

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.: 1736/KOL/2024
Assessment Year: 2016-17**

***Mallickpur Samabay Krishi Unnayan Samity Limited.....Appellant
[PAN: AABAM 5357 J]***

Vs.

ITO, Ward-24(2), Hooghly.....Respondent

Appearances:

Assessee represented by: Gautam Kumar, Adv.

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

Date of concluding the hearing : September 12th, 2024

Date of pronouncing the order : September 23rd, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2016-17 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 20.03.2024 arising out of the assessment order framed u/s 143(3) of the Act dated 29.11.2018.

1.1. The present appeal has been filed by the appellant against the order passed by Id. CIT(A) and as per the report submitted by the Registry, there is a delay of 85 days in filing the appeal. The appellant has filed a condonation petition in support of the delay. The Id. Counsel for the assessee submits that

the delay was caused due to the communication gap with the consultant appointed by the appellant and according to him, consultant could not be contacted for a long period of time and in fact the appellant came to know regarding the order passed by Id. CIT(A) on receiving one communication from the Income Tax Department regarding this matter only on 05.08.2024 and thereafter, steps have been taken by the appellant for filing the present appeal. The Id. DR did not raise any objection in condoning the delay. Keeping in view a catena of decisions of the Hon'ble Apex Court in which it has been decided that case should be decided on merit and not on technical basis and further considering the facts stated in the petition, we condone the delay. The delay is here by condoned and the appeal is admitted for hearing.

2. The brief facts of the case of the appellant are that the assessee is a cooperative Society registered under the West Bengal Cooperative Societies Act 1983 filed its return of income for the AY 2016-17 declare in total income at 'NIL'. The case of the assessee was selected for scrutiny, notice u/s 143(2) of the of the Act sent to the assessee, but in spite of giving sufficient opportunity to the assessee, none appeared on behalf of the assessee nor submitted any details. Accordingly, an amount of Rs. 29,07,369/- has been disallowed and added back to the total income of the assessee. The said order has been placed by the assessee before the Id. CIT(A) wherein also the appeal of the assessee has been dismissed on the ground that appellant in the appellate proceeding failed to furnish documentary evidences/proper explanation in support of his condonation.

Being aggrieved and dissatisfied with the action of Id. CIT(A), the present appeal has been preferred

2.1. The Id. Counsel for the assessee challenges the impugned order thereby submitting that the appellant is a cooperative Society duly registered under the West Bengal Cooperative Societies Act, 1983 and during FY 2015-16 generated revenue from sale of various products and interest earned. The Id. Counsel for the assessee submits that the aforesaid sources of revenue are not in advertence of the scope of the Society and it is duly recognised in the

bylaws of the appellant. The ld. Counsel for the assessee further submits that appellant has also an audited financial statement in which the aforesaid amount has been duly disclosed and the said certificate has been duly certified by the Auditor in filing of the income tax return. The ld. Counsel for the assessee submits that appellant is entitled for deduction as prescribed u/s 80P of the Act. The ld. AO did wrong in not allowing the deduction u/s 80P of the Act. The ld. Counsel for the assessee further submits that appellant has to be allowed to place its submission before ld. CIT(A) or to the AO for the interest of justice as the order passed by the AO as well as confirmed by the ld. CIT(A) due to the non-submission of the written submission, statement or to the documents though the appellant possesses all the documents.

2.2. The ld. DR supports the impugned order.

3. We have perused the order of the ld. AO as well as the ld. CIT(A). It admits of no doubt that the assessee is a cooperative Society and his claim is u/s 80P of the Act. Ld. AO passed the order on this ground that assessee had been served show cause notice in this regard but none appeared nor submitted any written submission. Accordingly, deduction claimed u/s 80P of the Act of Rs. 2,88,037/- is hereby disallowed. We have also perused the order of ld. CIT(A) and it appears to us that in spite of given adequate opportunity, appellant did not response nor file any written submission. The ld. Counsel for the assessee before us submits that the appellant should be given reasonable opportunity to place his submission before the adjudicating authority as due to some unavoidable circumstances, appellant could not place his submission before the adjudicating authority. On perusal of the orders of the ld. AO as well as the ld. CIT(A) it admits of no doubt that the order passed behind the back of the assessee. Interest of justice requires that appellant should be given reasonable opportunity to place his submission or the documents before the ld. AO which they want in support of his case. The ld. AO shall pass an order after hearing the assessee. Accordingly, the order passed by the ld. AO confirmed by the ld. CIT(A) is hereby set aside, case is restored to the file of ld. AO. The ld. AO is hereby directed to hear the assessee,

go over the documents filed by the assessee and thereafter pass a reasoned order.

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

Order pronounced in the open Court on 23rd September, 2024.

Sd/-

[Sanjay Awasthi]

Accountant Member

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Dated: 23.09.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Mallickpur Samabay Krishi Unnayan Samity Limited, Mallickpur, Rudrani, Dhaniakhali, Hooghly, West Bengal, 712302.**
- 2. ITO, Ward-24(2), Hooghly.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata