

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.186/RJT/2022
Assessment Year: 2019-20**

Ambaradi Seva Sahkari Mandali Ltd., vs. The DCIT (CPC),
Ambaradi, Bengaluru.
Ta. Savarkundla,
Amreli – 364 522.
[PAN – AABAA 9907 C]

**ITA No.197/RJT/2022
Assessment Year: 2019-20**

Dhareshwar Seva Sahakari Mandali Ltd., vs. The DCIT (CPC),
Dhareshwar, Bengaluru.
Rajula,
Amreli – 365 560.
[PAN – AAAAD 8596 R]

**ITA No.204/RJT/2022
Assessment Year: 2019-20**

Shree Sanaliya Seva Sahkari Mandli Ltd., vs. The ADIT (CPC),
Lital Motaliliya Sanaliya, Bengaluru.
Amreli – 365 535.
[PAN – AALAS 5721]

**ITA No.203/RJT/2022
Assessment Year: 2019-20**

Amrutpur Seva Sahakari Mandali Ltd., vs. The ADIT (CPC),
Amrutpur, Dhari, Bengaluru.
Amreli – 365 660.
[PAN – AAGAA 4908 A]
(Appellants) (Respondents)

Appellant by : Shri D.M. Rindani, AR
Respondent by : Shri B.D. Gupta, Sr. DR &
Shri Shramdeep Sinha, CIT(DR)

Date of hearing : 18.01.2023
Date of pronouncement : 10.02.2023

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These four appeals are filed by the assessees against four separate orders dated 20.04.2022, 18.05.2022, 10.06.2022 & 15.06.2022 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Years 2019-20 for all the appeals.

2. The assessees have raised identical grounds in all the appeals and hence grounds raised in ITA No.186/RJT/2022 are being reproduced hereunder:

- "1. The Learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in confirming action of CPC Bengaluru by holding that claim made by the Appellant was "Incorrect claim" as per Sec.143(1) of the Act.*
- 2. The Learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in confirming action of CPC Bengaluru by disallowing claim of deduction of Rs.18,20,276/- by failing to appreciate that provisions of Sec.143(1)(a)(v) do not provide for denial of deduction u/s 80P of the Act when the return of income is not filed within time allowed u/s.139(1) of the Act but u/s.139(4).*
- 3. The Learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in upholding action of the CPC Bengaluru in making adjustment to the returned income of the Appellant by way of an intimation u/s.143(1) and in denying the benefit of Sec.80P of the Act of Rs.18,20,280/- to the Appellant by failing to appreciate that this was not a prima facie adjustment permissible u/s.143(1)(a) of the Act.*
- 4. The Learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in not adjudicating ground of disallowance of claim of deduction of Rs.18,20,280/- u/s.80P of the Act on merits."*

3. Firstly we are taking up ITA No.186/RJT/2022 as the issue contested in all these appeals are identical. The assessee is a Co-operative Society registered under the Mumbai Co-operative Societies Act, 1925 with object and activities of providing credit facilities to its members as well as it provides facilities to members for purchase of agricultural implements, seeds, livestock or other articles intended for agricultural activities. The original return of income for the year under consideration was filed on 30.11.2020 declaring total income of Rs.nil claiming therein deduction of Rs.18,20,276/- under Section 80P of the Income Tax Act, 1961, under Section 80P(2)(a)(i) – Rs.10,22,148/-, under Section 80P(2)(a)(iv) – Rs.3,76,152/-, under Section 80P(2)(d) – Rs.3,51,076/- and under Section 80P(2)(e) – Rs.70,900/-.

Thereafter, the assessee was in receipt of communication under Section 143(1)(a) of the Act from CPC dated 08.12.2020 for proposed adjustment under Section 143(1)(a) of the Act in returned income for not granting deduction of Rs.18,20,276/- claimed in the return of income under Section 80P of the Act stating that of the assessee made incorrect claim under Section 143(1)(a)(ii) of the Act by way of deduction under Section 80P to the returned income is not filed within due date. The assessee filed response in reply to communication under Section 143(1)(c) of the Act by stating that the return of income was filed under Section 139(4) of the Act and provisions of Section 143(1)(a)(b) of the Act do not provide for denial of deduction under Section 80P of the Act. Even when the return of income is not filed within the time limit as per Section 139(1) of the Act and, therefore, denial of deduction under Section 80P vide intimation under Section 143(1) of the Act was not valid in law. The assessee also submitted that the said adjustment could not be called prima facie adjustment. Thereafter, intimation under Section 143(1) of the Act dated 22.12.2020 was received by the assessee thereby no deduction under Section 80P of the Act was made determining total income at Rs.18,20,276/-.

4. Being aggrieved by the intimation under section 143(1) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal/not allowed the appeal of the assessee.

5. The Ld. AR submitted that the return was not filed as per Section 139(1) of the Act but within the time limit of due date under Section 139(4) of the Act. Therefore, the rejection of return cannot be the criteria. The Ld. AR further submitted that the debatable issue in respect of pima facie adjustment cannot be taken into account by disallowing the claim under Section 80P of the Act which is available to the assessee. The Ld. AR relied upon the decision of Hon'ble Madras High Court in the case of Veerappampalayam Primary Agricultural Co-operative Credit society Limited vs. DCIT and Others (2021) 110 CCH 0219, which was referred by the CIT(A) will not be applicable in the present case as the Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Limited vs. CIT (2016) 95 CCH 0197 specifically stated that in cases where returns have been filed, the question of exemptions or deductions referable to Section 80P would definitely have to be considered and granted if eligible. The Hon'ble Kerala High Court most specifically observed that the

Tribunal was not justified in denying exemption under Section 80P of the Act on the mere ground of belated filing of return by the assessee concerned. The Ld. AR also relied upon the decision of Tribunal in case of Lanjani Co-operative Agri Service Society Limited & Another vs. DCIT (2022) 65 CCH 0560 (Chandigarh Tribunal) as well as decision of the Tribunal of Rajkot Bench in the case of Medi Seva Sahakari Mandali Limited vs. ADIT (CPC), ITA no.38/RJT/2022, order dated 31.10.2022.

6. The Ld. DR submitted that the Hon'ble Madras High Court has given a categorical finding that it is Administrative order and the same was properly done by the Assessing Officer as the return was filed beyond the due date of Section 139(1) of the Act. The Ld. DR relied upon the decision of Hon'ble Supreme Court in the case of Prakash Khanna, 135 taxman 327 (SC). The Ld. DR relied upon the order of the CIT(A). The Ld. DR has filed the following submissions:-

"2. All the above assesses are co-operative societies. The details of due dates of filing of return of income and the date on which they were actually filed are tabulated below:

Sr. No.	Name of the assessee	PAN	A.Y.	Due date of filing	Return filed on
1.	Ambaradi Seva Sahakari Mandli Ltd.	AABAA9907C	2019-20	30.09.2019	30.11.2020
2.	Dhareshwar Seva Sahakari Mandli Ltd.	AAAAD8596R	2019-20	31.08.2019	28.11.2020
3.	Amrutpur Seva Sahkari Mandli Ltd.	AAGAA4908A	2019-20	31.08.2019	30.11.2020
4.	Shree Sanaliya Seva Sahakari Mandali Ltd.	AALAS5721J	2019-20	31.08.2019	30.11.2020

As seen from the above details, the returns in all the four cases were filed beyond the due date of their filing as per the date specified in section 139(1). The Ld. A.O. CPC Bengaluru processed the return of income u/s. 143(1)(a)(ii) disallowing their claim of deduction u/s. 80P as the returns were not filed within the due date.

*3. The Ld. CIT(A) upheld the prlma-facie adjustments applying the provisions of section 80AC(ii). As per the provision of section 80AC(ii), no deduction under any provision of Chapter VIA under the heading "**C-deduction in respect of certain Incomes**" will be allowed w.e.f 01.04,2018 unless an assessee files the return of his income on or before the due date specified under sub-section (1) of section 139. The Ld. CIT(A) held that since the above provisions are effective from 01.04.2018 and as the returns were filed beyond*

the due date mentioned in section 139(1) only, the disallowance of deduction claimed u/s 80P was correctly made.

3.1 Thus, in view of the fact that the returns have been filed beyond the due date specified in section 139(1) of the act, the assessee was not eligible to claim deduction u/s.80P r.w.s. 80AC, the only remedy to the solution lies in the machinery provisions of the Act rather than seeking legal remedy. Such provisions are found in section 119(2)(b) which enables an assessee to approach the Board for seeking relief in such matters. The provisions of section 119(2)(b) are reproduced below:

Section 119.

"Instructions to subordinate authorities.

- (1) The Board may from time to time,
- (2) Without prejudice to the generality of the foregoing power,—
 - (a) the Board may,..... in the prescribed manner for general information;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize (any income-tax authority, not being a [*] Commissioner (Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.**

Perusal of the above provision reveals that appellate authorities have not been given powers in such cases, it therefore follows that there being no legal or debatable issue, the legislative intent to find remedy in such cases have been provided in section 119(2)(b) as discussed above.

4. In an identical case the Hon'ble Madras High Court in WP No.7038 of 2020 dated 07.04.2021 in the case of '**Veerappampalayam Primary Agricultural Co-operative Society Ltd., Vs. DCIT**' [138 taxmann.com 571] dismissed the writ petition of the assessee. In the above referred cases supra, the CPC has made prima-facie adjustment under sub-clause (ii) of section 143(1)(a) which states that- "on incorrect claim if such incorrect claim is apparent from any information in the return".

In the said writ petitions the Hon'ble Madras High Court had decided the matter in favour of the revenue holding that the prima-facie adjustment u/s 143(1)(a) was possible. It held that:

"Section 80AC of the Income-tax Act, 1961 – Deduction - Not to be allowed unless return furnished (Belated return) - Assessment Year 2018-19 - Whether provisions of section 80AC(ii) make it dear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if return of income in that case were filed within

prescribed due date - Held, yes - Whether thus, no claim under any provisions of Part C of Chapter VIA would be admissible in case of a belated return - Held, yes [Para 8] [In favour of revenue]

Section 143 of the Income-tax Act, 1961 - Assessment - General (Intimation under section 143(1)(a)) - Assessment year 2018-19 - Whether scope of an 'intimation' under section 143(1)(a), extends only to making of adjustments based upon errors apparent from return of income and patent from record - Held, yes [Para 7] [in favour of revenue]".

The Hon'ble Court observed that the provisions of section 80AC(ii) was very clear in the sense that any deduction claimed under part C of Chapter VIA would be admissible only if the return of income in the case was filed within the prescribed due date. The date of filing of return of income would be apparent from the return itself and that the AO could draw an inference whether the return was filed within the statutory limit prescribed u/s.139(1) which is basically a mechanical exercise and within the scope of section 143(1)(a)(ii) of the Act. (Para 8).

4.1. Further in a recent decision in the case of **Janki Vaishali Co-operative Housing Society Ltd. Vs CIT(A) NaFAC New Delhi**, the ITAT Mumbai Bench in ITA No.944/MUM/2022 (AY 2018-19) (copy encl. date of order 31.10.2022) has also upheld the decision of the CIT(A) in disallowing the assessee's claim of deduction under 80P(2)(d) of the IT Act, 1961 on the ground that the assessee had not filed the return of Income within due date as specified in section 139(1) of the Act (emphasis applied). [para 6]. The Hon'ble Tribunal has held that due to the amended provisions brought about by Finance Act, 2018 to section 80AC, to include all deductions admissible under Chapter VIA under the heading "**C- deduction In respect of certain incomes**", the deduction would not be applicable from 01.04.2018 i.e. AY 2018-19.

5. Thus, the issue is no longer debatable as the matter has been decided against the assessee by Hon'ble Courts. As per the amended provision of section 80AC, benefit of deduction was not available to an assessee w.e.f. 01.04.2018 if the return of income was filed beyond the due date as provided in Section 139(1) of the Act. As discussed earlier the remedy to the issue lies in section 119(2)(b). The current provisions of section 143(1)(a) allows an Assessing Officer to make prima-facie adjustment of disallowance of deduction claimed u/s. 10AA or under any provisions of Chapter VIA w.e.f. 1st April 2021, if the return is furnished beyond the due date specified under sub-section 1 of section 139. This shows the legislative intent while amending sub-section (v) of section 143(1)(a) w.e.f. 01.04.2021 to include all provisions of Chapter VIA if the return of income was filed beyond the due date specified under sub-section 1 of section 139. Hence, no legal issue emanates before the Hon'ble ITAT. At the most the assessee can challenge it before the Hon'ble High Court or Supreme Court.

5.1 Now, it remains to be examined whether a return filed u/s.139(4) can be said to be a return filed within due date as per the provision of section 139(1). Though, the Hon'ble Kerala High Court in the case of **Chirakkal Service Co-**

operative Bank Ltd. Vs CIT (68 taxmann.com 298] (copy enclosed) has held that the return filed beyond the period stipulated u/s 139(1) or 139(4) or u/s. 142(1) or section 148 can also be accepted and acted upon for allowing the claim u/s.80P. However, the Hon'ble Court has not considered the decision of the Hon'ble Supreme Court of India in **the case of Prakash Nath Khanna Vs. CIT (135 taxmann 327]** (copy enclosed) wherein the Hon'ble Supreme Court held that the time within which return is to be furnished is indicated only in sub-section 1 of section 139 and not in sub-section 4 of section 139 and therefore a return filed u/s.139(4) would not dilute the fact that the return was filed after the due date (para 12). Further in a recent decision, the **Hon'ble Supreme Court in PCIT Vs. Wipro [140 taxmann.com 223 (SC)]** has further held that for claiming benefit u/s. 10B, it was mandatory for the assessee to file the declaration as per the provisions of section 139(1), which is mandatory in nature and a direction as well. The decision of the Hon'ble Kerala High Court is sub-silentio on the ratio of the above decision of the Hon'ble Supreme Court in the case of Prakash Nath Khanna Vs. CIT [135 taxmann 327].

5.2 Further, the Hon'ble Kerala High Court in **Chirakkal Service Co-operative Bank Ltd. Vs CIT**, has not considered the machinery provisions of section 119(2)(b).

6. The Hon'ble ITAT, Rajkot Bench while deciding similar cases in its order ITA No.38/Rjt/2022 Assessment Year 2019-20 dated 31.10.2022 has not considered the submissions made by the Sr. DR while allowing the appeals of the assessee for which a MA is being filed shortly before the Hon'ble Tribunal. Further, while referring to the case of **Chirakkal Service Co-operative Bank Ltd. Vs CIT** the Hon'ble ITAT lost track of the fact that the Hon'ble High Court had not considered the decisions of Hon'ble Supreme Court mentioned in para 5.1 in its order and therefore the principle of 'ratio decidendi' will not apply in these present cases under the consideration of the Honourable Tribunal.

7. In the hearing in the above cases on 19.01.2023, the Ld. AR has made written submission in these cases relying upon the decision of the Hon'ble ITAT, Chandigarh in the case of Lanjani Co-operative Agri Service Society Ltd. and others Vs DCIT. The Hon'ble ITAT has allowed the appeal relying on the provision of section 143(1)(a)(v) which was amended by the Finance Act, 2021 which gave jurisdiction to the AO to make prima facie adjustments U/s.143(1)(a) if the return was filed beyond the due date, w.e.f. 01.04.2021 only. The Ld. AR has highlighted the fact that the Hon'ble Tribunal, Chandigarh Bench has clearly distinguished the issue of prima-facie adjustment u/s. 143(1)(a) r.w.s. 80P and 80AC viz-a-viz the decision of the Hon'ble Madras High Court in WP No.7038 of 2020 dated 07.04.2021 in the case of **'Veerappampalayam Primary Agricultural Co-operative Society Ltd. Vs. DCIT' [138 taxmann.com 571]**, The Hon'ble ITAT Chandigarh has allowed the appeal relying on the provision of section 143(1)(a)(v) which was amended by the Finance Act, 2021 which gave jurisdiction to the AO to make disallowance on the grounds of return being filed beyond the due date whereas the Hon'ble Madras High Court relied upon the provisions of section 80AC(ii) to uphold the adjustments made by the Ld. AO which have been made under clause (ii) of

section 143(1)(a). Hence, the decision of the Hon'ble Madras High Court is also distinguishable from the decision of the Hon'ble ITAT, Chandigarh Bench.

Most importantly, the Hon'ble Chandigarh Tribunal has not considered the two decisions cited above of the Hon'ble Supreme Court in so far as the determination of due date is concerned.

8. In view of the above legal and administrative provisions, the appeals of the assessee may be dismissed as non-maintainable as they can seek remedy U/s.119(2)(b) of the Act, it is emphasized that the authority u/s. 119(2)(b) has not been delegated to appellate authorities.

Submitted for your honors' kind consideration."

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee though filed return of income not as per Section 139(1) of the Act due date, but prior to due date of Section 139(4) of the Act. This fact was not disputed by the Revenue at any juncture. In the light of the decision of Hon'ble Kerala High Court in case of Chirakkal Service Co-operative Bank Limited (supra), the Hon'ble High Court has observed that denying the exemption under Section 80P of the Act merely on the ground of belated filing of return by the assessee is not justifiable. The Hon'ble High Court observed as under :-

"19. Section 80A(5) provides that where the assessee fails to make a claim in his return of income for any deduction, inter alia, under any provision of Chapter VIA under the heading "C.-Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder. Therefore, in cases where no returns have been filed for a particular assessment year, no deductions shall be allowed. This embargo in section 80A(5) would apply, though section SOP is not included in section 80AC. This is so because, the inhibition against allowing deduction is worded in quite similar terms in sections 80A(5) and 80AC, of which section 80A (5) is a provision inserted through the Finance Act 33/2009 with effect from 1.4.2013 after the insertion of section 80AC as per the Finance Act of 2006 with effect from 1.4.2006. This clearly evidences the legislative intendiment that the inhibition contained in subsection 5 of section 80A would operate by itself. In cases where returns have been filed, the question of exemptions or deductions referable to section SOP would definitely have to be considered and granted if eligible.

20. Here, questions would arise as to whether belated returns filed beyond the period stipulated under section 139(1) or section 139(4) as well as following sections 142(1) and 148 proceedings could be considered for exemption. If those returns are eligible to be accepted in terms of law, going by the provisions of the statute and the governing binding precedents, it goes without

saying that the claim for exemption will also stand effectuated as a claim duly made as part of the returns so filed, for due consideration.

21. When a notice under section 142(1) is issued, the person may furnish the return and while doing so, could also make claim for deduction referable to section 80P. Not much different is the situation when pre-assessment enquiry is carried forward by issuance of notice under section 142 (1) or when notice is issued on the premise of escaped assessment referable to section 148 of the IT Act. This position notwithstanding, when an assessment is subjected to first appeal or further appeals under the IT Act or all questions germane for concluding the assessment would be relevant and claims which may result in modification of the returns already filed could also be entertained, particularly when it relates to claims for exemptions. This is so because the finality of assessment would not be achieved in all such cases, until the termination of all such appellate remedies. Under such circumstances, the Tribunal was not justified in denying exemption under section 80P of the IT Act on the mere ground of belated filing of return by the assessee concerned. A return filed by the assessee beyond the period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est in law and invalid for the purpose of deciding exemption under section 80P of the IT Act. We thus answer substantial questions of law B and C formulated and enumerated above."

8. In respect of the decision of Hon'ble Madras High Court, the same will not be applicable in the present case as in the said case whether the assessee therein has filed the return of income beyond the due date of Section 139(4) or not has not been taken into account. Thus, the issue contested by the assessee herein is squarely covered by the Hon'ble Kerala High Court decision and hence appeal being ITA No.186/RJT/2022 is allowed.

9. ITA No.197/RJT/2022, ITA No.204/RJT/2022 & ITA No.203/RJT/2020 are identical in nature and, therefore, the same reasoning will be applicable as given by us hereinabove. Hence, these appeals are also allowed

10. In the result, all the 4 appeals are allowed.

Order pronounced in the open Court on this 10th February, 2023

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 10th day of February, 2023

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot*