

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 716/CHD/2022

निर्धारण वर्ष / Assessment Year : 2018-19

The Sard Dogri Co-operative Agri Services Society Limited, VPO – Sard Dogri, Kangra (HP).	बनाम VS	The DCIT, CPC, Bangaluru.
स्थायी लेखा सं./PAN /TAN No: AADAT2075Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vishal Mohan, Sr.Advocate with
Shri Praveen Sharma, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharamvir, JCIT-Sr.DR

तारीख/Date of Hearing : 05.06.2023

उदघोषणा की तारीख/Date of Pronouncement : 05.06.2023

आदेश/ORDER

PER VIKRAM SINGH YADAV,A.M.

This is assessee's appeal against the order of the ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 22.12.2021, for the Assessment Year 2018-19, taking the following grounds of appeal:-

(i) That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in upholding the disallowance of deduction claimed under section 80P of the Income Tax Act, 1961 and that too under section 143(1) of the Income Tax Act, 1961.

(ii) That the order of the Ld. Assessing Officer is bad in law and facts.

2. At the outset, it is noted that there has been a delay in filing the present appeal as pointed out by the Registry. After hearing both the parties and pursuing the material on record, the delay is hereby condoned and the appeal is admitted for adjudication.

3. Briefly, the facts of the case are that the assessee filed its return of income declaring total income at Rs. 'Nil' after claiming deduction u/s 80P of the Income-tax Act, 1961 amounting to Rs. 7,35,190/-. The return was processed by the CPC, Bangalore u/s 143(1) of the I.T. Act, denying the deduction claimed u/s 80P for the reason that the return of income was not filed with the due date.

4. In its appeal before the Ld. CIT(A), the Assessee contended that though amendment by the Finance Act 2018 in section 80AC, any society claiming deduction under section 80P has to furnish the return of income with due date as specified u/s 139(1) of the Act, at the same time, such deduction cannot be disallowed while processing the return of income under section 143(1) of the Act as existing at the relevant point in time as clause (v) to 143(1)(a) enabling such disallowance has been introduced only by the Finance Act, 2021 which is effective from 01/04/2021 i.e, from assessment year 2021-22 onwards and doesn't apply to the impugned assessment year.

5. By virtue of the impugned order, the ld. CIT(A) dismissed the appeal. It was observed that the provisions of section 80AC are applicable from assessment year 2018-19 onwards; that as per these amended provisions, no deduction under Chapter VIA, Part C can be allowed, unless the return is filed within the time allowed u/s 139(1) of the Act; that the amendment covers deduction u/s 80P as well and the provisions of section 80AC would limit and disallow the deduction u/s 80P.

6. Before us, besides reiterating the stand taken by the Assessee before the ld. CIT(A), the ld. Counsel for the assessee has placed reliance on the decision of the ITAT, Chandigarh Benches, rendered on 30.08.2022 in 'The Lanjani Co-operative Agri Service Society Ltd., VPO Lanjani, Kangra (HP) vs. The DCIT (CPC) Bangaluru' (ITA No. 332-338/Chd/2021), for assessment year 2018-19 and other cases.

7. On the other hand, the ld. DR has placed strong reliance on the impugned order and the decision of the Hon'ble Madras High Court in the

case of Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs DCIT.

8. In his rejoinder, the Id AR submitted that the Coordinate Bench in case of The Lanjani Co-operative Agri Service Society Ltd (*supra*) has duly considered the decision of the Hon'ble Madras High Court as referred to by the Id Sr DR.

9. We have heard the rival contentions and have perused the material on record. It is not in question that section 80AC of the I.T. Act, as amended by Finance Act, 2018, stipulated that for claiming deduction u/s 80P of the Act, the return of income was required to be filed before the due date, as prescribed by section 139(1) and in the present case, the return was filed belatedly. However, it was only by the amendment to section 143(1) (a)(v) brought in by Finance Act, 2021, that the CPC can be said have been vested, exercising powers u/s 143(1)(a), to make disallowance on the ground of belated return. Prior to that, as per the un-amended provisions, the AO could disallow a claim u/s 143(1) (a) only on the grounds of arithmetical error or that the Assessee had made an incorrect claim, etc. Reference, in this regard, may be had to 'Fatehraj Singhvi & Ors. v. UOI and Ors'; 289 ITR 602 (Kar.). It goes without saying that in the absence of enabling powers, no disallowance can be made. As such, enabling provisions being absent, the CPC did not have the jurisdiction to make the disallowance in question, in the order u/s 143(1) of the Act. For this, we find support from the decision of the Coordinate Chandigarh Benches in case of **'The Lanjani Co-operative Agri Service Society Ltd., VPO Lanjani, Kangra (HP) vs. The DCIT (CPC) Bangaluru'** (*supra*) wherein the relevant findings read as under:

"14. I have heard the submissions and perused the material on record. Since heavy reliance has been placed by the Id. Sr.DR on the impugned order, specific para 8.1. For ready reference of the same is extracted hereunder :

"8.1 Finding on Ground of appeal Nos. 1 to 3

a) The CPC Bangalore has made the addition/adjustment of Rs.1,11,421/- u/s 143(1) of the Act as deduction u/s 80P claimed of

Rs.1,11,421/- was disallowed on the ground that return was not filed within the due date. The undersigned has gone through the 143(1) intimation and written submissions filed by the Appellant. These Grounds of Appeal are discussed and decided in subsequent paras of this order.

b) It is not in dispute that from AY. 2018-19, the Appellant for claiming deduction u/s 80P has to file return of income within the due date of filing of ITR as provided in Section 80AC of the IT Act, 1961. Section 80AC was amended by Finance Act, 2018. From AY. 2018-19, all the deductions falling under the heading 'C of Chapter VIA of IT Act, 1961 were brought into the ambit of this section. Section 80P also falls under the heading 'C of Chapter VIA of the Act is included in Section 80AC of the Act.

c) The amended Section 80AC provides as under:-

"[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 or;

(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.]"

d) Thus, from 01.04.2018, the clause(i) of the above section has become inoperative and clause (ii) was introduced which provides that all the deductions falling under the heading 'C of Chapter VIA of the Act will be allowed only when ITR is furnished before the due date specified u/s 139(1) of the Act. This amendment became effective from AY. 2018-19.

e) In the present case the due date of filing ITR for AY. 2018-19 was 31.08.2018. However, the Appellant filed its return on 13.10.2018 i.e. after the due date for filing of ITR. Appellant had claimed deduction u/s 80P of Rs. 1,11,421/-. As discussed above Section 80P falls under the heading 'C of Chapter VIA of the Act. Therefore, from AY. 2018-19 and onwards, any assessee claiming deduction u/s 80P has to file its return within due date specified u/s 139(1) of the Act to avail such deduction as required u/s 80AC of the Act. In the present case, the Appellant did not file its return within the due date prescribed u/s 139(1) of the Act for AY. 2018-19, therefore, the AO rightly disallowed deduction u/s 80P of Rs. 1,11,421/- in intimation u/s 143(1). Thus, the action of AO in disallowing deduction u/s 80P is upheld. Grounds of Appeal Nos. 1 to 3 are dismissed."

14.1 On consideration of the above when read alongwith the arguments advanced before the CIT(A) on behalf of the assessee which have been re-iterated before the ITAT, I find that on facts the case of the assessee is allowable. The AO/CPC Bangalore at the relevant time though considering the amended Section 80AC was exercising the powers as vested by the Section 143(1) of the Act as it then stood. At the relevant point of time, the provisions of Section 143(1) of the Act were as under :

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely: —

(i) any arithmetical error in the return; [***]

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under subsection (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under Sections 10AA, 80-I A, 80-I AB, 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

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

(emphasis supplied)

14.2 It is a matter of fact that sub-clause (v) of Section 143(1)(a) was amended by the Finance Act, 2021 wherein instead of reference to Sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or Section 80-IE, the provision instead makes a mention of Section 10AA or under any of the provisions of Chapter VI-A under the head 'C-Deductions in respect of certain incomes'. Accordingly, the enabling provisions to address the amendment in Section 80-AC by Finance Act, 2018 came into play only in 2020-21 assessment year. Thus, no doubt Section 80AC as amended by the Finance Act, 2018 mandated that even for claiming deduction claimed u/s 80P, the return of income was to be filed before the due date as specified under sub-section (1) of Section 139. However, for the AO to insist upon the compliance by way of making a disallowance, the power was vested in the said Authority only vide Finance Act, 2021. Hence, in the absence of the enabling provisions, the CPC Bangalore lacked the jurisdiction to make this disallowance in the order u/s 143(1). Accordingly, on facts, I find that the appeal of the assessee has to be allowed.

14.3 Before parting, it may also be relevant to refer to the decision of the Apex Court dated 30.07.2018 in the case of Commissioner of Customs (Import) Vs M/s Dilip Kumar & Co. & Ors. Civil Appeal No.3327 of 2007 relied upon by the Id. Sr.DR. On a reading therefrom, it is seen that the issue for consideration before the Hon'ble Court was whether the denial of benefit of Customs Notification No. 20/1999 was justified to the party who pleaded that the benefit of concessional rates for import of animal feed should also be available to import which admittedly contained chemical ingredients for animal feed. The concessional rate of duty under the extent Notification was being considered. The order of denial by the Customs Officer was reversed by Commissioner of Customs. This order was confirmed by Customs Excise & Service Tax Tribunal (CESTAT) which led to the filing of the appeal before the Hon'ble High Court and then the Apex Court. It is in that background that the Hon'ble Court held that exemption notification should be interpreted strictly and the burden of proving that the case comes within the parameters of the exemption clause or exemption notification would be on the assessee. In such circumstances, in case

there is ambiguity, the Notification must be interpreted in favour of the Revenue. In the facts of the present case, there is no ambiguity. It is a case of absence of enabling provision. Hence, the ratio laid down therein has no applicability to the facts of the present case.

14.4 It is also necessary to refer to the decision of the Hon'ble Madras High Court in the case of Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs DCIT (cited supra). A perusal of the same shows that the issue for consideration before the Hon'ble High Court in the Writ Jurisdiction invoked by the assessee was very fact specific. The assessee therein was canvassing that u/s 143(1)(a) for considering denial on the grounds of "incorrect claims" the scope was limited to "entry" in the return of income. The Court therein did not permit such a restrictive interpretation commenting variously on the conduct of the assessee. Hence, the decision is distinguishable. Further, before the Hon'ble High Court, the amendment carried out in Section 143(1)(a) by the Finance Act 2021 was neither argued nor referred to for consideration of the Hon'ble Court.

14.5 It is further seen that the decision of the Apex Court in the case of CIT Vs B.C. Srinivasa Shetty 128 ITR 294 fully supports the view taken. The Court therein at page 299 has held as under :

"The character of the computation provisions in each case bears a relationship to the nature of the charge. **Thus, the charging section and the computation provisions together constitute an integrated code** . When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantify it....."

(emphasis supplied)

14.6 In the facts of the present case, admittedly the provision enabling the AO to pass an order relying upon sub-clause (5) of Section 143(1)(a) was not on the Statute for 2018-19 assessment year. Accordingly, for the detailed reasons hereinabove, setting aside the impugned order, the appeal of the assessee is allowed."

10. For the above discussion, finding merit in the grievance raised by the Assessee, the same is accepted. The order under appeal is accordingly reversed. Consequently, the disallowance of Rs. 7,35,190/- is cancelled.

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

Order pronounced in the open Court on 05/06/2023.

Sd/-

आकाश दीप जैन

(AAKASH DEEP JAIN)

उपाध्यक्ष / VICE PRESIDENT

"Poonam"

Sd/-

विक्रम सिंह यादव

VIKRAM SINGH YADAV)

लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar