

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Shri Ramit Kochar, Accountant Member**

**ITA No. 528/Ahd/2024  
Assessment Year 2018-19**

Punyabhoomi Welfare Service Society, 22/36, Pankaj Society, Opp.State Bank of India, Paldi Bhattha, Ahmedabad-380009, Gujarat PAN: AADAP7659J (Appellant)	v.	The Income Tax Officer, Ward-5(3)(1), Ahmedabad/AO, CPC, Bengaluru (Respondent)
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**Assessee by: Shri Varis Isani, Advocate**  
**Revenue by: Shri M. Anand Kumar, Sr. D.R.**

Date of hearing : 19-06-2024  
Date of pronouncement : 03-07-2024

**आदेश/ORDER**

This appeal in ITA No. 528/Ahd/2024 for assessment year 2018-19 has been filed by the assessee with Income Tax Appellate Tribunal, Ahmedabad, which has arisen from the appellate order dated 10<sup>th</sup> October, 2023 in DIN & Order No. ITBA/NFAC/S/250/2023-24/1056937257(1) passed by National Faceless Appeal Centre(NFAC), Delhi , which appeal

before ld. CIT(A), NFAC in turn has arisen from the rectification order dated 06-01-2020 passed by CPC u/s. 154 of the Income-tax Act, 1961 (Document Identification No. CPC/189/U5/19711641093) for assessment year 2018-19.

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad, which reads as under :-

- 1. The Lrd. Commissioner of Income Tax(Appeals) (for short "CIT(A)")-National Faceless Appeal Centre(for short "NFAC") has erred in confirming the action of the assessing officer -CPC (for short "AO")- Bangalore , in denying the deduction of Rs. 782092/- u/s 80P of the Income Tax Act.*
- 2. The Lrd. CIT(A) has grievously erred in law in confirming the rejection of application filed by the appellant u/s 154 of the Income Tax Act and confirmed the order of Lrd. Assessing Officer.*
- 3. The Lrd. CIT(A) has grievously erred in law in not considering the claim of deduction u/s 80P as the appellant is governed by the concept of mutuality and entire income is exempt from taxation . The decision of Lrd. CIT(A) rejecting the rectification application u/s 154 of the IT Act confirming the order passed by the Lrd. AO is highly unjustifiable , unwarranted and bad in law.*
- 4. The Lrd. CIT(A) has on facts and law erred in not considering issue which was filed u/s 154 of the Income Tax Act by of rectification and considered that appellant has not filed any appeal against intimation u/s 143(1) of the Income Tax Act and appellant's claim is debatable. The order passed may please deserved to be quashed and set aside.*
- 5. The Lrd. CIT(A) has erred in law in not appreciating application filed by the appellant u/s 154 of the IT Act against the intimation u/s 143(1) passed by the Lrd.*

*Assessing Authority . Since the mistake was apparent from the record appellant has filed rectification application u/s 154 as there is no other remedial legal way-out. Hence the appellant prays that Rs. 782092/- to be allowed to be claimed as deduction u/s 80P of the Income Tax Act.*

*6. The appellant craves leave to add , alter or amend any of the grounds of appeal either before or at the time of hearing of the appeal.”*

3. The brief facts of the case are that the assessee filed return of income declaring gross total income of Rs. 7,82,092/- on 28<sup>th</sup> August 2018 u/s. 139 of the Act for the impugned assessment year .The assessee claimed deduction under Chapter VIA of the Act to the tune of Rs. 7,82,092/- and the net income declared by assessee being chargeable to tax was Nil. However, CPC processed the return of income vide order dated 12<sup>th</sup> July, 2019 u/s. 143(1) of the Act , wherein the deduction allowed under Chapter VIA was not allowed by Revenue to the assessee and the income chargeable to tax was computed at Rs. 7,82,092/-, vide intimation u/s 143(1) dated 12.07.2019.

4. Aggrieved , the assessee filed first rectification application u/s. 154 which was processed by CPC. The assessee filed second rectification application u/s 154 on 17-12-2019 which was rejected by CPC vide order dated 6<sup>th</sup> January, 2020 ,

wherein the claim of the assessee for deduction under chapter VIA was rejected by CPC, by holding as under:

*“As seen from the e-filed return of income and rectification filed by you. It is found that you have not correctly filled Sch. VIA, for claiming the deduction u/s. 80P. The system has computed the allowable deduction under chapter via, from the details entered.*

*-The other reason for non-allowance of deduction u/s 80P is, the same is not allowable for ‘status’ other than ‘co-operative society’ .Further, the said deduction is allowable only on the balance income from business available , after set off of the current year and brought forward losses.*

*-Further The deduction u/s 80P(2)(a)(i) to (vii) will be allowed to the extent of non speculative and non specified business income.*

*-The deduction u/s 80P(2)(d) will be allowed to the extent of interest & Dividend income mentioned in Schedule P&L & OS OR Non speculative and non specified business income.*

*-The assessee should then tick the appropriate box therein, for selecting the rectification reason , and then upload the rectification XML, after making the necessary corrections in the requisite schedules.*

*-It is suggested that Assessee may use Department utility for filing corrected XML”*

5. Aggrieved , the assessee filed first appeal with ld. CIT(A) , and stated in SOF and/ or written submissions filed before ld. CIT(A) that the assessee is a co-operative society registered under the Co-operative Society Act. The assessee filed return of income on 28-08-2018 declaring nil income. The assessee submitted that the assessee has shown gross income of Rs. 7,82,092/- which consisted mainly of Rs. 5,88,000/- for maintenance income which is exempt on principles of mutuality. All the expenses of Rs. 10,88,753/- are allowable expenses shown in Profit and Loss account and the same were restricted to Rs.7,82,092 , and return of income was filed

showing Nil income. The AO passes intimation u/s 143(1) dated 12.07.2019 determining total income at Rs. 7,82,092/- ignoring the claim by the society of the expenditure. The assessee submitted that the assessee filed first rectification application u/s 154 on 22.10.2019 which was rejected on technical grounds , and second rectification was filed by the assessee u/s 154 on 17.12.2019 which was also rejected on 06.01.2020. The assessee pleaded that the assessee be assessed in the status of Co-operative society and the benefit u/s 80P be granted to the society. The assessee also enclosed computation of income as well filed Audited Profit and Loss account and Balance Sheet along with the audit report with CIT(A). The assessee also submitted that Assessing Officer ought to have assessed the assessee in the status of the Co-operative Society. The assessee also submitted that the AO ought to have given notice u/s. 139(9) of the Act and ought to have given opportunity to assessee to remove the defects . The assessee submitted that all the expenses which are exclusively incurred for the appellant be allowed. The CIT(A) dismissed the appeal of the assessee on the ground that the assessee has not filled the schedule in the return of income for claiming deduction u/s 80P properly, and hence it could not be said that there is any mistake apparent from record vis-à-vis intimation order issued by the AO u/s 143(1) of the 1961 Act. The ld. CIT(A) observed that the assessee has not filed any

appeal against the intimation order issued by the AO u/s 143(1). The ld. CIT(A) observed that the rectification application filed by the assessee u/s. 154 before the CPC was not maintainable as scope of Section 154 is very limited to the mistake apparent from record, and debatable issues cannot be decided within the scope of Section 154 of the Act. The ld. CIT(A) observed that the claim of the assessee that it has expenses of Rs. 10,88,753/- but restricted to total receipts of Rs. 7,82,092/- , and return was filed showing nil income is not correct. The assessee had claimed deduction u/s. 80P of Rs. 7,82,092/- and declared the income as nil and the CPC has observed that the assessee has not filed schedule in the return of income for claiming u/s. 80P properly. Thus, the appeal of the assessee was dismissed by ld. CIT(A).

6. Aggrieved, the assessee filed appeal with the Tribunal. At the outset when the appeal was heard by “SMC” Bench , the ld. counsel for the assessee submitted that this appeal has been filed belatedly by the assessee beyond the time prescribed u/s. 253(3) by 104 days. The assessee has filed an application praying for condonation of delay supported by affidavit. In the application as well as affidavit, the assessee has claimed that the assessee was never informed about the order passed by ld. CIT(A) by the Authorized Representative who appeared before ld. CIT(A), and the assessee came to know of the order when all the documents were returned by

the said AR, and on verification of the papers, the assessee had come to know of about such order passed by ld. CIT(A) dismissing the appeal of the assessee. It is averred that then the assessee approached another Authorized Representative who told the assessee to file appeal with ITAT. The assessee has filed an affidavit that when the assessee came to know that the CIT(A) dismissed the appeal of the assessee, the assessee filed the appeal with the Tribunal. The ld. counsel for the assessee prayed for the condonation of delay , and the ld. Sr DR left the matter to the Bench to decided about the condonation of delay. After hearing both the parties and perusing the material,I have observed that the assessee filed this appeal belatedly before the Tribunal by 104 days beyond the time stipulated u/s. 253(3) of the Act. I have observed that the assessee has filed application praying for the condonation of delay supported with an affidavit. The assessee claimed that the Authorized Representative who was Representing the assessee before the ld. CIT(A) never informed the assessee about the order passed by ld. CIT(A) dismissing the appeal of the assessee, and when papers were returned by the said counsel, the assessee came to know that the order has been passed by the CIT(A) dismissing the appeal filed by the assessee , and immediately coming to know that the appeal of the assessee is dismissed, the assessee has claimed to have appointed another counsel who has filed the appeal of

the assessee. I have observed that there is no malafide on the part of the assessee in filing this appeal belated with Tribunal. The assessee has shown reasonable and sufficient cause in filing this appeal belatedly with Tribunal and assessee is not likely to gain anything by filing this appeal belated with Tribunal. Under the facts and circumstances of the case, I am of the considered view that the delay in filing this appeal belatedly by the assessee with ITAT beyond the time provided u/s 253(2) needs to be condoned, and I condone the delay and proceed to adjudicate this appeal on merit. When technicalities are pitted against the substantial justice, courts will lean towards advancement of substantial justice rather than technicalities unless malafide is at writ large on the part of the assessee. I donot find any malafide on the part of the assessee in filing this appeal belatedly with ITAT. Reference is drawn to the decision of Hon'ble Supreme Court in the case of **Collector of Land Acquisition, Anantnag v. Mst. Katiji (1987 AIR 1353(SC))**. Thus, I admit this appeal and proceed to adjudicate this appeal on merit.

7. Before me, ld. counsel for the assessee submitted that assessee has filed return of income with the Department within the time prescribed u/s. 139(1) of the Act. The assessee has claimed deduction u/s. 80P. It was submitted that the assessee is a co-operative society and the total expenditure



incurred by the assessee was at Rs. 10,88,753/- while the total receipts were to the tune of 7,82,092/- , and return of income was showing nil income was filed. It was submitted that the assessee is a housing society registered under the Co-Operative Society Act , and the receipts are from the maintenance and charges received from the members apart from interest from the bank deposits with saving bank . It is claimed that the assessee is governed by the principles of mutuality. It was submitted that the assessee did not file appeal with ld. CIT(A) against intimation u/s. 143(1) , but had filed rectification application u/s. 154 , which stood rejected by the CPC and the appeal filed by the assessee before ld. CIT(A) was also dismissed. It was submitted that the there was procedural lapse on the part of the assessee in filing in the column for claiming deduction in the return of income. It was submitted that no revised return was filed by the assessee. It was also submitted that the assessee should not be punished for a procedural lapse on the part of the assessee. While the ld. Departmental Representative submitted that the return of income was not filed properly by the assessee, and the claim of the assessee u/s. 80P was rightly disallowed by the CPC and the assessee has not filed appeal against the intimation u/s. 143(1) but had filed rectification application u/s 154, and the scope of section 154 is very limited to correcting mistakes apparent from record. It was also

submitted by Id. Departmental Representative that the assessee is not a 'Co-operative society' as CPC has shown the status of 'Association of person'. The Id. Counsel for the assessee was given liberty to file written synopsis on the claim of deduction filed u/s 80P, copy of application filed u/s 154, copy of Audit Report and computation of income but the assessee has chosen not to file the above details.

8. I have considered the contention of both the parties and perused the material on record. I have observed that the assessee has claimed itself to be a housing co-operative society which is engaged in the maintenance of the society, but the department has assessed the assessee as AOP. The assessee has filed before me, copy of Audited Profit and Loss Account, which shows break up of the receipts which shows that the assessee has received Rs. 5,88,000/- as maintenance income, Rs. 1,00,000/- as development charges , Rs. 50,000/- as transfer fees income , and then there are miscellaneous income of Rs. 17,900/- , income from Kesar Vatav of Rs. 820, interest from saving bank account of Rs. 25,372/-. I have observed from the audited Profit and Loss Account that the assessee has also claimed to have incurred expenditure to the tune of Rs. 10,88,713/-. I have also observed that the assessee has filed return of income in which the gross total income was shown at Rs. 7,82,092/- and the assessee claimed deduction 782092/-, leaving the taxable income at nil. On

perusal of the record, it appears that the assessee has claimed deduction u/s. 80P of Rs. 7,82,092/- but the ld. Counsel for the assessee could not demonstrate before me as to how the assessee is entitled to deduction of Rs. 7,82,092/- u/s 80P. The liberty was given to ld. Counsel for the assessee to file written synopsis but the same are not filed. However, at the same time the assessee is also claiming exemption on the ground of mutuality as it is claimed that the assessee is a housing co-operative society(the department has assessed assessee as AOP). The income which has been received from members , and where the contributor of the income and participants are same , the income cannot be taxed on the ground of mutuality. It appears that there is procedural lapse on the part of the assessee in filing the return of income. The assessee is claimed to be housing co-operative society for the welfare of the members , and it is quite possible that the assessee is not having tax-experts/professionals as in the case of corporate entities , to file its return of income and advise on tax matters. The e-filing of return of income is an evolving concept and is a complex process wherein large number of details are captured by department which also is increasing with the time , and there are regular changes made by the Department in the procedural aspects of filing the return of income including changes made in the ITR's . There is every possibility that some error could be committed by the tax-

payers keeping in view complexity in filing return of income. There is an error committed by the assessee which is admitted by the assessee. It is also true that the assessee has not filed revised return of income , but at the same time the department authorities are obligated to assess the correct Income and to collect correct taxes under the mandate of the 1961 Act. Reference is drawn to Article 265 of the Constitution of India. Reference is also drawn to CBDT circular No. 14 of 1955 , dated 11.04.1955. The mandate is to assessee correct income and to allow correct deductions , so that correct taxes can be collected. The departmental officers are duty bound to follow the above mandate. If there is a procedural lapse, the department should not take advantage of the same and collect more taxes than what is legitimately due . The assessee return of income was processed by CPC u/s. 143(1) and the claim of deduction was disallowed. It is true that the assessee has not filed any appeal against the intimation u/s. 143(1) issued by CPC but the assessee has filed rectification application u/s. 154. The CPC itself has stated in rectification order dated 06.01.2020 as under:

*“As seen from the e-filed return of income and rectification filed by you. It is found that you have not correctly filled Sch. VIA, for claiming the deduction u/s. 80P. The system has computed the allowable deduction under chapter via, from the details entered.  
-The other reason for non-allowance of deduction u/s 80P is, the same is not allowable for ‘status’ other than ‘co-operative society’ .Further, the said deduction is allowable only on the balance income from business available , after set off of the current year and brought forward losses.*

*-Further The deduction u/s 80P(2)(a)(i) to (vii) will be allowed to the extent of non speculative and non specified business income.*  
*-The deduction u/s 80P(2)(d) will be allowed to the extent of interest & Dividend income mentioned in Schedule P&L & OS OR Non speculative and non specified business income.*  
*-The assessee should then tick the appropriate box therein, for selecting the rectification reason , and then upload the rectification XML, after making the necessary corrections in the requisite schedules.*  
*-It is suggested that Assessee may use Department utility for filing corrected XML”*

The doors of justice cannot be shut merely on technicalities. It is equally true that the assessee has declared taxable income to be Nil in the return of income filed with the Department after claiming deduction of Rs. 7,88,092/-. The claims and contentions of the assessee both on legal as well factual aspects requires verification by the authorities below. At this stage it will be appropriate to refer to the decision of Hon'ble Supreme Court in the case of Bangalore Club v. CIT (2013) 350 ITR 509(SC) and the decision of Hon'ble Supreme Court in the case of ITO v. Venkatesh Premises Co-operative Society Limited (2018) 402 ITR 670(SC). Thus, keeping in view overall facts and circumstances of the case and in the interest of justice, I am remanding the matter back to the file of ld. CIT(A) to reconsider the contentions , claims as well evidences filed by the assessee , and to pass appellate order on merit, both factual and legal, in accordance with law. I clarify that I have not commented upon the merits of the issue both factual and legal, and CIT(A) is to adjudicate all the issues on merit,

both factual and legal, in accordance with law after giving opportunity to both the parties. The appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 03-07-2024

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 03/07/2024**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद