

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Before Shri Sonjoy Sarma, Judicial Member and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.186/Kol/2024**  
Assessment Year: 2018-19

**Chunakhali Samabay Krishi Unnayan Samity Ltd.....Appellant**  
**Chunakhali, Gopinathpur,**  
**Murshidabad-742149.**  
**[PAN: AAATC5443M]**

**vs.**

**ITO, Ward-42(1), Kolkata.....Respondent**

**Appearances by:**

Shri S. Das Sarma, Advocate, appeared on behalf of the appellant.

Shri Sanjay Paul, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : October 23, 2024

Date of pronouncing the order : November 20, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

1. In this case there is a delay of 151 days in the filing of this appeal. The same has been requested for condonation through an Affidavit dated 18.1.2023. The main reasons for the said delay have been mentioned as lack of timely legal advice on the next steps, in the face of an adverse order from the Ld. AO. It is also mentioned in the said Affidavit that the Legal Counsel eventually engaged for the purpose fell ill, leading to further delay.

1.1 The reasons for delay have been considered and it is clear that in the interest of substantive justice, this appeal deserves to be admitted for adjudication.

2. The present appeal has been filed by the assessee against the order dated 18.09.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2.1 The assessee is primarily an agricultural society registered with Registrar of Cooperative Societies under Govt. of West Bengal. The assessee filed its return of income for assessment year 2018-19 on 27.11.2018 declaring 'nil' income. The Assessing Officer vide his order dated 05.04.2021, considerably enhanced the income of the assessee and assessed total income at Rs.3,09,11,197/-.

3. Aggrieved with the above action of the Assessing Officer, the assessee carried the matter before the ld. CIT(A). The ld. CIT(A) vide order dated 18.09.2023 gave relief on substantial issues but confirmed the addition on account of interest income earned from Murshidabad District Central Cooperative Bank ('MDCCB') and IDBI bank.

3.1 It is seen that the present appeal challenges the action of the ld. CIT(A) in confirming the addition to the tune of Rs.1,94,37,511/- representing interest income earned from MDCCB. The gist of the findings of the ld. CIT(A) in this regard is that the MDCCB is a banking company recognised by the Reserve Bank of India as such and hence, MDCCB could not be a cooperative society envisaged u/s 80P(2)(d) of the Act. In arriving at this conclusion, the ld. CIT(A) has relied on several authorities which in turn, have relied on the decision of Hon'ble Supreme Court in the case of '*Totgars Co-operative Sale Society Ltd. Vs. ITO reported in 322 ITR 283(SC)*'.

4. The assessee has challenged the above action of the ld. CIT(A) before us through the following grounds of appeal:

*"1. That on the facts and in the circumstances of the case, the ld. CIT(A), NFAC erred in passing the order without allowing the permissible deduction on account of interest earned from Central Co-operative amounted to Rs.1,94,37,511/-, which was unjust and contrary to the facts and law.*

*2. That on the facts and in the circumstances of the case, the ld. CIT(A), NFAC erred in passing the order sustaining the addition of Rs.1,94,37,511/- on account of interest earned from Central Co-operative bank.*

*3. That the appellant craves leave to urge such other ground or grounds before or at the time of hearing of appeal.”*

4.1 Before us, the ld. AR mainly argued on the ground that MDCCB is a cooperative society, hence, the interest received from the same would be eligible for deduction u/s 80P of the Act.

5. Per contra, the ld. DR, by relying on the findings of the ld. CIT(A), stated that the MDCCB and IDBI bank were on equal footing, hence, the interest received from these two entities has been rightly considered to be as ‘income from other sources’, which is not eligible for any relief u/s 80P of the Act.

6. We have carefully considered the rival contentions and also gone through the orders of the authorities below. In the present case, a situation has arisen whereby the ld. CIT(A) has gone to great lengths to show that MDCCB is a banking company as opposed to being a cooperative society. The ld. CIT(A) has taken pains to distinguish the status of MDCCB with respect to section 80P(2)(d) of the Act. At this stage, we have been made aware of the decision of the Coordinate Bench of Tribunal in the case of ‘ITO vs. Bongaon Cooperative Credit Society Limited’ in ITA No.1101/Kol/2023, wherein, the following findings, which are considered as relevant for deciding the instant issue, may be extracted:

*“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."*

6.1 A reading of the extract above makes it clear that a cooperative bank, in principle would be akin to a cooperative society and would thus be eligible for being covered u/s 80P(2)(d) of the Act. However, factually, similarities between a cooperative society and MDCCB deserve to be established clearly so that there remains no error on facts. Accordingly, we deem it appropriate to remand this matter to the file of the Assessing Officer for determining the status of MDCCB, keeping in view of the provisions of section 80P(2)(d) of the Act and the decision of Hon'ble Supreme Court referred to by the Id. CIT(A) in the case of '*Totgars Co-operative Sale Society Ltd.* (supra), and the cases relied upon in the Bongaon Co-operative Society case (supra). The Assessing Officer is directed accordingly.

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

***Kolkata, the 20<sup>TH</sup> November, 2024.***

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 20.11.2024.

RS

*Copy of the order forwarded to:*

1. Chunakhali Samabay Krishi Unnayan Samity Ltd
2. ITO, Ward-42(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches