

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

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
एवं

श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष

Before

**PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 302/KOL/2024  
Assessment Year: 2017-18**

***M/s. Gariahat Market Byabasayee Cooperative Credit Society  
Ltd.....Appellant  
[PAN: AAAAG 8667 L]***

***Vs.***

***ITO, Ward-30(1), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: Manoj Kataruka, AR.***

***Department represented by: Bibekananda Madhu, JCIT, Sr. DR.***

Date of concluding the hearing : September 12<sup>th</sup>, 2024

Date of pronouncing the order : September 23<sup>rd</sup>, 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 Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 20.10.2023 arising out of the assessment order framed u/s 143(3) of the Act dated 16.12.2019.

1.1. There is a delay of 58 days in filing the appeal. Ld. Counsel for the assessee in his petition stated that delay in filing the appeal was *bona fide* as the appeal order was seen on 20.12.2023 in the Income Tax Website by the new Accountant of the cooperative Society. According to him, the earlier

person who was in charge of handling the income tax matters and had provided an e-mail ID which was not in communication and there was no information from him of any notice received or any order passed and it is for this reason there could not be any compliance. The Id. Counsel for the assessee submits that delay of 58 days was due to the above reasons i.e. beyond the control of the assessee. The prayer is to condone the delay. The Id. DR did not raise any objection if the delay is condoned. Accordingly, the delay is hereby condoned and the appeal is admitted for adjudication.

2. The brief facts of the case of the appellant are that the assessee is a cooperative credit Society registered under Cooperative Societies Act. The appellant filed its income tax return declaring total income at 'NIL' after claiming deduction u/s 80P of the Act amounting to Rs. 6,99,900/-. The case was selected for scrutiny in respect of cash deposit during demonetization period. Notices u/s 143(2) of the Act were issued, show cause notice was also issued to the full list of members who deposited cash during demonetization period. The Assessing Officer (hereinafter referred to as Id. 'AO') in the course of assessment proceedings asked to furnish cash flow statement or extract of cash deposited from the period 01.04.2016 to 08.11.2016 and 09.11.2016 to 31.12.2016 and also bifurcate cash deposited in the bank during demonetization period. But the assessee did not furnish the aforesaid details. However, assessee submitted hand-written list of names with incomplete address. Therefore, the AO has treated the amount of Rs. 6 lakh deposited during demonetization period as an unexplained cash credit u/s 68 of the Act. The said order has been challenged by the assessee before the Id. CIT(A) wherein appeal of the assessee had been dismissed on the ground that in spite of several notices, there was no compliance from the side of the assessee nor the assessee filed any material evidence or documents.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

2.1. Ld. Counsel for the assessee challenges the impugned order on the following grounds of appeal:

*“1) That on the facts and in the circumstances of the case the action of the CIT(A) to confirm the addition made by the AO of Rs. 6,00,000/- as unexplained cash credit u/s 68 of the Act is arbitrary, excessive and illegal.*

*2) That on the facts and in the circumstances of the case the action of the AO in not allowing deduction u/s 80P of the Act to the extent of Rs. 6,99,944/- as claimed in the return and confirmed by the CIT(A) is contrary to the settled principles of law and is illegal, arbitrary and excessive.*

*3) That the order of the Ld. CIT(A) confirming the action of the A.O. is arbitrary, excessive and illegal.*

*4) That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing.”*

2.2. The ld. Counsel for the assessee in course of arguments has submitted that assessee should be given an opportunity to place his submission before the ld. CIT(A) as the order passed by the ld. AO in absence of the assessee. Ld. Counsel for the assessee submits that ld. CIT(A) has passed an order only on this ground that appellant is not interested in pursuing the appeal although ld. CIT(A) ought to have decided the case on merit which he did not do. Ld. Counsel for the assessee further submits that the appellant being a cooperative Society is entitled to claim deduction u/s 80P of the Act. Hence, the order passed by the AO confirmed by ld. CIT(A) is erroneous and liable to be set aside.

2.3. Ld. D/R supports the impugned order.

3. We have perused the record and find that assessee is no doubt a cooperative Society and as per Section 80P of the Act he is entitled for deduction if he files documents. On perusal of the order of ld. CIT(A) it appears to us that the order passed by the ld. CIT(A) on this ground that in spite of notices issued to the appellant there was no compliance and hence, it is presumed that appellant is not interested in pursuing the appeal. Accordingly, appeal is hereby dismissed. Before us the ld. Counsel for the assessee submits that the assessee is a cooperative Society having several documents that goes to establish that he is entitled to claim deduction u/s 80P of the Act. His submission is that assessee should be given an opportunity to place his

submission before the Id. CIT(A). It admits of no doubt that the order passed by Id. CIT(A) is an *ex-parte* order and there is not discussion on the merit of the case.

3.1. Keeping in view the above facts and in the interest of justice, we are in this view that the appellant should be given an opportunity to place his submission before the Id. CIT(A) as the order passed by the Id. CIT(A) behind his back. Accordingly, the order of Id. CIT(A) is set aside, the case is restored to the file of Id. CIT(A) and the Id. CIT(A) is hereby directed to hear the assessee and pass a reasoned order after going over the documents as well as judicial pronouncements. The assessee is directed to cooperate in the proceedings.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 23<sup>rd</sup> September, 2024.**

Sd/-

**[Sanjay Awasthi]**

Accountant Member

Dated: 23.09.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **M/s. Gariahat Market Byabasayee Cooperative Credit Society Ltd., 02-61 Block C & D, Gariahat Market New Complex, 212, Rash Behari Avenue, Ballygunge, Kolkata, West Bengal, 700019.**
2. **ITO, Ward-30(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata