

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK  
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.362&363/CTK/2017

(निर्धारण वर्ष / Assessment Year :2013-2014 & 2014-2015)

DCIT, Circle-4(1), Bhubaneswar	Vs.	M/s The Orissa State Tassar & Silk Cooperative Society Ltd., Janpath, Sahid Nagar, Bhubaneswar-751007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAAAO 0169 R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**AND**

**Cross Objection No.21 & 22/CTK/2018**

(Arising out of ITA No.362&363/CTK/2017)

(निर्धारण वर्ष / Assessment Year :2013-2014 & 2014-2015)

M/s The Orissa State Tassar & Silk Cooperative Society Ltd., Janpath, Sahid Nagar, Bhubaneswar-751007	Vs.	DCIT, Circle-4(1), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAAAO 0169 R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

निर्धारिती की ओर से /Assessee by : Shri P.R.Mohanty, AR

सुनवाई की तारीख / Date of Hearing : **05/04/2018**

घोषणा की तारीख/Date of Pronouncement **09/04/2018**

**आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

These are the appeals filed by the Revenue against the separate order of the CIT(A)-2, Bhubaneswar, passed in IT Appeal No.0068/2016-17 & 0138/2016-17, both dated 29.06.2017 u/s.143(3)/250 of the Income Tax Act, 1961 for the assessment years 2013-2014 & 2014-2015. The assessee has also filed cross objections.

2. Since issues in both the appeals are common, they are heard together and disposed of by this common order. For the sake of convenience, we take up the appeal of Revenue i.e ITA No.362/CTK/2017 and the facts narrated therein, wherein the Revenue has raised the following grounds :-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as on facts in deleting the addition of Rs.99,74,610/- made by the AO treating it as 'income from other sources', when the interest income earned from surplus funds not required immediately for business purposes is not an allowable deduction u/s.80P(2)(ii) and is taxable u/s.56 of the I.T. Act.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as on facts in relying on the decision of the Hon'ble ITAT, Cuttack Bench in the assessee's case for the AY 2003-04, when the same has been overruled by the decision of the Hon'ble Apex Court in the case of Totgars' Cooperative Sale Society Ltd. Vs. ITO (2010) 322 ITR 283.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as on facts in deleting the addition of Rs. 1,90,500/- made by the AO treating it as 'income from house property', when the assessee did not let out the property in question for godown purpose and is not an allowable deduction u/s.80P(2)(ii) of the I.T. Act.*
4. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as on facts in relying on the decision of the Hon'ble ITAT, Cuttack Bench in the Orissa State Handlooms Weavers Co-operative Society Ltd. in ITA No.184/CTK/2007 for the AY 2003-04, when the same has been overruled by the decision of the Hon'ble Apex Court in the case of Udayapur Sahakari Upabhokta Thok Bhandar Ltd. Vs. CIT (2009) 182 Taxmann 287.*

3. Brief facts of the case are that the assessee is engaged in business of development of sericulture industry in Odisha on a cooperative basis and filed its return of income electronically on 22.09.2013 for the assessment year 2013-2014 Rs.Nil. Subsequently, the case was selected

for scrutiny and notice u/s.143(2) & 142(1) along with questionnaire were issued. In compliance Id. AR appeared from time to time and submitted the details. The AO after considering the submissions and verification of documents placed on record, found that the assessee has disclosed a net profit of Rs.1,00,16,090/- and claimed deduction u/s.80P(2) of the Act. Assessee's contention referred by the AO at page 2 of the order explaining that interest has been received out of the Earmarked reserve fund scheme of the Government and the interest is attributable to the operations of the business and further the assessee has no cash balance and such income has to be treated as income from business, whereas the AO overlooked the explanation and treated the said income under income from other sources and denied the claim of deduction of rental income u/s.80P(2) and made additions and passed assessment order u/s.143(3) of the Act dated 31.03.2010.

4. Aggrieved by the order of AO, the assessee has filed an appeal before the CIT(A). In the appellate proceedings the assessee argued the grounds and reiterated the submissions made in the assessment proceedings whereas the CIT(A) having considered the grounds and the findings of AO has dealt on the disputed issue and relied on the decision of the Tribunal in assessee's own case for the earlier assessment year referred at para 4.2 and deleted the addition, which reads under :-

*4.2 On perusal of the assessment order, it is seen that the assessing officer has treated the rental income of Rs. 3,360/- and interest income of Rs. 1,66,06,160/- as income from other sources and has disallowed deduction u/s.80P of I.T. Act, 1961. During the appeal proceedings the appellant has filed a judgement dated*

*01.12.2008 of Hon'ble Jurisdictional Tribunal in it's own case in ITA No.184/CTK/2007 for assessment year 2003-04. I find that the appellant's case for the year' under consideration is fully covered by the order of the Jurisdictional Hon'ble Tribunal in as much as the rental income and the interest income has been treated as business income and deduction 80P of IT Act, 1961 has been allowed to the appellant. Considering these aspects, the rental income and tithe interest income is held as income from business and deduction u/s.80P of I.T. Act; 1961 for the year under consideration is allowed. Accordingly the additions of Rs.3,360/- on account of rental income and Rs.1,66,06,160/- on account of interest income are ordered to be deleted and the grounds of appeal are allowed."*

5. Aggrieved by the order of CIT(A), the Revenue is in appeal before us.

6. Ld. DR submitted that the CIT(A) has erred in deleting the addition without considering the findings of the AO and supported the order of AO.

7. Contra, Id. AR relied on the order of CIT(A) and also relied on the decision of the Tribunal in assessee's own case.

8. We have heard submissions of both the parties and perused the materials on record. Ld. AR's submission that the issue is in favour of the assessee by the decision of the Tribunal in assessee's own case for the assessment year 2003-2004 and the decision relied by the Revenue are distinguishable. We have perused the copy of the coordinate bench order and found that the coordinate bench of the Tribunal in assessee's own case for the assessment year 2003-2004 in ITA No.184/CTK/2007, order dated 01.12.2008 has held as under :-

*"7. We have heard the rival submissions and perused the material available on record. We find that the Assessing Officer has made the addition without giving any reason whatsoever and he passed a very cryptic order. We further find that the Ld. CIT(A) has passed the order after verifying all the details and books of accounts of the assessee and after perusing the case laws cited by the assessee at the time of first appellate proceedings. In view of*

*the above, we are of the considered opinion that the Ld. CIT(A) has rightly treated the interest income of Rs.7,02,256/- of the assessee as business income and allowed exemption u/s.80P(2)(ii) of the Act. This ground of the revenue is, therefore, dismissed.”*

Accordingly we respectfully follow the judicial precedence and find that the CIT(A) has considered the facts and relied on the decision and has passed reasoned order. Accordingly we are not inclined to interfere with the order of CIT(A) and the same is upheld. Hence the appeal of the Revenue is dismissed.

9. Similar issue has been raised by the Revenue for the assessment year 2014-2015. We following the earlier year decision are not inclined to interfere with the order of CIT(A) and upheld the same and the grounds of appeal of the Revenue are dismissed.

10. The assessee has filed cross objections in CO Nos.21 & 22/CTK/2018 supporting the order of CIT(A). Since we have dismissed the appeals of Revenue, accordingly, the cross objections filed by the assessee have become infructuous and dismissed.

11. In the result, appeal of the Revenue i.e. ITA Nos.362&363/CTK/2017 are dismissed and cross objections filed by the assessee i.e CO No.21&22/CTK/2018 are dismissed.

Order pronounced in the open court on this 09/04/2018.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated

प्र.कु.मि/PKM, Senior Private Secretary

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

09/04/2018

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. Appellant-  
DCIT, Circle-4(1), Bhubaneswar
2. Respondent  
M/s The Orissa State Tassar &  
Silk Cooperative Society Ltd.,  
Janpath, Sahid Nagar,  
Bhubaneswar-751007
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack