

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA  
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.668 & 669/Kol/2023  
Assessment Years 2018-19 & 2019-20**

Pairagacha Cooperative Credit Society Ltd. Pairagacha, Chanditala, West Bengal-712304 (PAN: AAAAP9359C)	Vs.	Income Tax Officer, Hooghly.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Alokesh Kundu, Advocate  
Respondent by : Shri Amuldeep Kaur, JCIT  
Hearing concluded on : 24.01.2024  
Date of Pronouncement : 31.01.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

Both these captioned appeals filed by the assessee are against the separate orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order nos. ITBA/NFAC/S/250/2023-24/1052230906(1) & ITBA/NFAC/S/250/2023-24/1052231472(1) both dated 20.04.2023 passed against the penalty order for AY 2018-19 by ITO, NFAC, Delhi dated 10.08.2021 u/s. 272A(1)(d) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") and against the assessment order by ITO, Ward-23(1), Hooghly dated 22.11.2016 u/s.143(3) of the Act for AY 2019-20 respectively.

2. Both the appeals are time barred by 14 days. In respect of AY 2018-19 the assessee has filed an affidavit explaining the reasons for condonation of delay due to non-existence of board from 01.04.2022 to 01.07.2023, Members of the board were made through election process. Board was reconstituted on 01.07.2023. Considering the stated facts on record, the brief delay of 14 days is condoned.

3. First we take up ITA No. 669/Kol/2023 for AY 2019-20. Grounds of appeal in respect of AY 2019-20 read as under:

*1. That the disallowance of claim under section 80P in pursuance to deduction under chapter VIA in intimation u/s. 143(1) is unlawful and unjustified.*

*2 That the action of the AO in disallowance in intimation u/s. 143(1) of claim u/s. 80P which is a debatable issue and requires scrutinisation and verification is unlawful and unjustified.*

*3. That the disallowance of claim u/s. 80P in pursuance to deduction under Chapter VIA in intimation under section 143(1) even after allowing in scrutiny assessment proceeding u/s. 143(3) for AY 14-15 and AY 17-18 is unlawful and unjustified.*

*4. That the Appellant craves leave of adducing such further ground or grounds at any stage of appeal procedure.*

*5. That the imposition of the interest Rs.1,50,935/- is unlawful and unjustified.”*

4. The sole grievance of the assessee is against the action of the Ld. CIT(A) in confirming the action of the AO disallowing deduction u/s 80P of the Act for delay in filing the return of income.

3. Ld. Counsel for the assessee argued stating the reasons for delay in filing the return, also claimed that no opportunity was granted before making such.

4. On the other hand, the Ld. DR supported the order of the lower authorities.

5. 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 31.08.2019. However, the return was submitted on 26.06.2020.

6. 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;”*

6.1. 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.”*

7. 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.

8. 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.23,98,593/-. 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.23,98,593/-.

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

10. Now, we take up ITA No. 668/Kol/2023 for AY 2018-19 which is in respect of imposing a penalty of Rs.20,000/- u/s. 271A(d). In this respect, ld. AO has noted that notices u/s. 142(1) were issued and served on the assessee. However, no compliance was made within the stipulated time. For this non-compliance on the part of the assessee penalty of Rs.10,000/- per default was imposed totalling to Rs.20,000/- for failure of compliance with the notice issued u/s. 142(1). In the impugned penalty order, it is noted that demand notice is issued along with this order. However, assessee claimed that no demand notice has been issued and served on the assessee imposing the said penalty. Aggrieved, assessee went in appeal before the Ld. CIT(A).

11. Before the Ld. CIT(A) assessee contended that notices have not been served on it. It also contended that assessment of the assessee for the impugned assessment year has been completed u/s. 143(3) and, therefore, there is no occasion for the Ld. AO to impose a penalty u/s. 272A(1)(d). Further, it was strongly submitted that a demand notice for imposing the penalty was not accompanied with the penalty order and, therefore, the penalty so imposed is ought to be deleted which is not in accordance with the provisions of law. Ld. CIT(A),

however, confirmed the penalty so imposed. Aggrieved, assessee is in appeal before the Tribunal.

12. Before us, ld. Counsel submitted that since the assessment has been completed u/s. 143(3) wherein submissions made by the assessee has been considered by taking them on record there is no occasion for the Ld. AO to impose the penalty. Ld. Counsel also reiterated the submissions made before the Ld. CIT(A) whereby no demand notice has been issued and served on the assessee for the imposition of penalty. According to him, there exists a reasonable cause both on account of assessment being completed u/s. 143(3) and no demand notice being issued so as to delete the penalty in the instant case.

13. Per contra, Ld. Sr. DR relied on the orders of the authorities below.

14. We have heard the rival contentions and perused the material available on record. From the documents on record, we observe that the demand notice for imposition of penalty is not available. However, we find it proper to consider the submissions made by the Ld. Counsel for deleting the penalty since the assessment has been completed u/s. 143(3) of the Act and it not being an ex parte order u/s. 144. Considering these facts, we find that there is a reasonable cause to delete the penalty so imposed. Thus, the penalty imposed of Rs.20,000/- is deleted. Grounds taken by the assessee are allowed.

15. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 31st January, 2024

Sd/-  
(Sanjay Garg)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 31st January, 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
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata