

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA No. 269/Rjt/2022
Assessment Year: 2019-20

Aliudepur Seva Sahakari Mandli Ltd. Aliudepur Village, Taluka Lathi, Dist:-Amreli-365430 PAN No: AAAAA0804D (Appellant)	Vs	The ADIT, (CPC), Bengaluru, Bengaluru (Respondent)
---	----	---

ITA No. 276/Rjt/2022
Assessment Year: 2019-20

Shree Antaliya Kheti Vikas Karyakari Seva Sahakari Mandali Ltd., Liliya Mota, Amreli PAN No: ABLAS0197B (Appellant)	Vs	The ADIT, (CPC), Bengaluru, Bengaluru (Respondent)
--	----	---

ITA No.
277/Rjt/2022
Assessment Year:
2019-20

Dahida Seva Sahakari Mandli Ltd. dahida, Amreli. PAN No: AADAD1734E (Appellant)	Vs	The ADIT, (CPC), Bengaluru, Bengaluru (Respondent)
---	----	--

Assessee Represented: Ms. Devina Patel, A.R.
Revenue Represented: Shri B.D. Gupta, Sr.D.R.

Date of hearing : 23-02-2023
Date of pronouncement : 24-02-2023

□□□□/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These three appeals are filed by different Assesseees as against the three separate Appellate orders dated 13.09.2022, 08.10.2022 and 23.09.2022 passed by the Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), as against the Intimations passed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2019-20.

2. The solitary issue involved in all these appeals is denial of exemption u/s. 80P of the Act on the ground that the Return was filed belatedly u/s. 139(4) of the Act. Since common issues are involved in all the appeals and the same are disposed of by this common order.

2.1. ITA No. 269/Rjt/2022 in the case of Aliudepur Seva Sahakari Mandali Ltd. as the lead case.

2.2. The assessee is a Co-operative Society duly registered under the Gujarat Co-operative Societies Act vide Registration No. 1460/1955 dated 19.08.1955. The assessee is engaged in the business of providing credit facilities (financing) to its members only. The assessee has earned interest income from its members and from its investments with other Co-operative Society. The assessee filed its Return of Income on 30.11.2020 belatedly u/s. 139(4) of the Act, claiming deduction u/s. 80P of Rs.7,83,615/-. The Return of Income filed by the assessee was processed by the Centralized Processing Centre, Bengaluru vide Intimation u/s. 143(1) dated 28.12.2020 thereby denying the benefit of claim of deduction under section 80P for the reason that the Return of Income was not filed within the due date prescribed u/s. 139(1) of the Act. Thus the CPC, Centre demanded a sum of Rs. 3,50,420/- as tax payable by the assessee.

3. Aggrieved against the same, the assessee filed an appeal before CPC Centre claiming that there was no provision in section 143(1)(a) to make adjustment to the returned income by disallowing u/s. 80P, if the returned income is not filed within the due date specified u/s. 139(1) of the Act. Further there was an amendment in section 143(1)(a)(v) in the Finance Act, 2021 w.e.f. 01.04.2021 such disallowances is possible under the 143(1) proceedings only from the Assessment Year 2022-23.

3.1. In support of the same, the assessee relied upon Mumbai Tribunal decision in the case of New Ideal Cooperative Housing Society Ltd. vs. ITO in ITA No. 2681/Mum/2019 dated 03.02.2021 wherein it was held that adjustments made to the returned income by denial of deduction u/s. 80P(2)(d)

and 80P(2)(c)(ii) did not fall in any other adjustments prescribed in Section 143(1) of the Act and that a Co-operative society will not get exemption was not something which was a subject matter of adjustment u/s. 143(1)(a) of the Act and the appeal of the assessee was liable to be allowed.

3.2. The Ld. NFAC after considering the submissions of the assessee dismissed the appeal of the assessee as follows:

6.1 The submission of the appellant is examined. The appellant in its submission has stated that it got a communication u/s 143(1)(a) of the Act for proposed adjustment u/s 143(1)(a) in returned income of the deduction claimed of Rs. 7,83,615/- u/s 80P of the Act. It is essential to note that section 143(1)(a) of the Act specifically provides that no adjustments can be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. Therefore, as can be seen the proposed adjustment provided the assessee an opportunity and hence is passed following the good law. And the adjustment made u/s 143(1)(a) of the Act is valid adjustment as far as the legality of it is concerned. Therefore, the action of the AO CPC is correct and is upheld. The ground of appeal is dismissed.

6.2 As far as the assessee second claim that no adjustments can be made u/s 143(1)(a) of the Act as sub-clause (v) of the said section states that:

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

The appellant state that the above specifically mentions certain sections wherein the disallowance can be made u/s 143(1)(a) of the Act are provided within it and as such the deduction u/s 80P of the Act is not mentioned in the sub-clause, therefore, the denial of deduction by the AO-CPC for the impugned A.Y. 2019-20 is not warranted and is not legally tenable.

6.3 The factual matrix of the case is that the return of income u/s 139 of the Act was filed by the assessee on 30.11.2020, whereas the extended date for filing the return was 31.8.2019. Therefore, the return was not filed within the due date as provided u/s 139(1) of the Act. Further section 80AC introduced in the Act vide Finance Act 2018 provides that no deduction shall be allowed if the return is not filed within the due date as specified u/s 139(1) of the Act. Section 80AC is reproduced 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 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."

6.4 The submission of the appellant is examined in the light of the provisions of above section which clearly in clause (ii) mentions "C- Deduction in respect of certain incomes", which clearly covers deduction u/s 80P of the Act. Therefore, the AO-CPC was correct in denying the exemption u/s 80P of the Act to the assessee as it has not filed the return within the due date as specified u/s 139(1) of the Act. The grounds of appeal are dismissed.

7. The appeal is dismissed.

4. Aggrieved against the same, the assessee is in appeal before us challenging the following Grounds of Appeal:

1. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in confirming action of CPC Bengaluru by disallowing claim of deduction of Rs.7,83,615/- by failing to appreciate that provisions of Sec. 143(1)(a)(v) do not provide for denial of deduction u/s 80P of the Act when the return of income is not filed within time allowed u/s 139(1) of the Act but u/s 139(4).

2. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in upholding action of the CPC Bengaluru in making adjustment to the returned income of the Appellant by way of an intimation u/s 143(1) and in denying the benefit of Sec. 80P of the Act of Rs;7,83,615/- to the Appellant by failing to appreciate that this was not a prima facie adjustment permissible u/s 143(1)(a) of the Act.

3. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, erred in holding that in view of amendment in Sec. 80AC, benefit of deduction u/s 80P has been denied by CPC, by failing to appreciate that this was not a prima facie adjustment permissible u/s 143(1)(a) of the Act during the year under appeal.

4. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, erred in not adjudicating ground of disallowance of claim of deduction of Rs.7,83,615/- u/s 80P of the Act on merits.

4.1. At the time of hearing of the above appeal, Ld. Counsel Ms. Devina Patel for the assessee submitted before us that this issue is squarely covered by the Co-ordinate Benches judgments in the case of Lunidhar Seva Sahakari Mandali Ltd. vs. Assessing Officer (CPC) in ITA No. 202/Rjt/2022 dated 22.02.2023 and ITA No. 186/Rjt/2022 dated 10.02.2023 in other group of cases. Thus pleaded that the assessment year involved herein being A.Y. 20192020, the disallowance u/s. 143(1)(a)(v) cannot be done. Therefore pleaded to quash the Intimation passed by the CPC, Centre.

5. Per contra, the Ld. D.R. appearing for the Revenue relied upon the order passed by the Lower Authorities and requested to dismiss the assessee appeal.
6. We have given our thoughtful consideration and perused the materials available on record. It is apparent from the Ld. NFAC order when the assessee has clearly pointed out the amendment in Section 143(1) made by Finance Act, 2021 which is not applicable for the present assessment year 2019-2020. However the same was not been considered by the Ld. NFAC and erroneously dismissed the assessee's appeal.

6.1. The Co-ordinate Bench of this Tribunal in Lunidhar Seva Sahakari Mandali Ltd. (cited supra) considered the above amendment and held as follows:

7. We have heard the rival contentions and perused the material on record. In the instant facts, admittedly the assessee did not file return of income within the time permissible under section 139(1) of the Act. However, the assessee filed its return of income belatedly on 30-11-2020 and claimed deduction of Rs. 2,22,704/- under section 80P of the Act. The issue for consideration before us is that whether once the return of income is filed beyond the prescribed date under section 139(1) of the Act, can the deduction under section 80P of the Act be denied to the assessee, by way of adjustment under section 143(1) of the Act. On going through the statutory provisions, we observe that 80AC of the Act provides that no such deduction under section 80P of the Act shall be allowed to an assessee unless he furnishes a return of his income on or before the due date specified under section 139(1) w.e.f. assessment year 2018-19 onwards. However, section 143(1)(a)(v) of the Act provides that disallowance of deduction claimed under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" (which includes deduction under section 80P of the Act), can be made if the return is furnished beyond the due date specified under sub-section (1) of section 139. This amendment has been introduced w.e.f. 1-4-2021. Accordingly, the above amendment would not apply to the impugned assessment year. Further, section 143(1)(ii) of the Act permits adjustment in case of an incorrect claim, if such incorrect claim is apparent from any information in the return. However, Explanation to the aforesaid section specifies the following cases where the claim made in the return of income can be said to be "incorrect" for the purposes of this sub-section:

- (a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—
 - (i) of an item, which is inconsistent with another entry of the same or some other item in such return;
 - (ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or
 - (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction

7.1. A joint reading of the above provisions makes it evident that the claim of deduction under section 80P of the Act cannot be allowed the assessee, if the assessee does not file its return of income within the due date stipulated under section 139(1) of the Act w.e.f. assessment year 2018-19 onwards. However, we also note that amendment has been introduced in section 143(1)(a)(v) of the Act to provide that the claim of deduction under section 80P of the Act can be denied to the assessee, in case the assessee does not file its return of income within the time prescribed under section 139(1) of the Act with effect from 01-04-2021 and does not apply to the impugned assessment year i.e. assessment year 2019-20 relevant to financial year 2018-19. Accordingly, in our considered view, denial of claim under section 80P of the Act would not come within the purview of prima facie adjustment under section 143(1)(a)(v) of the Act, for the simple reason that the section was not in force during the period under consideration i.e. assessment year 2019-20.

7.2. The second issue for consideration is that whether the case of the assessee would fall within the purview of prima facie adjustment under section 143(1)(a)(ii) (an incorrect claim, if such incorrect claim is apparent from any information in the return). In our view, the scope of the adjustments that can be made under the said provision has been elaborated in the Explanation to the aforesaid section, which does not include denial of deduction claimed by the assessee in case the assessee does not furnish its return of income within the date stipulated under section 139(1) of the Act. The Explanation to the said section specifically provides for cases/instances when the claim made by the assessee could be said to be "incorrect". Therefore, in our considered view, the case of the assessee would also not fall within the purview of prima facie adjustment under section 143(1)(a)(ii) (an incorrect claim, if such incorrect claim is apparent from any information in the return).

7.3. We note that in the case of Chirakkal Service Co-Operative Bank Ltd. Kannur v. CIT 2016] 68 taxmann.com 298 (Kerala), the Kerala High Court held that a return filed by assessee beyond period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can also be accepted and acted upon for entertaining claim raised under section 80P provided further proceedings in relation to such assessments are pending in statutory hierarchy of adjudication in terms of provisions of Act. In the case of ASR Engg. & Projects Ltd. [2019] 111 taxmann.com 49 (Hyderabad - Trib.), the ITAT held that to be eligible to make claim under section 80-IA or any other section of Chapter VI A, assessee should have filed return of income under section 139(1) and even if it did not make claim for deduction in original return and subsequently file revised return making such claim, its claim for deduction under section 80-IA is maintainable. Therefore, where assessee had filed return under section 139(1), it was entitled to claim deduction under section 80-IA even if such claim was not made in original return but subsequently in revised return filed in response to notice issued under section 153A. In the case of Lanjani Co-Operative Agri Service Society Ltd. (CPC) v. DCIT [2023] 146 taxmann.com 468 (Chandigarh - Trib.), the ITAT held that the enabling provisions of sub-clause (v) of section 143(1) providing for disallowance of deduction under section 80P due to late filing of return having been introduced by Finance Act, 2021 effective from 1-4-2021, disallowance of deduction claimed under section 80P during relevant years 2018-19 and 2019-20 on grounds of late filing of return was unjustified

7.4. We note that the instant case, there was a delay in filing the return of income by the assessee for the assessment year 2019-20 and return of income was filed within due date permissible u/s 139(4) of the Act, in which the claim for deduction u/s 80P of the Act was made. Therefore, looking into the totality of facts, we are of the view that claim of deduction u/s 80P of the Act cannot be denied to the assessee only on the basis that the assessee did not file return of income its return of income within due date u/s 139(1) of the Act, in light of the discussion and judicial precedents highlighted above.

8. In the result, appeal of the assessee is allowed.

6.2. Respectfully following the above Co-ordinate Bench decisions, we have no hesitation in holding that the assessee cannot be denied the deduction u/s. 80P of the Act on the ground that the assessee did not file the Return of Income within the due date prescribed u/s. 139(1) of the Act under proceedings made u/s.

143(1) of the Act for the Assessment Year 2019-20.

7. In the result, the appeal filed by the Assessee is hereby allowed.

8. ITA Nos. 276 and 277/Rjt/2022 are an identical nature and therefore for the reasonings stated in ITA No. 269/Rjt/2022 will be squarely applicable. Thus the appeals filed by the assesseees are also allowed.

9. In the result, all the appeals filed by the respective Assesseees in ITA Nos. 269, 276 & 277/RJT/2022 are hereby allowed.

Order pronounced in the open court on 24 -02-2023

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER True Copy

Ahmedabad : Dated 24/02/2023 □□□□ क तलप □□□□ / Copy

of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad 6. Guard file.

Sd/-

(T.R. SENTHIL KUMAR)

JUDICIAL MEMBER

By order/□□□□

□□,

□□/□□□□□ □□□ □
□□□□ □□□□ □□□□□
□□□□□, □□□□□□