Act. Appeal of the assessee is thus dismissed.

9. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on this 17th day of May, 2023.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th day of May, 2023

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
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By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*