

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri SonjoySarma, Judicial Member]

I.T.A. No. 579/Kol/2022
Assessment Year: 2018-19

M/s BishupurRowtara Primary Agricultural Co-operative Credit Society Ltd. (PAN: AACAB 3042 Q)	Vs.	ITO, Ward-41(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 18.08.2022 for the AY 2018-19.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of disallowance of Rs. 44,95,319/- by Ld. CIT(A) as made by the AO

by rejecting the deduction claimed u/s 80P(2)(a)(i) of the Act in respect of interest on loan from the bank deposits.

3. Facts in brief are that the assessee filed return of income on 30.10.2018 declaring total income at Nil which was processed u/s 143(1) of the Act accepting the returned income. Thereafter the case of the assessee was selected for scrutiny under CASS. During the assessment proceedings the AO observed that assessee has shown net income of Rs. 44,95,319/- from of total receipts of Rs. 3,57,58,634/- which included interest income of Rs. 2,98,28,543/-. The AO further noted that the assessee has claimed the whole of its income as deduction u/s 80P(2)(a)(i) of the Act. The AO observed that the assessee has shown interest income from banks to the tune of Rs. 79,62,713/- on deposits out of surplus funds with Union Banks of India and BandhanBank which were not required immediately in the business of the assessee and the said income does not come under the purview of the above provisions of the Act. Similarly the assessee has received the interest from savings a/cs to the tune of Rs. 3,90,845/- which does not come under the purview of Section 80P. Besides the AO observed that the assessee has derived income under different heads such as Rs. 39,000/- on sale of mango tree, Rs. 53,290/- as rent collection from ambulances, Rs. 34,781/- as rent collection from Dal mill, Rs. 1,11,200/- as rent of picnic garden, Rs. 1,24,681/- as house rent and Rs. 1,40,018 as commission received and aggregate of these comes to Rs. 5,02,970/- which does not come under the provisions of Section 80P of the Act. The AO accordingly gave a show cause notice to the assessee to this effect and after considering and rejecting the reply of the assessee and by relying the decision of Hon'ble Apex Court in the case of *Totagars Co-operative Sale Society Ltd. vs. ITO (2010) 188 taxmann 0282* came to the conclusion that interest income has to be treated as income from other sources u/s 56 of the Act and not u/s 28 of the Act as business income as such income does not qualify for deduction u/s 80P(2)(a)(i) of the Act. Finally the AO added the deduction claimed to the income of the assessee thereby assessing the income of Rs. 44,95,319/- in the assessment framed.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of AO by relying on the decision of Hon'ble Apex Court in the case of *Totagars Co-op Sale Society Ltd. (supra)*.

5. The Ld. Counsel submitted before the Bench that the order passed by the Ld. CIT(A) is wrong and against the facts on record. The Ld. A.R made threefold submissions before the Bench namely i) interest on saving accounts should be allowed u/s 80P in terms of the Co-ordinate Bench decision in the case of *Rabindra Bharati University Co-operative Credit Society Ltd. vs. ITO in ITA Nos. 584 & 585/Kol/2021 dated 11.11.2022*, ii) if the interest income is taken out of the ambit of Section 28 of the Act and to be taxed as income from other sources, then the AO may be directed to determine the corresponding expenses u/s 57 of the Act which may be allowed to the assessee in consonance with the decision of the Co-ordinate Bench in the case of *M/s Panditpur Samabay Krishi Unnayan Samity Ltd. vs. ITO in ITA NO. 04/Kol/2022 dated 5.4.2022* and iii) investments of surplus funds with the banks not being coop banks are covered by section 64 r.w.s. 63 of Multi State Co-operative Societies Act, 2022 and interest on these investments should be treated as income from business. The Ld. A.R. referred to the decision of Hon'ble Calcutta High Court in the case of *CIT vs. South Eastern Railway Employees Co-op Credit Society Ltd. in [2017] 390 ITR 524 (Cal)* therein the Hon'ble High Court has held that the interest earned from out of the investments made u/s 64 read with Section 63 of the Multi State Co-operative Societies Act, 2022 is attributable to the business of providing credit facilities to its members and accordingly the interest earned by the assessee from the said investment is also attributable to the business of providing credit facilities to its members. The Ld. A.R. submitted that in the same manner the assessee has invested its surplus fund u/s 64 read with Section 63 of Multi State Co-operative Societies Ltd., 2022 as stated above and the same has to be treated as income from business not from the other sources. The Ld. A.R. therefore prayed that the appeal may be restored to the file of the AO so that all the issues could be looked into and decided accordingly as per facts of the case.

6. The Ld. D.R on the other hand relied on the order of authorities below.
7. After hearing the rival contentions and perusing the material on record, we find merit in the three fold submissions made by the assessee as discussed hereinabove. Accordingly we deem it fit and proper to restore this issue to the file of the AO to decide these issues in terms of our following directions:
- i) interest from saving accounts should be allowed u/s 80P in terms of decision of Hon'ble Calcutta High Court in the case of *CIT vs. South Eastern Railway Employees Co-op Credit Society Ltd. in [2017] 390 ITR 524 (Cal)*, ii) if interest income on investments with banks is to be treated as income from other sources then the corresponding expenses may be determined deduction may be allowed in terms of Co-ordinate Bench decision in the case of *M/s Panditpur Samabay Krishi Unnayan Samity Ltd. vs. ITO in ITA NO. 04/Kol/2022 dated 5.4.2022* and iii) the interest income from investments as per Section 64 read with Section 63 of the Multi State Co-operative Societies Act, 2022 out of surplus funds is to be treated as business income in terms of the Co-ordinate Bench decision in the case of *Rabindra Bharati University Co-operative Credit Society Ltd. vs. ITO in ITA Nos. 584 & 585/Kol/2021 dated 11.11.2022*. Accordingly we direct the AO to frame the assessment in terms of aforesaid directions after affording a reasonable opportunity of hearing to the assessee.
8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 17th January, 2023

Sd/-
(SonjoySarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 17th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s BishupurRowtara Primary Agricultural Co-operative Credit Society Ltd., Bishnupur, Kotwali, Nadia, West Bengal-741103.
2. Respondent – ITO, Ward-41(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata