

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

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 752/KOL/2024
Assessment Year: 2017-18**

***Jotesriram Anchal Samabay Krishi Unnayan Samity Ltd.....Appellant
[PAN: AABAJ 3741 R]***

Vs.

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

Appearances:

Assessee represented by: Shuvo Chackrborty, A/R.

Department represented by: P.P. Barman, Addl. CIT, Sr. D/R.

Date of concluding the hearing : July 2nd, 2024

Date of pronouncing the order : August 12th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 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 (Appeal)-NFAC, Delhi [in short ld. 'CIT(A)'] dated 08.02.2024 arising out of the assessment order framed u/s 143(3) of the Act dated 06.12.2019.

2. The brief facts of the case of the appellant are that the assessee Jotesriram Anchal Samabay Krishi Unnayan Samity Limited is Primary Agricultural Credit Society which is registered under the West Bengal Co-

Operative Societies Act, 1912. The Object of the assessee is to carry business for creating funds by way of deposit in the form of banking business, borrowing from bank and otherwise for the purpose of providing credit facilities or lending to its members. During the normal course of business, the assessee accepts deposits among other activities from its member and farmers as savings and term deposits. The assessee is authorized and or permitted to raise such deposits from its members and farmers by its mother Bank. After raising the deposits, the assessee kept that deposit to its mother Bank to secure the re-payment of the said deposits to the member and farmer according to the precondition fixed by the mother bank as per the rules and order of the Cooperative department Co Operative societies Acts Government of West Bengal. The assessee earns interest and also pays interest this process treated as business income of Banking and not as income from other sources.

2.1. The assessee filed its return of income on 29.10.2017 declaring total income of Rs. 'NIL'. The return was processed u/s 143(1) of the Act and selected for scrutiny and the Assessing Officer (hereinafter referred to as Id. 'AO') observed that Samiti had an investment of surplus fund of Rs. 5,30,09,763/- including an amount of Rs. 17,81,810/- that share with other cooperative institution and an amount of Rs. 5,12,27,953/- as deposits in bank. The assessee was directed to file the ledger of interest received by giving clear bifurcations of the interest received from the members of the Samiti on loans. However, there was no communication from the assessee and accordingly the AO assessed the total income of the assessee at Rs. 89,02,880/-. The said order has been challenged by the assessee before the Id. CIT(A) wherein also it has been held that the appellant has not given bifurcations of the interest amount and accordingly, confirmed the order of the AO by dismissing the appeal. Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

2.2. Ld. Counsel for the assessee challenges the impugned order thereby submitting that the appellant is a primary agricultural credit cooperative

society, the primary object of principal business is to provide agricultural credit facility to its members or for the purpose connected with agricultural activities. Hence, profit from which are subjected to deduction u/s 80P(2)(a)(i) of the Act. It has further been argued that appellant invested its operative funds in banks and the same on maturity is used for the purpose of timely repayment of deposits to its members, the profit from these activities which include the net interest earning from deposits in bank which are required to be deposited in mother bank and other bank for running business of the Samiti and member security for timely payments with interest cost and according to him it is fully eligible for deduction u/s 80P of the Act. But the authorities below did not consider his things and added the same by assessing the total income at Rs. 89,02,880/-. Ld. Counsel for the assessee further submits that the present facts are completely distinguished from the facts of the *Totgars Co-Operative Sale Society Ltd. vs. ITO* case in which ld. CIT(A) has given his finding. Ld. Counsel for the assessee further submits that he ought to have given an opportunity to place his entire material before the ld. CIT(A) as the amount received by the society from the cooperative and the scheduled bank. Ld. Counsel for the assessee filed papers before us.

3. On the contrary, ld. D/R supports the impugned order.

4. We have perused the order of the AO as well as the ld. CIT(A). The relevant portion of the order of the AO is thus:

“Please furnish the ledgers of these expenses and with supporting evidences.

In your Balance Sheet for FY: 2016-17, it is observed that the Samity had an investment of its surplus fund of Rs.5,30,09,763/- including an amount of Rs.17,81,810/- as Share with other cooperative institutions and an amount of Rs.5,12,27,953/- as deposits with bank. Also, in the P/L account of the Samity for FY: 2016-17, an amount of Rs.89,09,882/- was shown as Interest received & receivable on loan, advance & bank deposits.

Please furnish the ledger of this interest received/receivable amount for the FY: 2016-17 giving a clear bifurcation of interest received from members of the Samity on loans given to them and interest received from TD/FD out of

surplus fund. The Samity claimed an exemption of this amount u/s 80P of the Act.

Please explain as to why these any interest amount on such investment made on surplus fund should not be treated as income from other source of the assessee Samity for the AY: 2017-18.”

4.1. We further find that a show cause notice is also been issued through ITBA E-proceedings thereby asking the assessee to furnish documents requisitioned in the earlier letter, however, this time also the assessee did not make in response to the show cause notice duly communicated. We have also perused the order of ld. CIT(A) and find that the order of the ld. CIT(A) is based on the finding of the AO that the appellant has not given any bifurcations of the interest amount of Rs. 89,09,882/-.

4.2. In these proceedings, ld. Counsel for the assessee has filed the following papers which are as follows:

- a) Memorandum of society
- b) Audit report of the society for AY 2016-17
- c) Tax audit report for AY 2016-17
- d) Returned copy of AY 2017-18

4.3. The submission of the ld. Counsel for the assessee is that the appellant society invested its operating funds in banks and the same on maturity is used for the purpose of timely repayment of deposits to its members and according to him as per the rules and orders of the Cooperative department and Cooperative societies Act interest earning on loans which is to be provided to the members are fully eligible for deduction u/s 80P of the Act. The submission of ld. Counsel for the assessee is that his case is not covered under the case decided by the Hon'ble Supreme Court in the case of *Totgars Co-Operative Sale Society Ltd. (supra)*. It is important to mention here that CIT(A) has dismissed the appeal by observing thus- **The appellant has not given any bifurcation of the interest amount of Rs 89,09,882/-**. Before us the prayer of the A/R is that has to be given an opportunity to place his case with documentary evidence before the CIT(A) as assessee being a primary

agricultural cooperative society and his profit subject to the deduction under section 80P(2) of the Act.

4.4. Keeping in view the submission of the Id. Counsel for the assessee as well as the facts of the case we are of this view that the assessee has to be given an opportunity to place all his facts and documents before the Id. CIT(A), Id. CIT(A) is hereby directed to hear the assessee, scrutinise the paper filed by the assessee in support of his grievance and thereafter pass a fresh order keeping in view the judgement passed by the Hon'ble Supreme Court in the case of *Totgars Co-Operative Sale Society Ltd. (supra)*, the case is remanded back to the file of Id. CIT(A) for fresh decision as observed hereinabove.

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

Order pronounced in the open Court on 12th August, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 12.08.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Jotesriram Anchal Samabay Krishi Unnayan Samity Ltd., P.O. Bahadurpur B.O. Krishnapur, Bardhaman, West Bengal, 713408.**
2. **ITO, Ward-1(3), Burdwan.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata