IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 14TH DAY OF MARCH 2023/23RD PHALGUNA, 1944

I.T.A.NO.120 OF 2019

AGAINST THE ORDER DATED 26.9.2017 IN I.T.A.NO.268/COCH/2015 OF I.T.A.TRIBUNAL, COCHIN BENCH, COCHIN

APPELLANT/APPELLANT/ASSESSEE:

M/S. NILESHWAR RANGEKALLU CHETHU VYAVASAYA THOZHILALI SAHAKARANA SANGHAM
PALLIKKARA, NILESHWAR, KASARAGOD DISTRICT-671 314.

BY ADV.SRI.S.ARUN RAJ
BY ADV.SMT.C.T.SUJA

RESPONDENT/RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME TAX
AAYAKAR BHAVAN, MANANCHIRA, CALICUT-673 001.

BY SRI.CHRISTOPHER ABRAHAM, SC, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 28.02.2023 ALONG WITH ITA.NO.11/2022, THE COURT ON 14.03.2023 DELIVERED THE FOLLOWING:

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THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

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THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

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THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 28.02.2023 ALONG WITH ITA.NO.120/2019, THE COURT ON 14.03.2023 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

As both these appeals arise out of a common order of the Income Tax Appellate Tribunal, Cochin Bench, in relation to the appellant/assessee and involve a common issue relating to the entitlement of the appellant to deduction under Section 80P of the Income Tax Act [hereinafter referred to as the 'IT Act'], they are taken up for consideration together and disposed by this common judgment.

2. The brief facts necessary for disposal of these appeals are as follows:

The appellant/assessee is a Labour Co-operative Society registered under the Kerala Co-operative Societies Act. The Society was formed for the financial and social welfare of toddy tappers/workers and for tapping and selling toddy within the jurisdiction of Nileshwar. During the financial year 2008-09, the appellant Society got license from the Excise Department for carrying

out the activity for tapping, pooling and marketing of toddy within the Excise range of Nileshwar.

3. For the assessment year 2009-10, the appellant did not file any return of income. Believing that the appellant had income chargeable to tax that had escaped assessment, the Department issued a notice under Section 148 of the IT Act to the appellant on 6.2.2012 requiring the appellant to furnish a return of income within 30 days of receipt of the notice. The appellant failed to file the return of income in response to the notice under Section 148. A return was however filed by the appellant on 5.7.2012, which was much beyond the date for filing of return in terms of Section 139(4) of the IT Act. The return of income for the assessment year 2009-10 should have been filed on or before 31.3.2011 in terms of Section 139(4) of the IT Act. Since the return of income was filed after the expiry of the time allowed under Section 139(4) and much after the due date mentioned in the notice under Section 148, the Assessing Officer treated the same as invalid and proceeded to complete the assessment in terms of Section 144 of the IT Act after hearing the representative of the appellant and verifying the books of account and other details called for by the Department. While completing the assessment, the claim of the

appellant for deduction under Section 80P was disallowed on the ground that the claim for deduction had not been made in a valid return filed by the appellant in terms of the IT Act. It was the stand of the Assessing Officer that in view of the provisions of Section 80A(5) of the IT Act, the claim for deduction could not be considered.

4. For the assessment year 2010-11 also, the appellant did not file any return of income voluntarily. A notice under Section 142 (1) of the IT Act was therefore issued to it on 3.2.2012 requiring it to furnish a return of income for the assessment year in question. The appellant however failed to comply with the terms of the notice, and inasmuch as there was a failure on the part of the appellant in filing return of income under Section 139(1) and Section 139(4) and further in terms of the notice issued to it under Section 142(1) of the IT Act, proceedings were initiated for completing the assessment on best judgment basis under Section 144 of the IT Act. The assessment was thereafter completed after hearing the authorised representative of the appellant and perusing the books of account and other details called for by the Department. As in the case of the previous assessment year, the assessment for the year 2010-11 was also completed by denying the claim of the appellant for deduction under

Section 80P of the IT Act, on the ground that in terms of Section 80A(5) of the IT Act, the deduction had to be claimed in a valid return filed by the assessee, and in the instant case, the appellant/assessee had not filed a valid return.

5. Against the assessment orders for both the assessment years 2009-10 and 2010-11, the appellant preferred appeals before the Appellate Authority. The Appellate Authority dismissed the appeals by upholding the stand of the Assessing Authority. In further appeals preferred before the Tribunal, the Tribunal did not specifically go into the issue of whether or not the belated returns filed by the appellant in both the assessment years was valid or not, but found that in view of the fact that the claim for deduction under Section 80P(2)(a)(vi) of the IT Act had already been decided against the assessee by the jurisdictional High Court in the decision reported in **Peravoor Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham and others v. Commissioner of Income-Tax – [(2016) 380 ITR 34 (Ker)]**, there was no necessity to interfere with the order of the First Appellate Authority dismissing the appeals preferred by the appellant/assessee for the assessment years 2009-10 and 2010-11.

6. The appellant/assessee has preferred these IT Appeals raising the following substantial questions of law therein:

1. Whether the Tribunal is right in law and facts of the case in not considering the issue of rejection of claim under Section 80P by the Lower authorities as hit by Section 80 A (5) of the Act as the claim made in a belated return, which issue is now squarely covered in favour of the assessee by the decision of the Honourable Court in the case of ***Chirakkal Service Co-operative Bank Ltd. v. CIT and other connected cases*** reported in ***(2016) 384 ITR 490 (Ker)***.

2. Whether the Tribunal is right in law and facts of the case in not considering the issue/fact that both the assessing officer and the CIT (Appeals) has held that the appellant/assessee is not entitled to any deduction under section 80 P of the Act erroneously holding that the return filed by the appellant is non-est and invalid and hit by section 80 A (5) of the Act and therefore the appellant is not entitled to any deduction under section 80 P of the Act?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the appellant society cannot be considered as Co-operative Societies engaged in the collective disposal of labour of its members as contemplated under section 80P(2) (a) (vi) of the Act and therefore not eligible for deduction under section 80 P of the Act? Is not such a finding of the Tribunal illegal, arbitrary and perverse?

4. Whether the Tribunal is right in law and facts of the case in upholding the finding of the assessing officer/contention of the revenue that the appellant society having granted registration under the Kerala Co-operative Societies Act, 1969 and the Rules as a “Miscellaneous Society” and therefore assessee cannot be treated as a society engaged in collective disposal of labour of its members and therefore is not eligible/entitled for the deduction under section 80 P (2) (a) (vi) of the Act?

5. Whether the Tribunal was right in law and facts of the case in not considering the issue of eligibility of the appellant for deduction under section 80 P (2) (a) (iii) of the Act?

6. Whether, the Tribunal is right in law and facts of the case in not

remanding the matter back to the assessing officer to consider the issue on merits and to consider whether the appellant society falls in any of the category mentioned under section 80 P (2) (a) and eligible for deduction under 80 P of the Act?

Re: Questions of law Nos.3 and 4:

7. These questions of law that have been raised by the appellant/assessee need not detain us for long. By a judgment reported in **Peravoor Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham [supra],** a Division Bench of this Court has, in the assessee's own case for a previous assessment year, answered the issues in favour of the Revenue and against the assessee. Following the said judgment of the Division Bench of this Court, we answer the aforesaid questions of law in favour of the Revenue and against the assessee for the assessment years 2009-10 and 2010-11 respectively.

Re: Questions of law Nos. 1, 2, 5 and 6:

8. These questions of law are taken together since they pertain to the issue of whether the claim for deduction under Section 80P(2)(a)(iii) of the IT Act, that was made by the assessee in returns stated to be filed on 5.7.2012 for the assessment years 2009-10 and 2010-11 can be seen as validly made for the purposes of the IT Act. The

authorities below hold the view that it cannot. They rely on the provisions of Section 80A(5) of the IT Act that make it obligatory on an assessee claiming deduction under Section 80P of the IT Act to make the claim in its return of income, to contend that the return of income referred to in Section 80A(5) must necessarily be one that is traceable to the provisions of the IT Act that mandate the filing of a return such as Section 139(1), Section 139(4), Section 142(1) or Section 148, and since in the case of the assessee herein, the claim was made in a return filed beyond the due date for filing returns under the aforesaid provisions, the return filed had to be seen as invalid and non-est.

9. Per contra, the contentions of Sri.Arun Raj, the learned counsel for the appellant/assessee, briefly stated are as follows:

- The return filed by the appellant/assessee on 5.7.2012 for the assessment years 2009-10 and 2010-11 respectively cannot be treated as non-est and invalid. The IT Act does not contemplate a return filed beyond the dates specified under Sections 139(1), 139(4), 142(1) or 148 of the IT Act as non-est or invalid returns. He refers to the provisions of Sections 139(8), 139(9) and Section 234A of the IT Act to demonstrate that under the said provisions, returns filed beyond the due date specified under Sections 139, 142 and 148 are accepted for the purposes

of limiting the accrual of interest on the tax amounts assessed against an assessee. It is pointed out that Section 139(8) and Section 234A treat a return filed after the time specified under Sections 139, 142 or 148 as a valid return and interest is charged only from the specified date till the date of filing the return.

- Section 148 of the IT Act stipulates that before making assessment, re-assessment or re-computation, the Assessing Officer shall serve a notice requiring to furnish within such period as may be specified in the notice, a return of income. As per Section 142(1) of the IT Act, for making an assessment under the IT Act, the Assessing Officer may serve notice requiring to furnish a return of income on a date to be specified in the notice. It is evident from the above provisions that no specific date/period is stipulated in the statutory provisions and no outer time limit is stipulated thereunder for filing the return. It is the Assessing Officer who has the power to grant time for filing return before the completion of the assessment. It follows therefore that a return filed before completing the assessment, which is available for taking cognizance, cannot be treated as invalid or non-est by the Assessing Officer. Reliance is placed on the order dated 18.9.2000 of the Income Tax Appellate Tribunal, Pune Bench in the case of **G.C. Associates v. Deputy Commissioner of Income Tax**.

- A plain reading of Section 80A(5) of the IT Act makes it clear that a claim in respect of a deduction *inter alia* under Section 80P has to be made in a return of income filed in order

for such deduction to be allowed. The Section does not make any specific reference to any particular provision under which the return has to be filed. The Section also does not stipulate any specific date by which such return should be filed. It follows therefore that so long as there is a return filed before the completion of assessment, the claim for deduction made thereunder can be entertained by the Assessing Officer. At any rate, since the provisions of Section 80A(5) were amended with effect from 1.4.2003 only with a view to prevent the assessees from claiming multiple deductions for the same profits under various Sections in Chapter VIA, the mere fact that the appellant had made the claim for deduction in a return filed beyond the time prescribed under Sections 139, 142 and 148, but well before the completion of assessment could not have been used by the Assessing Authority to deny the valid claim for deduction. Reliance is placed on the decision in **The Chirakkal Service Co-operative Bank Ltd. v. The Commissioner of Income Tax** - **[(2016) 384 ITR 490 (Ker)]** in support of the above contentions. Reliance is also placed on the judgment dated 12.3.2021 of the Bombay High Court in **Sesa Goa Limited v. Additional Commissioner of Income Tax [Tax Appeal No.24 of 2011]** and the judgment of the Supreme Court in **Goetze (India) Ltd. v. CIT - [Civil Appeal No.1761 of 2006]**.

- Reliance is placed on the judgment of the Supreme Court in **The Mavilayi Service Co-operative Bank Ltd. and Others v. Commissioner of Income Tax, Calicut and Others - [431 ITR 1 (SC)]** to contend that if there is any ambiguity while

considering a claim for deduction under Section 80P of the IT Act, the revenue authorities have to read the statutory provisions in favour of the assessee. It is pointed out that in the instant case, the revenue authorities have relied on a technicality to deny the benefit of the claim for deduction under Section 80P(2)(a)(iii) of the IT Act to the assessee.

10. We have considered the rival submissions of Sri.S.Arun Raj, the learned counsel appearing for the appellant/assessee and Sri.Christopher Abraham, the learned Standing Counsel for the Income Tax Department.

11. On a consideration of the rival submissions and on a perusal of the statutory provisions, we find that a reading of Section 80A(5) and Section 80AC of the IT Act as they stood prior to 1.4.2018, when the latter provision was amended by Finance Act 2018, would reveal that the statutory scheme under the IT Act was to admit only such claims for deduction under Section 80P of the IT Act as were made by the assessee in a return of income filed by him. That return can be under Sections 139(1), 139(4), 142(1) or Section 148, and to be valid, had to be filed within the due date contemplated under those provisions. Under Section 80A(5), the claim for deduction under Section 80P could be made by an assessee in a return filed within the

time prescribed for filing such returns under any of the above provisions. The amendment to Section 80AC with effect from 1.4.2018, however, mandated that for an assessee to get a deduction under Section 80P of the IT Act, he had to furnish a return of his income for such assessment year on or before the due date specified in Section 139(1) of the IT Act. In other words, after 1.4.2018, even if the assessee makes his claim for deduction under Section 80P in a return filed within time under Sections 139(4), 142(1) or Section 148, he will not be allowed the deduction, unless the return in question was filed within the due date prescribed under Section 139(1). Thus, it is clear that the statutory scheme permits the allowance of a deduction under Section 80P of the IT Act only if it is made in a return recognised as such under the IT Act, and after 1.4.2018, only if that return is one filed within the time prescribed under Section 139(1) of the Act. As the return in these cases, for the assessment years 2009-10 and 2010-11, were admittedly filed after the dates prescribed under Sections 139(1) and 139(4) or in the notices issued under Section 142(1) and Section 148, the returns were indeed non-est and could not have been acted upon by the Assessing Officer even though they were filed before the completion of the assessment.

12. There is yet another aspect of the matter. The requirement of making the claim for deduction in a return of income filed by the assessee can be seen as a statutory pre-condition for claiming the benefit of deduction under the IT Act. It is trite that a provision for deduction or exemption under a taxing Statute has to be strictly construed against the assessee and in favour of the Revenue. Thus viewed, a failure on the part of an assessee to comply with the pre-condition for obtaining the deduction cannot be condoned either by the statutory authorities or by the courts.

13. It is in the backdrop of the aforesaid discussion that we must consider the findings of a Division Bench of this Court in **The Chirakkal Service Co-operative Bank Ltd. [supra]**. The findings therein, that appear to suggest that a claim for deduction under Section 80P can be entertained even if it is made in a return filed beyond the time permitted under the IT Act, ignores the perspective that sees the requirement of the claim for deduction being made in a valid return as a pre-condition for obtaining the benefit of the statutory deduction. The said findings also fly in the face of the express statutory provisions that requires the claim to be made in a return filed by the assessee, by which term is meant a valid return

under the Act, and therefore have necessarily to be seen as *per incuriam*. We also find that the subsequent amendments to Section 80AC by the Finance Act 2018 fortifies the view that we have taken for, it makes the claim for deduction under Section 80P conditional on filing a return within the due date prescribed under Section 139(1) of the IT Act. In other words, the pre-condition for claiming the deduction under Section 80P of the IT Act has now been made more stringent by reducing the time available to an assessee for making the claim.

14. Before parting with these cases, we must also address the arguments of the learned counsel for the appellant/assessee relying on the provisions of Section 139(8)/(9) and Section 234A of the IT Act. A reading of the provisions of Section 139(8) and (9) of the IT Act clearly reveals that even under those provisions, the restrictions placed with regard to the accrual of interest on amounts assessed on an assessee is with regard to the date of filing of a return within the time prescribed under the IT Act. Under Section 234A of the IT Act, however, although the provision suggests that even a return filed beyond the time prescribed under any of the provisions of the IT Act can have the effect of limiting the accrual of interest on the amounts

assessed against an assessee, we have to see the said provision as permitting a filing of a belated return for the limited purpose of conferring a specific benefit of limiting the accrual of interest, on an assessee, and for no other purpose. We cannot accept the contention of the appellant/assessee that the said provisions which are intended for a specific purpose and are not general in nature, have to be seen as manifesting a statutory scheme that enables the Department to act upon a belated return for allowing the claim of an assessee for deduction under Section 80P of the IT Act.

In the light of the aforesaid discussion, we find that the above questions of law have to be answered in favour of the Revenue and against the assessee, and we do so. Thus, these I.T. Appeals are disposed by answering the substantial questions of law raised therein, in favour of the Revenue and against the assessee.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE

prp/

APPENDIX OF ITA.NO.120/2019

PETITIONER'S ANNEXURES:

ANNEXURE A	**A TRUE COPY OF THE ASSESSMENT ORDER DATED 08.03.2013 PASSED BY THE ASSESSING OFFICER FOR THE AY 2009-10.**
ANNEXURE B	**A TRUE COPY OF ORDER DATED 16.02.2015 PASSED BY THE COMMISSIONER OF INCOME TAX(APPEALS), KOZHIKODE FOR THE AY 2009-10.**
ANNEXURE C	**A TRUE COPY OF THE ORDER DATED 26.09.2017 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN FOR THE AY 2009-10.**

APPENDIX OF ITA.NO.11/2022

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RESPONDENTS ANNEXURES: **NIL.**

//TRUE COPY//

P.S. TO JUDGE