

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-C” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA No.614/Bang/2021
Assessment Year : 2017-18

M/s. Prathamika Krishi Pattina, Sahakara Sangha Ltd., Salagame, Hassan – 573 201. PAN : AABAP 8799 B	Vs.	ITO, Ward – 2, Belur Road, Hassan – 573 201.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Mahesh R Uppin, Advocate
Revenue by	:	Shri. Ganesh R Ghale, Standing Counsel for Dept.

Date of hearing	:	13.06.2022
Date of Pronouncement	:	13.06.2022

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 14.07.2021 of National Faceless Appeal Centre, Delhi, relating to Assessment Year 2017-18.

2. The assessee is primarily agricultural co-operative society and derives income from providing credit facilities to its members and farmers. The assessee also distributes fertilizers, manure and PDS products. For Assessment Year 2016-17, the assessee did not file return of income. The AO issued a notice under section 142(1) of the Income Tax Act, 1961 (hereinafter called ‘the Act’) calling upon the assessee to file the return of

income for Assessment Year 2017-18. Notice was issued on 11.03.2018 giving time till 31.03.2018 to file return of income. The assessee did not comply with the said notice and therefore a summons under section 131 of the Act was issued on 23.09.2019. In response to the said summons, on a hearing on 23.09.2019, Shri. Harish Gowda, CA, appeared and produced Income and Expenditure A/c, Balance Sheet and Cash Book. As per the Income and Expenditure A/c produced, the assessee had surplus in the Income and Expenditure A/c of Rs.1,89,165/-. The AO therefore issued a notice 23.09.2019 proposing to assess the assessee at the total income of Rs.1,89,165/- as income from business. The AO also proposed to deny the assessee the benefit of deduction under section 80P of the Act for the reason that the assessee did not file the return of income for Assessment Year 2017-18 making a claim for deduction under section 80P of the Act. In this regard, the AO quoted the provisions of section 80A(5) of the Act which reads as follows:

“(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.”

3. In response to the said proposal, the assessee filed reply dated 25.09.2019 in which the assessee contended that in the Financial Year 2016-17, statutory audit was carried out by the Co-operative Audit Department and there was no proper guidance with regard to filing of income tax returns. Therefore, not filing of income tax return was unintentional and the same may be condoned. The assessee also submitted that the proposal of the AO to disallow deduction under section 80P of the Act for not filing of return of income by invoking provisions of section 80A(5) of the Act would not be appropriate as provisions of section 80P of

the Act are incentive provisions meant to help primary agricultural co-operative societies which act for the benefit of farmers.

4. The request of the assessee was however not acceded to by the AO and he denied the benefit of deduction to the assessee under section 80P of the Act for the following reasons:

“6. The submissions of the assessee were carefully examined. Further, the assessee furnished the copies of the balance sheet as on 31/03/2017, profit & loss account audited by co-operative department. And as per the details furnished, the assessee has earned total income of Rs. 1,89,165/- on which the assessee should have paid taxes or claimed any deductions by filing valid return of income within the due date prescribed. However, as the assessee has not filed any such valid return, no deduction shall be allowed as per section 80A(5) of the I T Act. Hence, the total business income of the assessee is treated at Rs. 1,89,165/-.”

5. The assessee preferred appeal before the CIT(A) against the benefit of deduction under section 80P of the Act. The primary contention of the assessee before the CIT(A) was that the provisions of section 80A(5) of the Act are directory and not mandatory and therefore deduction under section 80P cannot be denied by making the provisions of section 80A(5) of the Act. The assessee relied on the decision of *ITAT Delhi in the case of Fibrefill Engineers Vs. CIT (2017) 177 TTJ 556 (Del.)* wherein it was held that the provision of sec. 80A(5) are directory in nature and not mandatory. The said section can not be invoked for denying the deduction u/s.80P even if ITR is not filed. The assessee contended that the deduction available to a Co-operative Society u/s80P is in the nature of incentive provided which cannot be denied by invoking sec. 80A(5). The assessee relied on the decision of Hon'ble Kerala High Court in ITA No. 57/2016 – in the case of *Chirakkal Service Co-operative Bank Ltd. Kannur Vs. CIT*. The

assessee relied on another decision of ITAT, Cochin Bench in ITA No. 340/Coch/2012 rendered on 05/10/2017 in Kodiyeri service Cooperative Bank Ltd. Thalassery Vs. ITO, Kannur.

6. The CIT(A), however, rejected the contentions of the assessee by holding that the provisions of section 80A(5) of the Act are unambiguous and filing of return is a precondition for claiming deduction under section 80P of the Act. The CIT(A) also distinguished the cases cited on behalf of the assessee. I do not propose to discuss those aspects because in my view the case laws and the discussions are not germane to the issue that required consideration by the CIT(A). The CIT(A) ultimately upheld the order of the AO. Hence this appeal by the assessee before the Tribunal.

7. I have heard the rival submissions. The learned Counsel for the assessee submitted that the provisions of section 80A(5) of the Act will come into play only when a return of income is filed by an assessee and the claim for deduction under Chapter VIA of the Act is not claimed in the said return. It was contended that since the assessee did not file return of income for Assessment Year 2017-18, there was no question of invoking the provision of section 80A(5) of the Act. His further submission was that section 80AC of the Act as it existed prior to its substitution by the Finance Act, 2018 w.e.f. 01.04.2018 reads as follows:

"80AC. Deduction not to be allowed unless return furnished—Where in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IC or section 80-ID or section 80-IE, 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."

He pointed out that the aforesaid provisions contemplate filing of return of income to claim deductions under certain provisions of Chapter VI “A” of the Act and 80P is not one of the section which is mentioned in section 80AC of the Act. He therefore submitted that the deduction under section 80P of the Act cannot be denied to the assessee for non filing of return of income. Learned DR, on the other hand, reiterated the stand of the Revenue as reflected in the order of the CIT(A).

8. I have given a careful consideration to the rival submissions. I agree with the submissions of the learned Counsel for the assessee that section 80A(5) of the Act is applicable only when a return of income is filed by an assessee and a deduction under Chapter VI “A” of the Act, is not claimed in such return of income. It will not apply to a case where no return of income is filed. The provisions of section 80AC of the Act, as we have already seen, contemplates denial of deduction in respect of certain provisions of Chapter VI “A” of the Act, if a return of income is not filed by an assessee. Those provisions, as rightly contended by the learned Counsel for the assessee, do not apply to the claim for deduction under section 80P of the Act. Therefore, the Revenue authorities were not justified in not entertaining the claim of the assessee for deduction under section 80P of the Act as made by the assessee. Since neither the AO nor the CIT(A) have examined the other conditions for allowing deduction under section 80P of the Act, I deem it fit and proper to remand the issue of the assessee’s eligibility to claim deduction under section 80P of the Act, in the sense with regard to the quantum of deduction and also with regard to the other conditions for allowing deduction under section 80P of the Act, for examining afresh by the AO. I therefore allow the appeal of the assessee for statistical purposes.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

**Sd/-
(N.V. VASUDEVAN)
Vice President**

Bangalore,
Dated: 13.06.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.