

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA
BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1248/Kol/2023
Assessment Year: 2018-19**

Bisharpara Kodalia Cooperative Credit Society Ltd. Nabajiban, Bisharpara, Dum Dum, West Bengal-700158. (PAN: AAAAB9104B)	Vs.	Income Tax Officer, Ward-49(2), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Indranil Banerjee, FCA

Respondent by : Shri B. K. singh, JCIT, Sr. DR

Date of Hearing : 18.01.2024

Date of Pronouncement : 06.02.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1056371269(1) dated 21.09.2023 passed against the Intimation u/s.143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 31.05.2019 for AY 2018-19.

2. Grounds taken by the assessee are as under:

"1. That on the facts and circumstances of the case and in law, the Appellate Order, passed by the Ld. CIT(A)-NFAC, whereby the Appeal has been dismissed on the alleged ground of non-compliance, for being contrary to facts on record and law, would call for total reversal, cancellation and accordingly, substitution by restoration for a fresh adjudication.

2. Without prejudice to Ground No.1, on the facts and circumstances of the case and in law, the dismissal of the Appeal solely on the ground of alleged non-compliance, rather than on the ground of merit, is not sustainable under the law, and would thus, call of complete cancellation and reversal.

3. Without prejudice to Ground No.1 and 2, even otherwise, the Ld. CIT(A)-NFAC, should have appreciated the power to effect disallowance of deduction, claimed u/s 80P for not being conferred u/s 143(l)(v) for the Assessment Year

under Appeal, the corresponding disallowance of RS.1942264/- had been beyond jurisdiction and therefore not sustainable.”

3. Brief facts of the case are that the assessee is a Registered Co-operative Society, formed by the residents of the locality of Bisharpara Kodalia. The primary objective of the assessee Society is to accept deposits of the members of the society and to provide loan and credit facilities to them. All the Deposits, received from the members, and the Loans, advanced to them, carry respective and corresponding Interests. Interest is also earned from Investments, principally made with West Bengal State Co-operative Bank, with a small amount coming from Interests on Savings Bank Deposits with Commercial Banks. The Return of Income was filed under section 139(4) on 25.11.2018. The due date of filing Return of Income whose accounts have to be audited was extended from 30th September, 2018 to 31st October, 2018. There was delay in filing of Return of Income by 25 days. The Return of Income had been processed by CPC u/s. 143(1) dated 31.05.2019 disallowing deduction U/S 80P since Return was not filed within the due date.

3.1. The assessee has filed Rectification of Mistake stating that assessee a Credit Co-operative Society dealing only with its members and its Income is exempt U/S 80P(2)(b) of the Act and Interest Income from West Bengal State Co-operative Bank is also exempt U/S 80P(2)(d) of the Act. But, CPC computed the income and passed order U/S 154, total income remaining same as processed originally u/s 143(1).

3.2. Aggrieved, assessee preferred appeal before the Ld. CIT(A), who dismissed the appeal of the assessee without going into the merits of the case by observing that the assessee does not wish to pursue the appeal. Hence, Ld. CIT(A) dismissed the appeal of the assessee ex parte. Aggrieved, assessee is now in appeal before the Tribunal.

4. We have heard rival submissions and have gone through the record placed before us. We notice that the assessee is a Co-operative Society engaged in the business of providing credit to its members. The assessee is required under law to get its account audited under the rules and regulations of West Bengal Cooperative Societies Act, 2006 by the auditor appointed by Directorate of Cooperative Societies. For the AY 2018-19 due date for filing the return was 30.09.2018. However, the return was submitted on 25.11.2018.

5. We note that the Central Processing Centre denied the deduction u/s. 80P of the Act solely for the reason that return was not filed within the due date. Provisions of section 143(1)(a)(v) provides that –

“(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VIA under the heading “C – Deductions in respect of certain incomes”, if the return is furnished beyond the due date specified under sub-section (1) of section 139;”

5.1. In the above provision, an amendment brought is in by Finance Act from 01.04.2021 w.e.f. 1.4.21 and before such amendment in place of the phrase section 10A or in any of the provisions of Chapter VIA under the head e – the words *“deductions in respect of certain income, previously which was provided as section 10AA, 80IA, 80IB, 80IC, 80ID or section 80IE of the Act were appearing.”*

6. From perusal of the said amendment, we note that before 01.04.2021 there was no mechanism for the CPC to *prima facie* disallow the claim u/s. 80P of the Act. It was only from 01.04.2021 that such powers have been conferred with the CPC to make *prima facie* disallowance in case of the claim made u/s 10AA or deduction claimed under any of the provisions in Chapter VIA which, inter alia, includes 80P of the Act.

7. We note that section 80AC of the Act puts a bar against claiming of deduction in respect of certain income provided under the head (C) of Chapter VIA which includes section 80P of the Act also if

the return of income are not filed before the due date prescribed u/s. 139(1) of the Act. Had it been a case of scrutiny proceeding u/s. 143(3) of the Act, the situation certainly would have been against the assessee subject to the approval by the authorities for condonation of delay in filing the return. However, before us, the issue is regarding prima facie adjustment made u/s. 143(1)(a)(v) of the Act and as discussed above, such power of making the *prima facie* adjustment towards deduction u/s. 80P of the Act came to CPC only from 1.4.2021 and thus, the alleged disallowance by CPC is beyond its jurisdiction. Therefore, the assessee deserves relief. We are thus inclined to hold that the Ld. CIT(A) erred in denying the deduction u/s 80P of the Act for Rs.19,42,264/-. We, therefore, set aside the order of the Ld. CIT(A) and allow the grounds of appeal raised by the assessee for the claim of deduction u/s. 80P of the Act at Rs.19,42,264/-.

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

Order is pronounced in the open court on 06th February, 2024

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated:06th February, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata