

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.129/Kol/2024
Assessment Year: 2017-18

Aiho Samabay Krishi Unnayan Samity Ltd.....Appellant
Jadab Nagar, Aiho
Maldah – 732121.
[PAN: AABAA0284A]

vs.

ITO, Ward-3(1), Malda..... Respondent

Appearances by:

Shri Siddharth Agarwal, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 28, 2024

Date of pronouncing the order : July 30 , 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee-society against the order dated 29.11.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee-society in this appeal has taken the following grounds of appeal:

"1. For that the Ld. CIT(A) was not justified in confirming the action of the A.O (CPC) in not granting the benefit of deduction u/s 80(P) to the tune of Rs.35,83,555/- in respect of income earned from deposits with bank from non-agricultural purposes.

2. For that the Ld. CIT(A) was not justified in confirming the action of the A.O (CPC) to disallowance of the cash deposit during the demonetization period amounting to Rs.1,86,30,500/- and wrongly added total Rs.2,22,14,055 as taxable income.

3. *Without prejudice to the above, the Ld. CIT(A) ought to have directed the A.O to grant the benefit of deduction of interest payable to members attributable to the deposits with the bank and disallowed the cash deposits during demonetization period.”*

3. **Ground No.1** – The assessee vide Ground no.1 has agitated against the non-grant of benefit of deduction u/s 80P of the Act in respect of income earned from deposits with bank. The assessee claimed deduction in respect of interest income earned from the activity which was done for non-agricultural purposes. The Assessing Officer has discussed this issue at length, the relevant part of the order of the Assessing Officer is reproduced as under:

“3.5. In none of the responses, the assessee has given the details of financials, members wise and non-members wise. At the same time, he has not confirmed that transactions are not done with non-members. The details of nature of loans whether the same are related to primary agriculture and are eligible loans for the purpose of deduction u/s 80P are also not given.

Section 80P(4) of the Income Tax Act, 1961 states as under:

“The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.”

For the purpose of sub-section 80P(4), a co-operative bank has been given a meaning assigned to them in Part V of the Banking Regulation Act, 1949.

In Part V of the Banking Regulation Act, 1949, Section 5(b) a “Co-operative Bank” means a state Co-operative bank, a Central Co-operative Bank and a primary Co-operative Bank.

A “primary Co-operative bank” is defined in Section 5(ciii) of the Banking Regulation Act, 1949 as the co-operative society which fulfils three conditions namely:-

- 1) The primary object or principal business of which is the transaction of banking business;
- 2) the paid up share capital and reserve of which are not less than one lakh of rupees; and
- 3) the bye-law of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfils all the above three conditions, it is to be treated as co-operative bank for the purpose of section 80P(4) and the benefit of deduction u/s 80P(2)(a)(i) is denied if it is not a PACS or a primary agricultural and rural development bank.

The Banking Regulation Act, 1949 defines PACS as under:

(cciv) "Primary Agricultural Credit Society" means a co-operative society, -
i) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purchases connected with agricultural activities (including marketing of crops); and
ii) the bye-laws of which do not permit admission of any other co-operative society as member.

On detailed examination of interest on loans, break up of which is furnished, it is found out of the total interest received/receivable amounting to Rs. 28,42,409/- on loans, 63.75% is from non-agricultural purpose. The details of non-agricultural loans are tabulated below:-

Sl. No.	Loan Type	Interest
1	NSC/KVP Short Term	125880
2	Short Term SHG	592913
3	Loan against deposit	232666
4	Medium term non farm	627294
5	Medium term non farm overdue	71640
6	Staff Loan	161578
	Total	18,11,980 (63.75% of total interest received)

It is clear that the primary object of the society is not giving loans for agricultural purposes. As such the society would not fit in the definition of PACS even if all loans/deposits were from members.

3.6 The provision of Sec.80P read as under:

"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section(2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in subsection(2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following namely: -

(a) in the case of a co-operative society engaged in -

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or iii) the marketing of agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v)

(vi)

(vii)

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

3.7 In spite of giving several opportunities, the assessee has failed to give the specific details of financials, members wise and non members wise and further has not confirmed that the transactions are not done with non-members.

3.8 The Hon'ble Supreme Court in the case of The Citizen Co-operative Society Limited 397 ITR 1 (SC) has held that "the assessee was engaged in the activity of granting loans to members of the general public as well and this was done without approval from Registrar of Societies and that therefore, the activity of the assessee was in violation of the Co-operative Societies Act and that it was a Co-operative Credit Society which was not entitled to deduction under section 80P(2)(a)(i) of the Act. A specific finding was also rendered that the assessee failed to satisfy the test of mutuality. These findings of fact remained undisturbed. Therefore, the assessee could not be treated as a co-operative society meant only for its members and providing credit facilities to its members. Such a society could not claim the benefit of section 80P of the Act."

3.9 In the instant case, the assessee has failed to prove that the business transactions of lending loans and advances, acceptance of deposits, the sale and purchase of agricultural implements, seeds, fertilizers, etc. was done only with its members. The case was selected for scrutiny for the Asst. Year(s) 2016-17 and the assessments were completed disallowing the deduction claimed u/s.80P as the assessee could not furnish the list of members details and details of loans and advances, etc. and hence could not pass the test of eligibility and mutuality. Hence, in view of the above and in view of the judgement of the Hon'ble Supreme Court in the case mentioned above, it is held that the assessee co-operative society is a society not eligible for deduction u/s.80P. Accordingly, the claim of deduction u/s.80P is disallowed and added to the income returned.

Income from Other Sources

3.10 Notwithstanding the above disallowance of deduction u/s 80P, on verification on the information filed, it is found that the investments are Rs. 18,98,05,154/- in shares, deposits and FDs and the loans and advances to Members is only Rs. 2,55,26,222/-. The interest received/receivable on such FDs/investment is Rs. 1,53,91,133/- whereas the interest on the loans and advances to members/ other is only Rs. 28,42,409/- which can be claimed/eligible for deduction u/s.80P, if any. It is clear from the above, that the main activity of the cooperative society is not extending credit facility to its Members and sale and purchase of agricultural implements and other allied activities. The interest income derived from -FDs/Investments do not qualify for deduction u/s.80P(2)(a)(i). The Hon'ble Supreme Court in the case of M/s Totgars Cooperative Sale Society Limited 322 ITR 283 (SC), held that

(i) Sec. 80P(2)(a)(i) allows a deduction in the case of a co-operative society engaged in carrying on the business of providing credit facilities to its members of the whole of the amount of profits and gains of business attributable to such activity. The words 'Profits and Gains of Business' means "business profits" and not "Income from other sources".

(ii) The interest on surplus invested in short term deposits not being attributable to the business of providing credit facilities to the members or marketing of agricultural produce of the members, is assessable as "other income" and not as "business income".

(iii) The words “the whole of the amount of profits and gains of business” attributable to one of the activities specified in Sec.80P(2)(a)(i) mean that **the source of income is relevant and that the income must be operational income**”

3.11 Though the assessee has submitted that the cooperative society is required to keep certain portion of their deposits with mother bank, etc., no evidence in support of the same has been furnished. Further, the assessee has relied on certain case laws but whether the same are applicable to the affairs of the assessee cannot be ascertained due to non furnishing of specific details of the information called for. In view of the above, the interest income on FDs, etc., is assessable as Income from Other Sources and does not qualify for deduction u/s.80P.

3.12 The assessee has admitted the income from marketing activity without allocating the proportionate indirect expenses incurred and the total indirect expenses have been allocated against interest income. As the deduction u/s.80P is being totally disallowed on the gross total income, proportionate allocation is not made now.”

4. The Id. CIT(A) has upheld the order of the Assessing Officer finding no infirmity in the same.

5. We have heard the rival contentions. The main contention of the Id. Counsel for the assessee has been that the assessee-society is engaged in the business of banking and that the aforesaid income was earned by the assessee by accepting deposits from its members and further reinvesting the same in cooperative banks and other commercial banks. It has been further pleaded that the assessee has taken loans from the cooperative banks and other commercial banks at a lesser rate and the same was paid to be members at a higher rate and the net of the interest income was eligible for deduction u/s 80P(2)(a)(i) of the Act. We find that the Assessing Officer has not only examined at length the details/facts including the details of the receipts, details of investments and income earned therefrom. From details as mentioned in the chart,

as reproduced above in the order of the Assessing Officer, it is noted that out of the total interest receipt/receivable amounting to Rs.28,42,409/- on loans, 63.75% was from non-agricultural purpose. The Assessing Officer, therefore, concluded that the primary objective of the assessee-society was not to give loan for agricultural purposes. The Assessing Officer thereafter has deliberated upon provisions of section 80P of the Act as reproduced above in the relevant part of the order of the Assessing Officer. The reliance of the Id. AR of the assessee, regarding his claim of deduction, is on the provisions of section 80P(2)(a)(i) of the Act to state that the aforesaid income was earned from banking business. We find that however the Assessing Officer has noted that the assessee-society was not authorised to run banking business on the same lines as run by other commercial/schedule banks. At this stage, section 80P(4) along with Explanation to section 80P is relevant, which, for the sake of convenience, is reproduced as under:

“80P(4) [The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation. - For the purposes of this sub-section,-

(a)"co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b)"primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]”

5.1 A perusal of section 80P(4) r.w. Explanation to section 80P would reveal that the benefit of section 80P is not available even to a cooperative bank. However, the said benefit is available to a ‘primary agricultural credit society’. The assessee-society has also claimed itself to be a ‘primary agricultural credit society’. However, no document has

been furnished on record to prove the same. However, since this fact has not been disputed by the revenue, so we take the assessee-society as a 'primary agricultural credit society'. As per the Explanation to section 80P of the Act, 'primary agricultural credit society' shall have the meanings as assigned to Part V of the Banking Regulation Act, 1949. The Assessing Officer has reproduced in the assessment order the definition of the primary agricultural society as defined under the Banking Regulation Act, 1949 (as reproduced in the earlier paras of this order). The 'primary agricultural credit society' has been defined as a cooperative society, the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for the purposes connected with agricultural activities including marketing of crops. Admittedly, the major loans were granted by the assessee-society for non-agricultural purposes, therefore, the assessee-society's primary activity is not for granting loans for agricultural purposes or purposes connected with agricultural activities. The Assessing Officer has tabulated the figures of the loan amounts and has observed that 63.75% of the interest income received by the assessee was from loans given for non-agricultural purposes. Therefore, the Assessing Officer held that since the primary purposes of the assessee-society was not for loans and credits given for agricultural purposes, therefore, the assessee-society would not fall in the definition of primary agricultural cooperative society and therefore, could not be eligible for deduction u/s 80P(2)(a)(i) of the Act. Moreover, it is the own case of the assessee that the assessee-society had received cash in demonetized currency (Specified Bank Notes) during demonetization period and had deposited the same in cooperative bank/schedule bank and earned interest thereupon. The aforesaid affirmation on the part of the assessee-society would itself show the said activity of the assessee-

society was not for providing financial accommodation to its members for agricultural purposes or purposes connecting with agricultural activities. Moreover, it has been also specifically observed by the Assessing Officer that the assessee has not confirmed that the transactions were not done with non-members. The assessee-society has not furnished list of members, the details of loans and advances etc., therefore, under the circumstances, the Assessing Officer rightly held that there were no confirmations that the deposits were not accepted from non-members. The plea of the Id. AR that the assessee-society is working in a rural area and that the villagers/farmers and members were totally dependent upon it and that is why the assessee accepted deposits from them during demonetization period and is doing banking activity, cannot be a ground for granting of deduction u/s 80P of the Act. To claim deduction u/s 80P, the assessee-society must fulfil the requisite conditions as stipulated in the statutory provisions. However, considering that the assessee-society has also been doing the activity of granting credit facilities to its members for agricultural purposes and activities connecting thereto, and further the assessee-society is involved in the activity of purchase, sale and marking of agricultural implements, therefore, the interest income earned by the assessee for providing credit facilities to its members for agricultural activities and activities relating thereto will be eligible for deduction u/s 80P(2)(a)(i) of the Act and further the income of the assessee earned from the activity of purchase, sale and agricultural implements etc. will also be eligible u/s 80P(2)(a)(iv) of the Act. The assessee-society, therefore, is given an opportunity to provide necessary details before the Assessing Officer in this respect. The matter is accordingly restored to the file of the Assessing Officer for the limited purpose that on furnishing of necessary details, the Assessing Officer will bifurcate the

interest income earned by the assessee from the credit facilities granted to its members for agricultural purposes or purposes connecting with agricultural activities and further after netting off such interest income with the expenditure/interest incurred by the assessee-society for getting deposits in respect of such income, the Assessing Officer would accordingly allow deduction in respect of the said amount out of total interest income u/s 80P(2)(a)(i) of the Act and further the Assessing Officer will also bifurcate the income earned by the assessee-society from the purchase, sale and agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members and will allow deduction on such income u/s 80P(2)(iv) of the Act. Needless to say that the assessee-society will promptly supply the necessary details and information as and when called for by the Assessing Officer and the Assessing Officer will also give reasonable time and opportunity to the assessee to furnish the necessary details, thereafter, the Assessing Officer will pass a speaking order on this issue. This Ground of the appeal of the assessee is partly allowed.

6. **Ground Nos.2 & 3** – Vide Ground Nos.2 & 3, the assessee-society has agitated against the action of the Id. CIT(A) in confirming the disallowance in respect of cash deposits in demonetized currency accepted during the demonetization period. In the alternative, the assessee has pleaded that the Id. CIT(A) ought to have allowed the benefit of deduction of interest payable to its members attributable to the deposits with the bank and out of the income earned on cash deposits during the demonetization period. The relevant part of the findings of the Assessing Officer on this issue is reproduced as under:

“Deposits during Demonetization Period

3.13 Information was received that the assessee has made cash deposits to the amount of Rs.1,20,50,000/- during the demonetization period. Rs.70,00,000/- in Malda District Cooperative Central Bank, Malda and Rs.50,50,000/- in Bandhan Bank. Further, as per the details furnished by the assessee, Rs.73,00,000/- was deposited in Mangalbari Branch, Malda District Cooperative Central Bank. The total cash deposited in SBNs during the period of demonetization is Rs.1,93,00,000/-.

The assessee has submitted that the cash in SBNs (Specified Bank Notes) was received from various members towards their various accounts held in the cooperative society, during the demonetization period. The details of such deposits containing the names of the members from whom the amounts in SBNs were received, their a/c nos., their PAN/Aadhar/Voter Id Nos., etc., were filed. In the show cause letter issued in this regard, it was asked why the acceptance and deposit of such SBNs, when the assessee society was not authorized to accept SBNs, should not be treated as unexplained. In the reply, the assessee submitted that "Aiho SKUS limited has already produced the financial documents, i.e. trading account, profit and loss account, balance sheet, cash account and trial balance which considered all the financial transactions including the cash deposit transactions during demonetization period moreover Income Tax return was also filed based on the said financial transactions. Society has further produced the details of cash collections and deposits with list and bank statement during demonetization period during scrutiny assessment, "therefore, the question of unexplained money does not arise here".

3.14 As the cash deposits in SBNs received during the demonetization period were credited in the books of accounts of the assessee, Sec.68 of the Income Tax Act, is attracted. Sec.68 of the Income Tax Act, 1961, reads as under.

Cash credits.

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be

charged to income tax as the income of the assessee of that previous year:

3.15 The act of deposit of money or loan repayment in the deposit account or loan account of a customer held in the cooperative society and the acceptance of the same by the cooperative society is an "Act of Contract", wherein the cooperative society is expected to give back the deposit amount, on demand, with or without interest and the deposit in the loan account is part of a contract of granting a loan and its repayment. The allied Acts which come in to picture in this context are the Indian Contracts Act 1872, and the Reserve Bank of India Act 1934.

As per Section 23 of Indian Contracts Act 1872, which defines what considerations and objects are lawful, and what not — The consideration or object of an agreement is lawful, unless— it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. **Every agreement of which the object or consideration is unlawful is void.**

As per Section 26 of the Reserve Bank of India Act 1934, which defines Legal tender — character of notes — (1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in India in payment, or on account for the amount expressed therein, and shall be guaranteed by the Central Government. (2) On recommendation of the Central Board, the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at such office or agency of the Bank and to such extent as may be specified in the notification.

Every contract involves consideration. Thus, in the above type of contracts, consideration is money. The word 'money' has not been defined under the said Act, but the most common definition of 'money' as found from dictionaries is that, money means an authorized medium of exchange especially coins or paper currency issued as legal tender by a Government. Hence, in a concluded and valid contract, the consideration has to be understood as money in legal tender only. In India, such 'legal

tender' status to the paper currency is given by the Central Government in terms of the provisions of Sec.26 of the RBI Act. Under the same section, the Central Government is also empowered to withdraw the legal tender' status of the currency notes. Thus, the currency notes are a mere piece of paper unless the same are recognized by the Government of India as 'legal tender' in terms of Section 26 of the RBI Act.

On the night of 08-11-2016, the Hon'ble Prime Minister of India while addressing the Nation has announced the decision of the Central Government to withdraw the legal tender status to the existing series of bank notes of the value of Rs.500 and Rs.1000 w.e.f. 09-11-2016. which was said to be a measure to tackle black money in the economy, to lower the cash circulation which is directly related to corruption in our Country, and to eliminate fake currency. Accordingly, a Notification in S.O.No.3407(E) dt. 08-11-2016 was also issued withdrawing the legal tender status to the bank notes of the value of Rs.500 and Rs.1000 referred to as specified bank notes or SBNs). However, in the said Notification a facility was granted to the holders of SBNs for the deposit of such SBNs in their account maintained with any bank on or before 30-12-2016 so that the equivalent value of SBNs will be credited to such accounts. The Government has further announced that the SBNs will continue to be legal tender during demonetization period for the limited purpose of making payments at places like petrol bunks, gas agencies, etc. Thus, except where the SBNs were deposited in a bank, or exchanged for goods / services at designated places like petrol bunks etc., in all other cases such SBNs are no longer legal tender w.e.f.09-11-2016. Coming to the present issue on hand, it is not in dispute that the assessee has carried on his business operations, accepted cash deposits/loan repayments during the demonetization period. As already discussed above, in a concluded and valid Contract, consideration shall only be the receipt of money in legal tender. Once the assessee says that he has carried out business operations, even during demonetization period, it has to be understood that he has received the money in legal tender only but not in SBNs, because from 09-11-2016 onwards, the SBNs are no longer money but a mere piece of paper as between the seller and the buyer, and do not constitute money in legal tender. The assessee cannot take a contradictory stand that he received price in SBNs. Thus, a valid contract during demonetization period and SBNs are mutually exclusive, and the assessee cannot be permitted to club both of them.

Hence, if any one says that he has received price in SBNs as a part of contract, such contract itself is void and non-est in the eyes of law, because the claim of receipt of such price in SBNs as a part of contract of sale, if accepted, would defeat the provisions of Sec.26(2) of RBI Act, 1934 and the Notification in S.O.No.3407(E) dt. 08-11-2016 issued thereunder, through which the Central Government has withdrawn the legal tender status of SBNs from 09-11-2016 onwards. As per the said Notification, the only way-out given to the persons holding SBNs as on 09-11-2016 to realize the equivalent value of such SBNs is to deposit the same in to his bank account (please see Para 2(iii) and 2(iv) of the Notification). If the SBNs are claimed to have been dealt by the persons who held the SBNs as on 09-11-2016, in a manner other than what was prescribed in the statutory Notification, like exchanging the same with unauthorized persons other than banks, and if such a claim is accepted, it would bring the said statutory Notification, which was issued as a measure to tackle black money, to ridicule and renders it nugatory. Also, since the 'public policy' behind the withdrawal of legal tender status to the SBNs from 09-11-2016 onwards was explained by the Central Government to be a measure to tackle the black money in the economy, to lower cash circulation which is directly linked to corruption, fake currency etc., any claim of acceptance of SBNs as a part of contract of sale or contract is opposed to the said 'public policy' as announced by the Central Government and vitiates the whole exercise of demonetization. Hence, for these reasons, the contract if it involves receipt of SBNs as 'price', is ab-initio void as per the provisions of Sec.23 of the Contracts Act, 1872 and thus non-est in the eyes of law. Hence, such SBNs cannot be treated as having arisen out of a contract. To conclude, as the assessee is not one of the entities authorized by the Central Government to accept SBNs during demonetization period in exchange for goods/services, and as the assessee has claimed that they have carried out valid business during the demonetization period by duly reporting such transactions, such receipts pre-suppose the receipt of price in legal tender, and accordingly any other claim to the contrary is not acceptable. Further, as the assessee has deposited the SBNs held by him in to his bank account, and since the Notification in S.O.No.3407(E) dt. 08-11-2016 issued by the Central Government has withdrawn the legal tender status of SBNs w.e.f 09-11- 2016 but permitted the deposit of such SBNs held by a person in to his bank account, the SBNs deposited in bank during demonetization period by the assessee represents the SBNs held by him as on 08-11-2016, and the onus is on the him to prove the

sources for such SBNs, failing which it may have to be treated as unexplained cash credits u/s.68 and brought to tax accordingly.

3.16 In view of the above, the explanation of the assessee is not found to be satisfactory and hence, the amounts deposited in SBNs during the demonetization period are held to be unexplained. The total cash deposited in SBNs during the demonetization period was Rs.1,93,00,000/-. The assessee has submitted that he had a cash balance of Rs.8,68,905/-as on 09.11.2016, out of which SBNs were Rs.7,19,500/-, and produced a copy of the cash book. Giving credit to the same, the unexplained cash deposits in SBNs work out to Rs.1,86,30,500/-. Hence, the cash deposits in SBNs during the demonetization period of Rs. 1,86,30,500/- are treated as unexplained and brought to tax u/s.68 of the Act.”

7. The ld. CIT(A) has confirmed the order of the Assessing Officer finding no infirmity in the same.

8. We have heard the rival contentions and gone through the record. Before us, the ld. Counsel for the assessee has submitted that the assessee-society has accepted the Specified Bank Notes during demonetization period from its members as the assessee-society was working in the rural area and the members were totally dependent upon it for banking needs. He, in this respect, has submitted that sources of the deposits were fully proved, therefore, the Assessing Officer was not justified in making the impugned additions u/s 68 of the Act. However, a perusal of the assessment order would reveal that the assessee-society has not provided the member-wise details of the deposits. Moreover, the assessee-society was not entitled to accept the demonetized currency/Specified Bank Notes during demonetization period. The assessee-society admittedly has done this activity in violation of law and the said activity of the assessee-society was not a legal activity. No justification on the part of the assessee-society can justify the said activity and cannot qualify it as legal activity. No doubt,

if the source of the deposits is explained, though the same is done in contravention of law, then the addition cannot be made u/s 68 of the Act. Though action can be initiated by the competent authority for the violation of law under the respective law but such deposits will not qualify to be declared as unexplained income of the assessee-society. However, the fact on the file is that the assessee-society has not furnished necessary member-wise details to the Assessing Officer. Under the circumstances, the source of the deposits is not proved. Further, the assessee-society has deposited the said demonetized currency accepted from its members in cooperative/schedule bank and earned interest income on the same. The assessee-society has claimed that it is indulged in the banking business activity. Therefore, the income earned by the assessee-society in the form of interest on such deposits is liable to be assessed as business income, however, not eligible for section 80P deduction. The assessee-society since has earned the said interest income from an activity which was prohibited by law by collecting deposits in demonetized currency during demonetization period, therefore, the expenditure incurred by the assessee-society in the shape of interest paid to the members cannot be allowed as deduction u/s 37 of the Act. With the above observations, the issue is restored to the file of the Assessing Officer with a direction that the assessee-society will furnish the necessary details relating to the source of the deposits to the Assessing Officer. If the assessee-society proves the source, no addition shall be made u/s 68 of the Act. The assessee-society will not be eligible for deduction in the form of interest paid on such deposits to the members. The Assessing Officer will also give proper opportunity to the assessee to furnish necessary details and thereafter to decide the issue afresh as directed above.

9. In the result, the appeal of the assessee-society is treated as partly allowed.

Kolkata, the 30th July, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 30.07.2024.

RS

Copy of the order forwarded to:

1. Aiho Samabay Krishi Unnayan Samity Ltd
2. ITO, Ward-3(1), Malda
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches