IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.969/Bang/2023
Assessment year : 2017-18

Madhu Souharda Pathina Sahakari Niyamitha, Okkaligara Samudaya Bhavana, Opp. KSRTC Bus Stand, Madhugiri – 572 132. **PAN: AADAM1667P**	Vs.	The Income Tax Officer, Ward 1 & TPS, Tumkur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep Chalapathy, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	01.01.2024
Date of Pronouncement	:	02.01.2024

O R D E R

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1056578870(1) dated 27.9.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18.

2. The brief facts of the case are that the assessee is in the status of AOP and did not file return of income within the time prescribed u/s. 139(1) & 139(4) of the Act. As per the information, the assessee had income above the taxable limit, accordingly notice u/s. 142(1) was

issued on 09.03.2018 which was served to the assessee requiring it to file return for the AY 2017-18 within 08.04.2018, but the assessee failed to furnish the return. Further notice u/s. 142(1) was issued on 18.01.2019 calling for details and documents mentioned in the notice. As there was no response one more notice u/s 142(1) dated 13.03.2019 was issued, calling for details and documents. In response, the assessee filed written submissions along with details and documents. The AO noticed that the assessee is a cooperative society mainly involved in the business of providing credit facilities to its members. The assessee arrived at a net profit of Rs.26,00,809 as per P&L account inclusive of interest of Rs.3,57,185 on deposits with DCC. The interest received from Other Societies/Banks/Co-operative Banks is to be assessed under the head income from other sources u/s. 56 of the Act. Since the assessee did not file the return of income and therefore as per section 80A(5) and 80AC of the Act, the AO observed that the assessee is not eligible for deduction u/s. 80P of the Act. The AO issued a show cause notice to the assessee on 22.04.2019 as to why the assessment should not be concluded u/s. 144 of the Act. Since there was no response from the assessee, the AO completed the assessment u/s. 144 of the Act denying deduction u/s. 80P of the Act.

3. On appeal, the CIT(Appeals) after considering the written submissions of the assessee and case laws relied on the judgment of Hon'ble Kerala High Court in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT [2023] 152 taxmann.com 347 (Kerala) and held that without a valid return of

income, deduction u/s. 80P cannot be allowed. He observed the above judgment of Kerala High Court takes precedence over the decisions of the jurisdictional ITAT relied on by the assessee. The CIT(A) also relied on the following decisions:-

(1) Kuthuparamba Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd. v. CIT [2018] 95 taxmann.com 299 (Kerala HC)
(2) Shree Datta Prasad Sahakari Patsanstha Ltd. [2022] 134 taxmann.com 324 (Mumbai-Trib.)

4. The CIT(A) observed that the Supreme Court decision relied by the assessee in the case of Goetze India is misplaced and not appliable to assessee's case. In the present case, since there was no valid return, the CIT(A) did not grant the deduction claimed u/s 80P of the I. T. Act. and dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

5. The ld. AR vehemently argued and relied on the submissions made before the lower authorities. He fairly admitted that the decision of Hon'ble Kerala High Court relied on by the CIT(Appeals) cited supra is against the assessee. He also submitted that since it is a cooperative society, a liberal view should be applied as per the judgment of Hon'ble Supreme Court.

6. On the other hand, the ld. DR relied on the orders of lower authorities and submitted that the AO noticed that inspite of having taxable income, the assessee did not file return of income and various opportunities were granted by the AO. Even the assessee did not reply

to the show cause notice issued, thereby the AO completed assessment u/s. 144 of the Act. The CIT(Appeals) has rightly decided the issue relying on the decision of the Hon'ble Kerala High Court (supra) wherein it was held that where the assessee did not file return of income, u/s. 139(1) r.w.s. 80A(5) & 80AC of the Act, the assessee is not eligible for deduction u/s. 80P.

7. Considering the rival submissions, we note that the during the impugned assessment year, the assessee has received interest of Rs.3,57,185 on deposits with DCC and earned profit at Rs.26,00,809 inclusive of interest income, but did not file return of income u/s. 139(1) or 139(4). Notice u/s. 142(1) was issued by the AO to the assessee for filing return of income on 09.03.2018 within 08.04.2018. Further notice u/s. 142(1) and show cause notice was issued to the assessee, but the assessee did not file the return of income except written submissions. Accoridngly the AO denied deduction u/s. 80P as per section 80A(5) and completed the assessment u/s. 144 of the Act.

8. Section 80A(5) of the Act reads as under:-

> "(5) Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder."

9. It is clear from the above section that for claiming deduction under Chapter VIA under the head, "*Deductions to be made in computing total income*", which covers section 80P also, the assessee

has to file return of income. However, the assessee did not file return of income at all and therefore the assessee is not eligible for deduction u/s. 80P of the Act. The Hon'ble Kerala High Court in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT [2023] 152 taxmann.com 347 (Kerala) has held as under:-

> "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.
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> 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."

10. Respectfully following the above judgment, we hold that the assessee is not eligible for deduction u/s. 80P of the Act.

11. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 2nd day of January, 2024.

Sd/-	Sd/-
(GEORGE GEORGE K.)	(LAXMI PRASAD SAHU)
VICE PRESIDENT	ACCOUNTANT MEMBER

Bangalore,
Dated, the 02nd January, 2024.
/Desai S Murthy /

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.