

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**SHRI SONJOY SARMA, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 1101/Kol/2023
Assessment Year: 2017-18**

**Deputy Commissioner of Income Tax,
Circle 32, Kolkata,
10B Middleton Row, 2nd Floor,
Kolkata - 700071**

.....**Appellant**

vs.

**Bongaon Co Operative Credit
Society Limited, Bongaon,
1st Floor, Banerjee Market Jessor Road
Bongaon S.O. North 24 Parganas - 743235
[PAN: AAAAB6325N]**

..... **Respondent**

Appearances by:

Assessee represented by : Dr. Somnath Ghosh, AR

Department represented by : Akhil Kumar, Sr. DR

Date of concluding the hearing : 11.11.2024

Date of pronouncing the order : 18.11.2024

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld. CIT(A)") passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2017-18, dated 23.08.2023, which has been passed against the assessment order u/s 143(3) of the Act, dated 15.12.2019.

1. In this case, the appellant has filed his return of income on 27.03.2018 at 'Nil' income. The Ld. AO essentially made two additions on account of interest income received (Rs. 35,63,552/-) and as unexplained cash credit on account of sums deposited in cash by the appellant during

the demonetisation period (Rs. 1,25,19,600/-). It is seen that the Ld. CIT(A) deleted the addition on account of unexplained cash credit following the judgment in the case of Sri Bhageeratha Pattina Sahakara Sangha Niyamitha, Hosadurga, ITA No. 646/Bang/2021, order dated 18.02.2022.

1.1 The Ld. CIT(A) also granted partial relief on the addition made on account of interest received, in as much as relief of Rs. 29,11,418/- was allowed on the ground that this was interest earned from a cooperative bank and was thus eligible for relief u/s 80P(2)(d) of the Act.

1.2 Aggrieved with the action of the Ld. CIT(A) the Department is in appeal through the following grounds:

“1. That the Ld. CIT(A) has erred in not considering the fact that as per RBI Notification in RBI/2016-17/130 DCM (Pig) No. 1273/10.27.00/2016-17 dated 14/11/2016, deposit of SBN (specified bank notes) to District Central Co-operative Banks was prohibited. Hence the assessee was not entitled to deposit SBN to the bank.

2. That the Ld. CIT(A) has erred in not appreciating the fact that the ratios of deposits of SBN during the demonetization period was much higher compared to previous part of the year, which the assessee could not explain before the Assessing Officer and hence it was rightly treated as Unexplained Cash Credit.

3. That the Ld. CIT(A) has erred in not appreciating the fact that the assessee society did not explain before the Assessing Officer, whether the unusual and huge amount of SBN deposited by members during demonetization period was actually due from them to the society and hence it was rightly treated as Unexplained Cash Credit.

4. That the appellant craves leave to add, alter, delete any of the grounds of appeal during the appellate proceedings.”

2. Before us, the Ld. DR relied on the order of Ld. AO and stated regarding the addition u/s 68 of the Act that the assessee should not have accepted currency notes which were no longer legal tender. On the issue of interest income earned, the Ld. DR relied on the judgment of the Hon'ble Apex Court in M/s Totagars Cooperative Sales Society reported in 322 ITR 283 (SC).

2.1 The Ld. AR relied on the findings of the Ld. CIT(A).

3. We have carefully considered the rival submissions and also gone through the authorities relied on by either side. Regarding the addition

made on account of unexplained cash credit the reliance placed on the case of Sri Bhageeratha Pattina Sahakara Sangha Niyamitha (supra) is acceptable considering that the facts are remarkably similar as the following extract from the said order would reveal:

“13. The Ld. A.R. submitted that, under the provisions of section 68 of the Act, the assessee's liability is to explain the nature and sources of the money. He submitted that the assessee has explained the nature as well as sources i.e. the above said deposit was made out of its collections in the ordinary course of carrying on business, i.e., it represented money deposited by its members towards repayment of loans, pigmy deposits, etc. Accordingly, he submitted that the assessee has discharged its responsibility u/s 68 of the Act. Further, the collections and deposits have been duly recorded in the books of account and hence, there is no reason to treat the same as unexplained money of assessee. The Ld. A.R. further submitted that merely because demonetized notes ceased to be legal tender, it does not mean that the amount collected by the assessee from its members would become unexplained money of the assessee. The Ld. A.R. also submitted that the Reserve Bank of India issued a series of notifications with regard to the deposit of demonetized notes from 8.11.2016 onwards. He submitted that the RBI, vide notification dated 14.11.2016, clarified that District Central Co-operative Banks can allow their existing customers to withdraw money from their accounts up to Rs.24,000/- per week. It further clarified that no exchange facility against demonetized notes or deposit of such notes should be entertained by them. In view of the above said notification, the assessee has stopped collecting the demonetized notes from 14.11.2016 onwards. Accordingly, the Ld. A.R. submitted that the above said deposits were collected by the assessee prior to 14.11.2016 and it cannot be considered as violation of any of the Provisions of the Act. Accordingly, he submitted that the A.O. was not justified in invoking the provisions of section 68 of the Act.

14. I heard Ld. D.R. on this issue and perused the record. I notice that the A.O. has not doubted the submissions of the assessee that the above said amount of Rs.24,47,500/- represents collection of money in the normal course of carrying on of business of the assessee, i.e., it represents money remitted by the members of the assessee society towards repayment of the loan taken by them and also towards pigmy deposits, etc. The Ld A.R submitted that the assessee has duly recorded in its books of account the transactions of collections of money as well as deposits made into bank account. Thus, I notice that the assessee has explained the nature and source of the above said amount of Rs.24,47,500/-, which was in-turn deposited by the assessee society in its bank account and further, all these transactions have been duly recorded in the books of account. Hence, the above said deposits cannot be considered as "unexplained money" in the hands of the assessee.”

3.1 It needs to be further mentioned that while the appellant may have been accepting the demonetised currency notes even beyond the date of the RBI Circular dated 14.11.2016 then to as long as a valid explanation has been tendered for the said amounts, then the provisions of section 68 of the Act would not apply since, the said section would be triggered once the sales found deposited with the assessee were found to be unexplained.

In this case, it is not proved that the sums of money found credited have not been explained, rather cash book etc. have been presented for appropriate perusal before the Ld. AO. In light of this fact the action of Ld. CIT(A) in deleting the impugned amount is upheld.

3.2 Regarding the action of Ld. CIT(A) in terms of granting relief on account of interest income earned, it is seen that there is considerable discussion regarding the legality and judicial precedents on the matter in the impugned order. Admittedly, the Ld. CIT(A) has gone by language of section 80P(2)(d) of the Act to hold that the amount of Rs. 29,11,418/- was clearly eligible for claiming deduction u/s 80P of the Act. The Ld. CIT(A)'s reliance on certain authorities mentioned in page 15 of the impugned order are also appropriate for the issue at hand. We may further add that in the following two cases also cooperative banks have been held to be covered for the purposes of section 80P(2)(d):

- (i) Thorapadi Urban Co-op Credit Society Ltd. Vs. Income Tax Officer reported in 296 Taxman 250 (Madras)
- (ii) Principal Commissioner of Income Tax, Hubli Vs. Totagars Co-operative Sale Society reported in 392 ITR 74 (Karnataka).

Considering this discussion, the action of Ld. CIT(A) is upheld on this point also. In result, the Revenue's appeal fails on this point too.

4. In the result, the appeal of the revenue is dismissed.

Order pronounced in the court on 18.11.2024

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 18.11.2024.
AK, PS

Copy of the order forwarded to:

1. Bongaon Co Operative Credit Society Limited, Bongaon
2. Deputy Commissioner of Income Tax, Circle 32, Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches