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

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1062/Bang/2022
AssessmentYear:2018-19

M/s. Syndicate Bank Staff Co-operative Society Limited G6, Manish Towers No.84, JC Road, Bengaluru 560 002 **PAN NO : AALAS0134P**	**Vs.**	Deputy Commissioner of Income-tax CPC Bengaluru 560 500
APPELLANT		**RESPONDENT**

Appellant by	**:**	N O N E
Respondent by	**:**	Shi Ganesh R Gale, Standing Counsel for Department.

Date of Hearing	**:**	26.12.2022
Date of Pronouncement	**:**	03.01.2023

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order passed by CIT(A) dated 20.9.2022 on the following grounds of appeal:

1. *The impugned order of the Appellate Commissioner of Income Tax is liable to set aside insofar as the same is incorrect, irregular, improper, unlawful and oppose to the law and facts of the case.*

2. *The Learned Appellate Commissioner erred in upholding the disallowance of deduction claimed u/s 80P(2)(a)(i) of theActdisregardingthefactthattheAppellanthavingfiledtheReturnofIncome within the time specified u/s 139(4), the Return of Income so filed by it -on 31.12.2018 is deemed to have been filed u/s 139(1) in view of the provisions contained u/s 139(4) of the Act.*

3. *The Learned Appellate Commissioner erred in upholding the Assessing Officer's action of impugned disallowance of deduction claimed u/s 80P(2)(a)(i) of the Act, assuming authority u/s 80AC of the Act, when in fact the Appellant is deemed to have filed its return of income u/s 139(1) of the Act.*

4. *deduction claimed u/s 80P(2)(a)(i) of the Act on account of a mere technical ground of belated filing, without considering that section 80P is a benevolent provision and the deduction has to be liberally construed as held in the case of Mavilayi Service Cooperative Bank Ltd. & Others v. CIT 431 ITR 1 (SC).*

5. *The Learned Appellate Commissioner erred in upholding the disallowance of deduction claimed u/s 80P(2)(a)(i) of the Act disregarding the principles laid down by the Jurisdictional High Court of Karnataka in ITA No.435 of 2004 in the case of FATHIMA BAI v. ITO.*

6. *The Learned Appellate Commissioner erred in upholding the levy of fee u/s 234F at Rs.5,000/- even when the Appellant is only liable to pay Rs.1,000/- for the said delay in filing the return well within the relevant assessment year.*

7. *That the impugned order is liable to set aside in so far as the Appellate Commissioner erred in upholding the levy of Interest of 9,320/- u/s 234A even when the Appellant is not liable there for under the law*

8. *That the impugned order is liable to set aside in so far as the Appellate Commissioner erred in upholding the levy of interest of 32,620/- u/s234Beven when the Appellant is not liable there for under the law*

9. *That the impugned order is liable to set aside in so far as the Appellate Commissioner erred in upholding the levyofinterestof11,768/- u/s234Cevenwhen the Appellant is not liable there for under the law.*

2. The brief facts of the case are that the due date for filing the return of income was 31.8.2018, whereas assessee has filed return of income on 31.12.2018 declaring income from business or profession at Rs.7,64,063/-, which was claimed as deduction u/s 80P(2)(a)(i) of the Act under Chapter VI-A of the Act. The return was processed u/s 143(1) of the Act on 31.5.2019 denying the deduction claimed u/s 80P(2)(a)(i) of the Act and raised the demand of Rs.2,90,710/-. Aggrieved from the above order, the assessee has filed appeal before CIT(A) and the assessee has also relied on some

case laws, which have been considered by the ld. CIT(A). The ld. CIT(A) has observed as under:

"5. Grounds 1 to 10 excluding ground No.7

The appellant filed the return of income on 31.12.2018 claiming deduction of Rs.7,64,063/- u/s 80P of the Act and the extended due date for filing of the original return was 31.08.2018. Thus there is a delay in filing the return. The CPC disallowed the deduction stating that the appellant is not entitled to deduction on the ground that the appellant filed the return of income beyond the due date mentioned in Sec.139(1) of the Act. In this regard, Section 80AC of the Act is reproduced beow:-.

> *"Section 80AC. Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after-*
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> *(i)the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-1A or section 80-lAB or section 80-1B or section 80-IC or section 80-ID or section 80-1E;*
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> *(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.- Deductions in respect of certain incomes",*
>
> *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."_*

Thus, it is clearly evident that deductions u/s 80P is not allowable if the return is not filed within the stipulated time mentioned in section 139(1) of the Act. Reliance is placed in the case of ***Bal Kishan Dhawan (HUF) Vs. ITO*** *reported in* ***[2012] 18 Taxmann.com 234*** *(in which the claim was made u/s 139(4) of the Act), Hon'ble Amritsar Bench of the Tribunal had categorically held that Sec.80AC not only contains the time limit for claiming deduction u/s 80IB but also indicates the consequences that would follow if return of income containing the claim of deduction is not furnished before the due date specified in sec.139(1) of the I.T. Act. Every provision in the statute has a purpose and the parliament in its wisdom has introduced the Sec.80AC and proviso to sec.139(1) to specify that the appellant's claiming certain deduction have to file their returns within the due date specified u/s 139(1) of the Act. Any decision to say that it is only directory and the appellant are entitled to make claims of deduction even if returns are filed u/s 139(4) would only make the provision redundant.*

5.1 The appellant further relied on various judicial decisions in regards to the liberal interpretation should be given in case of deductions. In this issue, the

observation of the Supreme Court in the following cases are relevant and are to be taken on note:

*(i) In the case of **Orissa State Warehousing Corporation Vs. CIT** reported in **237 ITR 589 (SC),** Hon'ble Supreme Court held that 'Fiscal statue shall have to be interpreted on the basis of the language used there in and not de horsthe same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislature. The Court is to ascribe natural and ordinary meaning to the words used by the legislature and the Court ought not, under any circumstances to substitute its own impression and ideas in place of the legislative intent as his available from a plan reading of the statutory provisions".*

*(ii) In the case of **KeshavjiRavji& Co. Vs. CIT** reported in **183 ITR 1 (SC)** it was held that "as long as there is no ambiguity in the statutory language resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the legislation cannot then appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used, it is nowhere else. The need for interpretation arises when the words used in the statute are, on their terms, ambivalent and do not manifest the intent of the legislature.*

Artificial and unduly latitudinarian rules of construction which, with their general tendency to 'give the tax payer the breaks' are out of place where the legislation has a fiscal mission".

*(iii) In the case of **NQVOPAN India Ltd Vs. Collector or central Excise** reported in 79 **ELT 769 (SC),** it was held that "The principle that in case of ambiguity, a taxing statute should be construed in favour of assessee-assuming that the said principle is good and sound does not apply to the construction of an exception or exempting provisions. They have to be construed strictly. A person invoking an exception or exemption provision to relieve him of the tax liability must establish that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the state".*

*5.2 In view of the above Supreme Court observations, **it** is held that there is no ambiguity in Sec. 80AC of the Act. Therefore, in view of the clear cut provisions of section 80AC of the Act, deduction u/s 80P of the Act cannot be allowed to the appellant as the return of income was filed beyond the due date as specified u/s 139(1) of the Act. In view of this, the disallowance made by the CPC is upheld. Therefore, ground no 3 of the appeal is **dismissed.***

Ground - 7

6. Before proceeding on to adjudicate the ground of appeal raised by the appellant in this appeal, it is pertinent to mention here that

"The due date for filing the Return by the Appellant being 30.9.2018 the AO erred in levying the Fee of Rs.5,000/- u/s 234F of the Act."

I have carefully considered the submission of the appellant. On verification of details filed by the appellant it is found that the appellant has filed its return of income u/s 139(4) of the I. T. Act, 1961 on 31.12.2018 for the A.Y. 2018-19. However, section 271 F clearly states that "If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139 or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees.".

6.1 The AO had imposed the penalty u/s 271F on the ground that the assessee had without reasonable cause, failed to furnish return of income u/s 139(1) of the I. T. Act, 1961 for A.Y. 2018-19 and thus committed default within the meaning of Sec. 271 of the Act. Even during the course of appeal proceedings, the appellant has not filed any valid, reasonable and cogent reason for not filing his return of income, even though the provisions of Section 139(1) of the Income Tax Act explicitly required him to file his Return of Income within the stipulated time. The penalty levied by the AO u/s 271F, is therefore upheld and the appellant's appeal accordingly dismissed."

Accordingly, the ld. CIT(A) dismissed the appeal of the assessee.

3. None was present on behalf of the assessee. Therefore, we proceed to dispose off this appeal after hearing the learned DR. The ld. DR submitted that the assessee is a co-operative society and it filed return of income after the due date. The due date for filling of return of income was 31.8.2018, whereas the assessee has filed return of income on 31.12.2018, which is beyond the period of due date for the relevant assessment year. Accordingly, as per section 80AC(ii) of the Act, the assessee is not eligible to claim deduction as per the amended provisions. The deduction / exemption provision should be read with strict interpretation as decided by the Hon'ble Supreme Court of India in the case of Dilip Kumar & Company &

others (Civil Appeal No. 3327 of 2007) dated 30.07.2008. He also reiterated the order of ld. CIT(A). He further relied on the judgement of Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. Deputy Commissioner of Income-tax reported in (2022) 138 taxmann.com 571 (Madras) and submitted that the adjustments can be made while processing the return as per section 143(1) of the Act and the deduction under Chapter VI-A should not be allowed if the assessee has filed return of income belatedly. The relevant part is as under:-

"6. Section 143 (1) (a) of the Act reads thus:—

'143.( ) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-IDorsection 80-1E, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

***Provided** that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:*

***Provided further** that the response received from the assessee, if any, shall be considered before making any adjustment, and*

in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:'

7. The scope of an 'intimation' under section 143(1)(a) of the Act, extends to the making of adjustments based upon errors apparent from the return of income and patent from the record. Thus to say that the scope of 'incorrect claim' should be circumscribed and restricted by the Explanation which employs the term 'entry' would, in my view, not be correct and the provision must be given full and unfettered play. The explanation cannot curtail or restrict the main thrust or scope of the provision and due weightage as well as meaning has to be attributed to the purposes of section 143(1)(a) of the Act.

8. The provisions of section 80AC(ii) make it clear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if the return of income in that case were filed within the prescribed due date. Thus no claim under any of the provisions of Part C of Chapter VIA would be admissible in the case of a belated return. There is no dispute on this position. The date of filing of a return of income would be apparent on the face of return and upon a perusal thereof, it would be clear as to whether the return is a valid return, having been filed within the statutory time limit, or a belated one. This is mechanical exercise and one that can be carried out by the CPC, very much within the scope of section 143(1)(a)(ii) of the Act."

3.1. The ld. DR. further submitted that even if it is considered that the books of accounts are audited under the relevant law of the Cooperative Society Act, the extended due date for filling of return of income was 31.10.2018, but the assessee did not comply upto the extended date. The ld. DR also submitted that the case law relied by the assessee in his statement of facts & grounds of appeal are not applicable in the present facts of the case.

4. After hearing the Ld. D.R. and perusing the documents available on records and orders of the authorities below, I noticed that the assessee is a co-operative society. It filed its return of income belatedly u/s 139(4) of the Act on 31.12.2018 claiming deduction u/s 80P(2)(a)(i) of the Act on income earned by it. But while processing the return u/s 143(1), the deduction was denied and in appeal before the ld. CIT(A), the ld. CIT(A) has also denied the deduction claimed u/s 80P(2)(a)(i) of the Act by observing that

the assessee did not file return of income within the due date as is specified u/s 139(1) of the Act, therefore, as per amended provisions of section 80AC (ii) of the Act, the assessee is not eligible to claim deduction.

5. The assessee has relied on the judgment of Hon'ble Supreme Court in the case of Mavilayi Service Cooperative Bank Ltd. & Others v. CIT 431 ITR 1 (SC). The relevant part is as under :-

> ***20.*** *We now come to the judgment of this Court in Citizen Cooperative Society Ltd. (supra). This judgment was concerned with an assessee who was established initially as a mutually aided cooperative credit society, having been registered under section 5 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995. As operations of the assessee began to spread over States outside the State of Andhra Pradesh, the assessee got registered under the Multi-State Cooperative Societies Act, 2002 as well. The question that the Court posed to itself was as to whether the appellant was barred from claiming deduction in view of Section 80P(4) of the Income-tax Act - see paragraph 5. After setting out the findings of fact in that case, and the income tax authorities concurrent holding that the society is carrying on banking business and for all practical purposes acts like a co-operative bank, this Court then held as follows:*
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> > *"18. We may mention at the outset that there cannot be any dispute to the proposition that section 80-P of the Act is a benevolent provision which is enacted by Parliament in order to encourage and promote growth of cooperative sector in the economic life of the country. It was done pursuant to the declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (see Bajaj Tempo Ltd. v. CIT [1992] 3 SCC 78]). It is also trite that such a provision has to be construed as to effectuate the object of the legislature and not to defeat it (see CIT v. Mahindra and Mahindra Ltd. [1983] 4 SCC 392. Therefore, it hardly needs to be emphasised that all those cooperative societies which fall within the purview of section 80-P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to any one or more of such activities which are mentioned in sub-section (2).*
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> > *19. Since we are concerned here with sub-clause (i) of clause (a) of sub-section (2), it recognises two kinds of cooperative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members.*
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> > *20. In Kerala State Coop. Mktg. Federation Ltd. v. CIT [1998] 5 SCC 48, this Court, while dealing with classes of societies covered by section 80-P of the Act, held as follows:*
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> > *"6. The classes of societies covered by section 80-P of the Act are as follows:*
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> > *(a) engaged in business of banking and providing credit facilities to its members;*
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> ** ** **
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> > *7. We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question*

arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption."

21. In CIT v. Punjab State Coop. Bank Ltd. [2008 SCC OnLine P&H 2042], while dealing with an identical issue, the High Court of Punjab and Haryana held as follows:

"8. The provisions of section 80-P were introduced with a view to encouraging and promoting the growth of the cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The different heads of exemption enumerated in the section are separate and distinct heads of exemption and are to be treated as such. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax, then it has to be seen whether such income fell within any of the several heads of exemption. If it fell within any one head of exemption...It means that a cooperative society engaged in carrying on the business of banking and a cooperative society providing credit facilities to its members will be entitled for exemption under this sub-clause. The carrying on the business of banking by a cooperative society or providing credit facilities to its members are two different types of activities which are covered under this sub-clause.

** ** **

13. So, in our view, if the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of section 80-P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary cooperative society, it was so made clear as is evident from clause (f) with reference to a milk cooperative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk cooperative society."

The aforesaid judgment of the High Court correctly analyses the provisions of section 80-P of the Act and it is in tune with the judgment of this Court in Kerala State Coop. Mktg. Federation Ltd. [(1998) 5 SCC 48]

22. With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a cooperative bank. However, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction would still be provided. Thus, cooperative banks are now specifically excluded from the ambit of section 80-P of the Act.

23. Undoubtedly, if one has to go by the aforesaid definition of "cooperative bank", the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a cooperative bank, it is imperative to have a licence from Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a cooperative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of section 80-P.

24. So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under section 80-P of the Act is not sub-section (4) thereof. What has been noticed by the assessing officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violation of the provisions of MACSA under which it is formed. It is pointed out by the assessing officer that the

assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of "nominal members". These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in fixed deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as cooperative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the assessing officer that the activity of the appellant is in violation of the Cooperative Societies Act. Moreover, it is a cooperative credit society which is not entitled to deduction under section 80-P(2)(a)(i) of the Act.

25. It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a detailed discussion in this behalf in the order of the assessing officer, our purpose would be served by taking note of the following portion of the discussion:

"As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality:

(i) that no person can earn from him;

(ii) that there a profit motivation;

(iii) and that there is no sharing of profit.

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20-12-2010]. [Though the bank formed the third party vis-à-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs.]

In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the Society as such the AOP body by the Society is not covered by concept of mutuality at all."

26. These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be treated as a cooperative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80-P of the Act."

***21.** An analysis of this judgment would show that the question of law that was reflected in paragraph 5 of the judgment was answered in favour of the assessee. The following propositions may be culled out from the judgment:*

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4).

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***45.** To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.*

As per above judgment it has been stated that the section 80P is a benevolent provision, but above decision is before the amendment brought in the section 80AC, therefore the above decision cited by the assessee in its appeal set will not support to the assessee's case.

6. Before deciding the issue, it is necessary to refer to section 80AC of the Act, which was amended w.e.f. 1.4.2018, which reads as under:

> *"80AC: Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after –*
>
> *(i) the 1st day of April, 2006 but before the 1st day of April, 2018 any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;*
> *(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C-Deductions in respect of certain incomes."*

7. On going through the above inserted clause (ii) in section 80AC of the Act, the assessee has to comply the section 80AC of the Act, if it wants to claim deduction under Chapter VIA under the heading "C-Deductions in respect of certain incomes". The assessee has claimed deduction U/s 80P(2)(a)(i) on profits earned during the year and filed return of income on 31.12.2018, which is beyond the due date as prescribed as per section 139(1) of the Act, accordingly the assessee is not complying with the condition which are prescribed by section 80AC(ii) of the Act. The Hon'ble Apex Court in the recent decision , settled the law in case of an exemption / deduction clause in a tax statute in the case of Checkmate Services (P.) Ltd. *v.* Commissioner of Income-tax reported in [2022] 143 taxmann.com 178 (SC) in which it has been held as under:-

> ***48.*** *One of the rules of interpretation of a tax statute is that if a deduction or exemption is available on compliance with certain conditions, the conditions are to be strictly complied with Eagle Flask Industries Ltd. v. CCE 2004 taxmann.com 350 (SC)/2004 Supp. (4) SCR 35. This rule is in line with the general principle that taxing statutes are to be construed strictly, and that there is no room for equitable considerations.*
> ***49.*** *That deductions are to be granted only when the conditions which govern them are strictly complied with. This has been laid down in State of Jharkhand v. Ambay Cement 2005 taxmann.com 1352 (SC)/[2005] 1 SCC 368 as follows:*
> *"23.... In our view, the provisions of exemption clause should be strictly construed and if the condition under which the exemption was granted stood changed on account of any subsequent event the exemption would not operate.*
> *24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notifications.*
> *25. In our view, the failure to comply with the requirements renders the writ petition filed by the respondent liable to be dismissed. While mandatory rule must be strictly observed, substantial compliance might suffice in the case of a directory rule.*

26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."

This was also reaffirmed in a number of judgments, such as CIT v. Ace Multi Axes Systems Ltd. [2017] 88 taxmann.com 69/[2018] 252 Taxman 274/400 ITR 141 (SC)/[2018] 2 SCC 158.

***50.** The Constitution Bench, in Commissioner of Customs v. Dilip Kumar & Co. [2018] 95 taxmann.com 327/69 GST 239 (SC)/[2018] 9 SCC 1 endorsed as following:*

"24. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution ["265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law."] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.

** ** **

34. The passages extracted above, were quoted with approval by this Court in at least two decisions being CIT v. Kasturi & Sons Ltd. [CIT v. Kasturi & Sons Ltd., (1999) 3 SCC 346] and State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] (hereinafter referred to as "Kesoram Industries case [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201]", for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

'(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

(ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and

(iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.'"

The above judgment was rendered in respect of disallowance of employees' contribution to P.F. & ESI for not complying as per the provisions of section 36(1)(va) r.w.s. 2(24)(x) and 43B of the I.T.Act, but the ratio decided in regard to interpretation of exemption & deduction compliance provisions will apply in this case also.

7.1. After reading of the above recent judgment, the assessee was required to file its return of income for claiming the deduction u/s 80P(2)(a)(i) of the Act within the due date as per amendment made in the section 80AC of the Act., whereas the assessee has filed return of income on 31.12.2018, which is beyond the due date, therefore the assessee is not eligible for claiming benefit of deduction u/s 80P(2)(a)(i) of the Act. The assessee has relied on judgments, which have been quoted in its grounds of appeal, which are not applicable in the present facts of the case. My view is supported by the judgment of the Hon'ble Madras High Court, cited supra, in which it has been observed that the adjustment can be made u/s 143(1) of the Act. while processing the return of income and the provisions of section 80AC(ii) make it clear that any deduction that is claimed under Part C of Chapter VI-A would be admissible only if the return of income in that case were filed within the prescribed due date. Thus, no claim under any of the provisions of Part C of Chapter VIA would be admissible in the case of a belated return. Respectfully following the above judgments relied by me and the ld. DR & considering the entire facts of the case and grounds of appeal taken by the assessee, I hold that the assessee is not eligible to claim deduction as per section 80P(2)(a)(i) of the Act. Accordingly, the grounds raised by the assessee in this regard is dismissed.

8. The next ground is with regard to levy of fee u/s 234F of the Act, which is ground No.6. I observed that the assessee has filed return of income belatedly and therefore, he is liable for levy of fee as per section 234F of the Act. The section 234F of the Act reads as under:

> ***"234F.*** *[(1) Without prejudice to the provisions of this Act, where a person required to furnish a return of income under section 139, fails to do so within the time prescribed in sub-section (1) of the said section, he shall pay, by way of a fee, a sum of five thousand rupees:*

Provided that if the total income of the person does not exceed five lakh rupees, the fee payable under this section shall not exceed one thousand rupees.]

(2) The provisions of this section shall apply in respect of return of income required to be furnished for the assessment year commencing on or after the 1st day of April, 2018]."

9. As per the above proviso of the section, if the total income of the person exceeds Rs.5 lakhs, he is liable for a levy of fee of Rs.5,000/- if he did not file his return of income within the due date as per section 139(1) of the Act. In the impugned case, the total income of the assessee is Rs.7,64,063/-, which is more than Rs.5 lakhs. The total income has been defined in section 2(45) of the Act. Accordingly, ground No.6 raised by the assessee is dismissed.

10. Ground Nos.7, 8 & 9 are consequential in nature.

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

Order pronounced in the open court on 3rd Jan, 2023.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 3rd Jan.,2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.