



ITA No.3030/Mum/2015
Apex Urban Co-op.Bank of Maharashtra & Goa Limited
Assessment Year-2010-11

आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री सी .नागेंद्र प्रसाद, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI C.N. PRASAD, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./I.T.A. No.3030/Mum/2015
(निर्धारणवर्ष / Assessment Year:2010-11)

Apex Urban Co-op. Bank of Maharashtra & Goa Limited 11, Sharda Sadan, S.A.Brelvi Road Opp.Fort Fire Station, Fort Mumbai-400 001	बनाम/ Vs.	Income Tax Officer 1(1)(1) Aaykar Bhavan M.K.Road Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.AAAJA-0013-B		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)
Revenue by	:	Shishir Dhamija, Ld. CIT DR
Assessee by	:	Aarti Sathe, Ld.AR
सुनवाई की तारीख/ Date of Hearing	:	03/07/2018
घोषणा की तारीख / Date of Pronouncement	:	07/09/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2010-11 contest the invocation of revisional jurisdiction u/s 263 by Ld. Commissioner of Income Tax-1 [CIT], Mumbai on 20/03/2015. The concise grounds as filed by the assessee on 29/11/2016 read as under:-



ITA No.3030/Mum/2015
Apex Urban Co-op.Bank of Maharashtra & Goa Limited
Assessment Year-2010-11

1. *The Commissioner of Income Tax-1, Mumbai (hereinafter said "the C.I.T.") erred on facts and in law in passing the order dated 20th March, 2015 (hereinafter referred to as the impugned order) passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") without appreciating the facts of the case.*
2. *The C.I.T. erred in not appreciating that in the present case the original assessment order was passed after considering all the details and the documents furnished by the Appellant before the Assessing Officer and hence C.I.T. was not justified in exercising the suo moto power of revision under the provisions of Section 263 of the Act. It is therefore also submitted that the original assessment order was passed after a proper examination and enquiry into all the facts of the case.*
3. *The C.I.T further erred in not appreciating that in the present case the Assessing Officer had applied his mind and arrived at a conclusion. It was not a case of lack of enquiry and not only because the C.I.T. had a different opinion on the subject matter of the present case, the same would not confer revisional jurisdiction on him under the provisions of Section 263 of the Act.*
4. *The C.I.T erred in passing the impugned order in as much as there is nothing erroneous or prejudicial to the interest of the revenue which has been pointed out in the impugned order. The impugned order is therefore liable to be set aside.*
5. *The C.I.T. erred in setting aside the order of assessment and in directing to make a fresh assessment as the twin conditions viz.*
 - (i) *The order is erroneous and*
 - (ii) *is also causing prejudice to the Revenue must have been satisfied before the revisional powers under section 263 of the Act invoked by the C.I.T*
6. *The C.I.T erred in not appearing that the deduction under section 80 (P) (2) (a) (i) of the Act was rightly availed by the Appellant, as even though its banking license was cancelled, it is continued its activity as a co-operative credit society and the income derived therefrom was eligible for a deduction under section 80 (P) (2) (a) (i) of the Act. The impugned order has been passed on a non-application of mind to the facts of the case and hence is liable to be set aside.*
7. *The C.I.T. erred in holding that the deduction under section 80(P) (2)(a)(i) of the Act is 'activity based' as opposed to being 'business based'. It is submitted that the Appellant was engaged in providing credit facilities to its members which was also eligible to a deduction under section 80(P) (2) (a) (i) of the Act.*
8. *The Appellant craves leave to add, to amend or alter any or all the grounds of appeal.*

The Registry had noted certain defects in the appeal documents which were duly communicated to the assessee. Consequently, the assessee vide letter dated 16/07/2015 has filed a revised Form No. 36 after rectifying the defects as pointed out by the registry. It has been submitted that a liquidator has been appointed for the assessee and all the powers to undertake legal



ITA No.3030/Mum/2015
Apex Urban Co-op.Bank of Maharashtra & Goa Limited
Assessment Year-2010-11

proceedings have been delegated to *Shri Arvind Damodar Marathe*, *General Manager* vide office order dated 12/06/2015, a copy of which has been placed on record. Accordingly, the appeal documents have been signed by the above stated person. Finding the same in order, we proceed to dispose-off the appeal on merits.

2.1 Briefly stated the assessee being *resident co-operative society* engaged in *providing credit facilities to its members* was assessed u/s 143(3) on 22/01/2013 by *Ld. Income Tax Officer-1(1)(1), Mumbai* accepting returned income of '*Nil*' as *e-filed* by the assessee on 04/10/2010. The quantum assessment order records a finding that the assessee was a *multi state cooperative bank*. However, *RBI* cancelled its license to operate as banking institution with effect from 30/10/2003 and accordingly, the assessee had stopped operations as a *banking organization* but exists as a multi state cooperative society and still continues lending / credit facilities extended by them in earlier years. The assessee earned interest income of Rs.323.93 Lacs from *loans & advances*. It also earned interest of Rs.159.50 Lacs on *inter-bank deposits* parked with *ICICI Bank, Corporation Bank and Indian Bank*. The assessee's *Gross Total Income* worked out to be Rs.183.68 Lacs, which after exemption u/s 80P for the same amount, got reduced to *Nil*.

2.2 Subsequently, the said assessment order was subjected to exercise of revisional jurisdiction u/s 263 by *Ld. CIT* vide *show cause* notice dated 13/08/2014, the relevant portion of which is extracted below:-



ITA No.3030/Mum/2015
Apex Urban Co-op.Bank of Maharashtra & Goa Limited
Assessment Year-2010-11

The assessment for A.Y. 2010-11 which has been completed u/s. 143(3) of the I.T. act, 1961 on 25.03.2013 by the ITO-1(1)-1, Mumbai found to be erroneous and prejudicial to the interest of the revenue.

You are therefore required to explain as to "Why the revision in assessment order u/s. 143(3) dtd. 28.03.2014 should not be made U/s. 263 of the I.T. Act, 1961 on the account of following reasons:

"On verification of record it was observed that the license of the bank was cancelled w.e.f 30.10.2003 hence, the bank is not entitled for the deduction U/s. 80P(2)(a)(i). The claim of deduction U/s. 80P(2)(a)(i) of Rs.27,19,052/- wrongly allowed for A.Y. 2010-11 is prejudicial to the interest of the revenue."

You are therefore required to explain as to "Why the revisions in assessment order u/s. 143(3) dtd. 25.03.2013 should not be made U/s. 263 of the I.T. Act, 1961?"

2.3 The assessee defended the same by submitting that amount received by the assessee on repayment of loan by borrowers was placed in bank *Fixed Deposits [FDs]* as per normal trade practice and there was no change in the nature of assessee's business. Reliance was placed on the decision of Hon'ble Gujarat High Court rendered in *CIT Vs Jafari Momin Vikas Coop Credit Society* to submit that deduction u/s 80P(2)(a)(i) was available to the assessee. However, Ld. CIT opined that the issue of deductibility of interest income was not, at all, looked into by Ld. AO and the deduction u/s 80P(2) has been granted in a *mechanical manner* without looking into the details of the nature of income since the Ld. AO failed to analyze which clause of Section 80P(2) was applicable to the case of the assessee which makes the order erroneous. The Ld. CIT further opined that since the assessee was engaged in providing credit facilities to its members, its claim fall under Clause 80P(2)(a)(i) which was activity based deduction and not business based deduction and therefore, interest income earned from Banks could not be covered under the said clause and deduction against the same was



ITA No.3030/Mum/2015
Apex Urban Co-op.Bank of Maharashtra & Goa Limited
Assessment Year-2010-11

not available to the assessee. Thus, the order was prejudicial to the interest of the revenue. Finally, holding the assessment order as erroneous and prejudicial to the interest of the revenue, the same was set aside for fresh adjudication after considering the aforesaid observations. Aggrieved by the invocation of jurisdiction u/s 263 , the assessee is in further appeal before us.

3. The Ld. Authorized Representative for Assessee [AR], *Ms. Aarti Sathe*, by drawing our attention to the documents placed in the *paper book* agitated the invocation of revisional jurisdiction u/s 263 on legal grounds as well as on merits. The Ld. AR submitted that the issue of deduction u/s 80P(2) was duly considered by Ld. AO during assessment proceedings and deduction was allowed with due application of mind and therefore, the jurisdiction u/s 263 was not justified. On merits, it has been submitted that the assessee continued to operate as a co-operative society and the surplus earned from credit facilities as parked with Banks was eligible for deduction in terms of various judicial pronouncements. Per *Contra*, Ld. CIT-DR, *Shri Shishir Dhamija*, submitted that no inquiry, whatsoever regarding assessee's eligibility to claim deduction u/s 80P(2) with respect to bank interest, was made by Ld. AO and therefore, the order was rightly subjected to revision u/s 263 which was the only course available to the revenue.

4. At the outset, certain typographical errors have been noted by us in the impugned order of Ld. CIT. The correct amount of interest income earned by the assessee during impugned AY is Rs.1,59,50,158/- which is



ITA No.3030/Mum/2015
Apex Urban Co-op.Bank of Maharashtra & Goa Limited
Assessment Year-2010-11

wrongly noted as Rs.27,19,052/- in the *show cause notice* as extracted here-in-above. The revenue has already clarified the same vide letter dated 07/10/2015 along with supporting documents. We find the same in order. Secondly, the quantum assessment order has been passed on 22/01/2013 the date of which has wrongly been referred to as 25.03.2013 / 28.03.2014 at various places in the impugned order and also in the *show-cause* notice dated 13/08/2014, which, at the most, is a clerical error and has no bearing on the case. Therefore, we proceed further to adjudicate the same as argued before us by respective representatives.

5. We have carefully heard the rival contentions and perused relevant material on record including the order of the lower authorities and judicial pronouncements cited before us. Upon perusal of the quantum assessment order, we find that no discussion, whatsoever, regarding assessee's eligibility to claim deduction u/s 80P(2) against interest income, has been made by Ld. AO and the order is silent in this regard. During assessment proceedings, Ld. AO, vide letter dated 12/09/2012 *point number-14*, had directed the assessee to file details of deduction u/s 80P claimed by it. The assessee's response, against the same, is extracted here-in-below:-

14. Details of Deduction u/s 80P:

Society is registered under Multi-State Cooperative Societies Act. & has discontinued Banking business. Since cancellation of its license by RBI on 30.10.2003. Till the date of discontinuance of business ie 30.10.2003. society was entitled for exemption from Tax on its entire surplus U/s 80P(2)(a)(i). As such society continues to enjoy the same exemption as provided U/s 176(3)(a). the surplus of Rs.1,83,68,294/- is claimed as deduction u/s 80(p) for the relevant year. The lending / credit facilities extended by us earlier period still continues. The GOI has placed us under Liquidation and Shri J.N.L.Srivastava, I.A.S. (Retd.) had been appointed from 2005. After the date of



ITA No.3030/Mum/2015
Apex Urban Co-op.Bank of Maharashtra & Goa Limited
Assessment Year-2010-11

cancellation of our Banking License we have not undertaken any activity and thus qualifying for provisions U/s 176(3)(a).

Besides above, there is no other material / explanation on record which suggests any further discussion on the issue under hand. After going the same, we find that the justification of claiming deduction against bank interest has neither been adduced / substantiated by the assessee nor being examined / verified by the Ld. AO. Nothing on record suggests any application of mind on the issue by Ld. AO. This being the case, we find no force in the submissions of Ld. AR that the issue was examined by Ld. AO with due application of mind and the deduction was allowed after due deliberations. The aforesaid factual matrix lead us to conclude that the case falls under the category of 'no inquiry' rather than 'lack of inquiry' or 'inadequate inquiry' as contended by Ld. AR. In such a case, the reliance placed by Ld. AR on various judicial pronouncements could not help the assessee, in any manner. Therefore, the order being clearly erroneous as well as prejudicial to the interest of the revenue justifies invocation of jurisdiction u/s 263.

6. The Ld. AR, placing reliance on certain judicial pronouncements, contended that the assessee was eligible to claim deduction u/s 80P(2)(a)(i) against interest income earned by the assessee since the same was integral part of assessee's business. The Ld. CIT-DR has controverted the same in the similar manner. However, at the stage, we are not concerned with the merits of the case since the issue has not, at all, been dealt with by



ITA No.3030/Mum/2015
Apex Urban Co-op.Bank of Maharashtra & Goa Limited
Assessment Year-2010-11

Ld. AO, in any manner and the lower authorities have already clinched the issue on merits. Therefore, we refrain ourselves to delve into the merits of the same at this stage. Needless to add that the assessee is free to agitate the same on merits at an appropriate level, as advised.

7. In nutshell, the appeal stands dismissed.

Order pronounced in the open court on 07th September, 2018

Sd/-

Sd/-

(C.N.Prasad)

(Manoj Kumar Aggarwal)

न्यायिकसदस्य / **Judicial Member**

लेखासदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 07.09.2018

Sr.PS:-Thirumalesh

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त (अपील)/ The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधिमुंबई ,आयकरअपीलीयअधिकरण ,/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard File

आदेशानुसार/ BY ORDER,

उपसहायकपंजीकार/ (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai