

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

ITA No. 3169/MUM/2022
Assessment Year: 2017-18

Sai Prerana Co-op. Credit
Society Ltd,
317, Puran Aasha Bldg., Gr. Fl.
Narashi Natha Street, Kathe
Bazar Masjid Bunder (W),
Mumbai-400 009.

PAN No. AADTS 5638 M

Appellant

Income Tax Officer-17(3)(2),
Room No. 126, 1st floor,
Vs. Kautilya Bhavan, C-41 to C-
43, G Block, Bandra Kurla
Complex, Bandra (East),
Mumbai-400051.

Respondent

Assessee by : Ms. Ruby Srivastava- Advocate &
Mr. Bharat Kumar, CA
Revenue by : Mrs. Sonia Kumar, DR

Date of Hearing : 15/02/2023
Date of pronouncement : 20/02/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 19.10.2022 passed by the Ld. Faceless Appeal Centre, Delhi, [in short 'the Ld. CIT(A)'] for assessment year 2017-18, arising from the order u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') passed by the Ld. Centralized Processing Centre (CPC) on



09.03.2019. The ground raised by the assessee are reproduced as under:

- 1. On the facts and circumstances case in law, the Ld. NaCIT(A) erred in not providing deduction u/s 80P of the Act.*
- 2. On the facts and circumstances of the case in law, the Ld. NaCIT(A) erred in not considering facts that assessee is facing issue of double taxation if addition is sustained.*

2. The assessee also raised additional ground which is reproduced as under:

- 1. On the facts and circumstances of the case in law, CPC erred in disallowing 80P deduction while processing return u/s 143(3) which is bad in law.*

3. Briefly stated, facts of the case are that in the case, the assessee filed return of income claiming deduction u/s 80P of the Act on 19.09.2017. While processing the return, the Ld. CPC denied the deduction claimed of Rs.1,82,74,406/- u/s 80P of the Act. On further appeal, the Ld. CIT(A) held that the order u/s 143(1) of the Act has merged with the assessment order u/s 143(3) of the Act dated 17.12.2019 wherein the Assessing Officer has disallowed deduction u/s 80P of the Act and therefore, no intervention was required as the subject matter and the issue involved has merged with the subsequent assessment order challenged by the assessee.

4. Before us, the Ld. Counsel of the assessee filed a copy of the order of the Ld. CIT(A) passed in relation to the order u/s 143(3)



dated 17.12.2019 and submitted the Assessing Officer has not reduced the demand which was raised consequent to u/s 143(1) of the Act, though Ld. CIT(A) has allowed the claim of the assessee in order passed with reference to 143(3) order of the Assessing Officer. We find that the Ld. CIT(A) has allowed the claim of deduction u/s 80P of the Act observing as under:

“8.0 The sole issue involved relates to Section 80P disallowance. In this respect, it is found that the assessee had, for the instant A.Yr., relied on the order passed in its own case by the Hon'ble ITAT, Mumbai Benches "G", Mumbai in ITA No.5741/Mum/2018 for Asst. Year 2014-15 dated 3/12/2018, wherein the para no. 8 & 9 read as follows:-

8. In view of the foregoing, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to allow deduction us 80P(2)(d) of the Act in respect of interest earned by the assessee from the deposits kept with Co-operative Banks.”

5. Before us, the Ld. Departmental Representative (DR) submitted that the Revenue has preferred appeal against the said order of the Ld. CIT(A) before the ITAT, hence matter being subjudice addition should not be deleted.

6. We have heard rival submission of the parties and perused the relevant material on record. In our opinion, the issue of deduction has already been allowed by the Ld. CIT(A) in 143(3) proceedings and therefore, the Revenue should have reduced the demand raised u/s 143(1) of the Act also. The Ld. AO is accordingly directed to give



effect of the finding of the Ld. CIT(A) in the impugned order that order u/s 143(1) already merged with the section 143(3) of the Act and the said addition u/s 143(3) has been deleted by the Ld. CIT(A) vide order dated 01.12.2022.

6.1 Before us, the Ld. Counsel of the assessee has raised an additional ground that the Ld. CPC was not authorized to make adjustment u/s 143(1) of the Act as the issue of deduction u/s 80P of the Act was of debatable nature. The Ld. Counsel also submitted that power to make disallowance of deduction under the heading C – “Deductions in respect of certain incomes u/s VI-A, while processing return u/s 143(1) only by the Finance Act, 2021 w.e.f. 01.04.2022 prior to that there was no power available to the Assessing Officer to allow the claim made under the heading “C-deduction in respect of certain incomes” under Chapter VI-A. She submitted that assessment year in the year under consideration being assessment year 2007-08 which is prior to empowering the CPC for carrying out such adjustments and therefore, making such adjustment was beyond the power of the CPC. She relied on the decision of the Tribunal in ITA No. 612 to 614/M/2022 for assessment year 2012-13 to 2014-15, in the case of **Meghana Apartment Co-operative Housing Society Ltd. v. ITO** order dated 20.07.2022. The relevant finding of the said decision is reproduced as under:



“7. I have heard rival contentions and perused the record. Provisions of section 80A(5) reads as under :-

“80A(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.

As per sec. 80A(5), if an assessee has not made a claim for deduction under any of the sections mentioned in sec. 80A(5) of the Act, then such deduction shall not be allowed to him. As rightly pointed out by learned AR, the provisions of section 80A(5) would be applicable only if an assessee fails to make a claim for deduction under the heading "C - Deductions in respect of certain incomes" under Chapter VIA, which includes section 80P of the Act. In the instant cases, there is no dispute that the assessee has made a claim for deduction u/s 80P of the Act. Hence the provisions of sec. 80A(5) are not applicable to the assessee.

8. I also noticed that the provisions of section 80AC which bars claiming of deduction if the return of income was not filed before the due date specified under section 139(1) of the Act, was made applicable to the deduction under the heading "C - Deductions in respect of certain incomes" under Chapter VIA of the Act w.e.f. Ist day of April, 2018. Hence, for all the three years under consideration, provisions of section 80AC are also not applicable to the assessee, since all these three years prior to assessment year 2018-19.

9. The Learned AR also brought to my notice that the power to make disallowance of deduction under the heading "C - Deductions in respect of certain incomes" under Chapter VIA, while processing return under section 143(1) of the Act has been given to the Assessing Officer only by the Finance Act 2021 w.e.f. 1.4.2021. Prior to that, there was no power available with the AO to disallow the



claim made under the heading "C - Deductions in respect of certain incomes" under Chapter VIA.

10. Hence, for all reasoning mentioned above, I am of the view that the Assessing Officer could not have disallowed the deduction claimed by the assessee under section 80P of the Act in all the three years under consideration, while processing the returns of income u/s 143(1) of the Act. Accordingly, I set aside the orders passed by Id CIT(A) on this issue in all the three years under consideration and direct the A to delete the disallowance of claim for deduction made u/s 80P of the Act."

6.2 Respectfully following the above decision, we uphold that the Ld. CPC was not authorized to carry out such adjustment for disallowance of deduction u/s 80P of the Act. The adjustment made by the CPC is accordingly deleted on this ground also.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/02/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 20/02/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai



6. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai