

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ मनीष बोर्ड, लेखा सदस्य  
के समक्ष

**Before**

**DR. MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील संख्या: 386/कोल/2022

निर्धारण वर्ष: 2018-19

**I.T.A. No.: 386/Kol/2022**

**Assessment Year: 2018-19**

***Nandan Live Stock***

***Development Co Operative Society Ltd.....Appellant***

***[PAN: AAAAN 5417 B]***

***Vs.***

***ACIT, Circle-1, Durgapur.....Respondent***

**Appearances by:**

*Sh. V.K. Jain, CA, appeared on behalf of the Assessee.*

*Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.*

Date of concluding the hearing : September 15<sup>th</sup>, 2022

Date of pronouncing the order : September 28<sup>th</sup>, 2022

**आदेश**

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the

“Act”) by ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short ld. “CIT(A)”] dated 25.05.2022 arising out of the assessment order framed u/s 143(1) of the Act dated 13.05.2019.

2. The assessee is in appeal before this Tribunal raising the following grounds:

*“1. That the Ld. CIT (A) erred in law as well as on the facts in dismissing the appeal to affirm the order of the Assessing Officer, without verification and examination of the records and provisions of law on the issue on hand.*

*2. That the Ld. CIT (A) erred in law as well as on facts to upheld the order of the Assessing Officer denying the claim of the assessee u/s.80 (P) (2) of the Income Tax Act.*

*3. That the Ld. CIT (A) erred in law in adjudicating that the Poultry farming is not an eligible activity u/s 80(P) (2) of the Act.*

*4. The appellant crave leave to adduce additional grounds or to modify, alter or omit any ground of appeal during the course of hearing.”*

3. At the outset, ld. Counsel for the assessee submitted that since the claim of the assessee u/s 80P(2) of the Act has neither being examined by the ld. Assessing Officer (in short ld. “AO”) in processing done u/s 143(1) of the Act nor by ld. CIT(A) while carrying out the appellate proceedings, the issue may be restored to the file of ld. AO having jurisdiction over the assessee for examining the correctness of the claim of the assessee made u/s 80P(2) of the Act.

4. Ld./ D/R though supported the order of ld. CIT(A), was fair enough not to raise any objection to this request of the assessee.

5. I have heard rival contentions and perused the records placed before me. The assessee is in appeal for being denied the claim of deduction made u/s 80P(2) of the Act. I find that the assessee is a Cooperative Society registered under the West Bengal Co-operative Societies Act-XLV of 1983 vide registration certificate dated 07.05.2002. The main object of the Society includes that of developing the farming of live-stock and perform the related works within the area referred in Bye-Laws and to fulfil its objects it shall perform the works programme as mentioned in the objects of the Societies bye-laws. The income tax return for AY 2018-19 was filed on 31.10.2018 on Form ITR-5 and against the income of Rs. 4,52,754/- shown under the head "Income from Business or Profession" deduction under Chapter VIA u/s 80P(2) of the Act at Rs. 4,52,750/- was claimed. Return was processed and in the intimation u/s 143(1)(a) of the Act issued by the Centralised Processing Centre, deduction claimed u/s 80P(2) of the Act was denied with the remark given that deduction under Chapter VIA will not be allowed unless respective Schedules are filled properly. It *prima facie* shows that there were certain columns in Income Tax Return which the assessee failed to fill properly which resulted in denying of the said claim. Rectification application filed by the assessee could not bring any favour as in the order u/s 154 of the Act it is stated that, "*On verification, it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore, your application for rectification u/s 154 of the Act is rejected.*" The assessee challenged this order before Id. CIT(A) but again failed to succeed.

6. I find that the assessee made a claim in the income tax return but for not filling up certain Schedules in the return correctly the claim u/s 80P(2) of the Act has been denied. But before denying such claim no opportunity has been given to the assessee as provided in the provisions of Section 143(1)(a) of the Act where the proviso states that *“No such adjustments shall be made unless any intimation is given to the assessee of such adjustments either in writing or in electronic mode and further provided that the response received by 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.”* I find that the assessee was never given an opportunity to substantiate its claim with necessary documentary evidences. Even Id. CIT(A) did not entertain the claim of the assessee by giving a general finding.

7. Under these given facts and circumstances of the case I am of the considered view that if the assessee has made a rightful claim it should not be denied without giving any opportunity of hearing to it to file necessary documents in support of its claim and if rightful claim has been made then denying of such claim merely on the basis of not filling up of certain Schedules in the income tax return will not be in the interest of justice. I, therefore, restore all the issues raised in the instant appeal including that of claim of deduction u/s 80P(2) of the Act to the file of Id. AO having jurisdiction over the assessee and direct him to examine/verify the claim of the assessee made for deduction u/s 80P(2) of the Act and if on the basis of documents and necessary details which will be

filed by the assessee after being provided reasonable opportunity of being heard, if ld. AO finds merit in such claim, the same should be allowed in accordance with law.

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

**Kolkata, the 28<sup>th</sup> September, 2022.**

*Sd/-*  
[Manish Borad]  
Accountant Member

Dated: 28.09.2022

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Nandan Live Stock Development Co Operative Society Ltd.,  
C/o. Jain Vinod K & Associates, 41A, AJC Bose Road,  
Diamond Prestige Nirman, 6<sup>th</sup> Floor, Suite No. 613,  
Kolkata-700 017.**
- 2. ACIT, Circle-1, Durgapur.**
3. CIT(A)- NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata