



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.56/LKW/2024
Assessment Year: 2018-19

Hardoi District Cane Growers Co-operative Society Ltd. Ayyubi Chamber, Raniganj Lakhimpur Kheri	v.	The ITO 3(2) Hardoi
TAN/PAN:AABAH4032R		
(Appellant)		(Respondent)

Appellant by:	Shri Shubham Rastogi, C.A.		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	23	07	2024
Date of pronouncement:	30	08	2024

ORDER

This appeal has been preferred by the assessee against the order dated 26.12.2023, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2018-19.

2. The brief facts of the case are that the assessee-society filed its return of income in ITR-5, declaring income at Nil on 30.10.2018. The case was selected for scrutiny under CASS and the Assessing Officer completed the assessment at a total income of Rs.34,50,823/- by making disallowance under section 80P(2)(a)(iii) of the Act at Rs.34,50,823/-.

3. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed on account of the fact that there was a delay of 40 days in filing of appeal before the NFAC and no application for condonation of delay has been filed by the assessee.

4. Now, the assessee has approached this Tribunal challenging the action of the NFAC by raising the following grounds of appeal:

(1) The Ld. C. I. T. (A) NFAC erred on facts and in law in dismissing the appeal by not condoning the Delay of 40 days in filing of the appeal without considering that there was a sufficient cause for delay in filing the appeal.

(2) The Ld. C. I. T. (A) NFAC erred in not considering that the cause for delay was sufficiently explained in the condonation of delay petition filed along with Form No. 35.

Without prejudice to above.

(3) That the Authorities below erred on facts and in law in not allowing deduction u/s 80P(2)(a)(iii) of 1. T. Act on Interest received on Investments held with Banks in form of FDR's Rs.34,50,823/-.

(4) That the Authorities below erred in relying on the decision of Hon'ble Supreme Court in the case of Totgars Co-Operative Sale Society Ltd. Vs. ITO without appreciating that it was a sale society and the facts of the case of the assessee are distinguishable from the facts prevailing in the case of Totgars Co-operative Sale Society and hence reliance placed on the said judgement is misplaced.

(5) That the A erred on facts and in law in not considering that the A. O. has nowhere demonstrated in the Assessment Order that the Interest Income on FDR's and Saving Bank Accounts was on account of surplus funds of the Society and in absence of such finding the decision of Hon'ble Supreme Court cannot be relied upon in Appellant's Case.

(6) That the Authorities below erred on facts and in law in not considering that the Law has used the word "attributable" and not the word "derived" in section 80P so as to include income from sources other than the actual conduct of the Business of the Society and thus Interest Income on FDR's & S. B. A/c is attributable to the business of providing

credit facilities and providing assistance to cane growers for better development cane crops.

WITHOUT PREJUDICE TO ABOVE

(7) That the Authorities below erred on facts and in law in not considering that the funds of the Society in form of Share Capital from members and the society being co-operative society is statutorily required to maintain a Reserve Fund of a minimum 25% of its profit and thus the investments in form of deposits with Banks to the extent of the Share Capital and Reserve Funds cannot be said to be made out of surplus funds.

(8) That the Authorities below erred on facts and in law in not considering that the P. F. Balance of seasonal employees of society which is held in the form of deposits are not the investments of the society and accordingly interest accruing on the said amount cannot be said to be the Income of the Society.

WITHOUT PREJUDICE TO ABOVE

(9) That the Authorities below erred on facts and in law in not allowing proportionate deduction for 'Management Expenses and 'Interest paid debited in the Profit and Loss Account.

(10) That the Authorities erred on facts and in law in not considering that only the real income/ profit can be Taxed and accordingly, the expenses incurred in earning the said income has to be determined and deducted from the Grass Income.

(11) That the addition confirmed is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by CIT (A).

5. The Id. AR drew my attention to Form No.35 filed before the NFAC and submitted that the NFAC had not considered the condonation of delay petition filed along with form No.35 before dismissing the assessee's appeal on the alleged ground of non-

filing of application for condonation of delay. The ld. AR prayed that the assessee's appeal may be restored to the file of the NFAC for the purpose of adjudication on merits after condoning the delay of 40 days in filing the appeal.

6. The ld. Senior D.R. had no objection to the restoration of appeal to the NFAC.

7. I have heard both the parties and have also perused the material on record. Looking into the facts of this case, I am of the considered view that the assessee deserves one more opportunity to present its case and, therefore, in the interest of substantial justice, I restore this file to the Office of the NFAC with the direction to condone the delay of 40 days in filing the appeal before the NFAC and decide the appeal of the assessee on merits after providing an opportunity of hearing to the assessee to present its case. I also caution the assessee to fully comply with the directions of the NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

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

Order pronounced in the open Court on 30/08/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:30/08/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar