

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BENGALURU**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
and  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.552/Bang/2014  
(Assessment year: 2008-09)

and

ITA No.2000/Bang/2017  
(Assessment year: 2008-09)

Mysore Co-operative Bank Ltd.  
Gandhi Square,  
Mysore.  
*PAN: AAAAT 3068L*

... Appellant

Vs.

Commissioner of Income-tax,  
Mysore.

... Respondent

AND

Appellant by : Shri G.Venkatesh, Advocate.

Respondent by : Dr. P.V.Pradeep Kumar, Addl.CIT(DR)

Date of hearing: 26/02/2019

Date of pronouncement: 01/03/2019

**O R D E R**

**Per PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the Commissioner of Income-tax, Mysore, dated 28/03/2013 passed u/s 263 of the Income-tax Act,1961 ['the Act' for short] for the assessment year 2008-09 and the revenue has filed the appeal against the order of the CIT(A), Mysore dated 31/08/2016. Since both the appeals are of the same assessee

and the issues are common, they were heard together and disposed of by a common order.

2. For the sake of convenience, we shall take up the appeal filed by the assessee viz. ITA No.552/Bang/2014 and the facts narrated therein. The assessee has raised the following grounds of appeal:

1. "The Order of the learned Commissioner of Income-tax, Bangalore-I, Bangalore passed under section 263 of the Act in so far as it is against the Appellant is opposed to law; equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.
2. The Commissioner of income Tax is not justified in low in exercising revisionary power's as the entire proceedings are without jurisdiction and rot in accordance with law.
3. The Commissioner of income Tax is not justified in quashing the order of assessment and directing the assessing officer to make a fresh assessment under the facts and circumstances of the case.
4. The Commissioner of Income Tax failed to appreciate that section 145A has no applicability to the case of the Appellant and the approach of the Appellant is in accordance with law under the facts and circumstances of the case.
5. The Commissioner of Income Tax has erred by not appreciating the settled position of ow that were there are two opinions possible on an issue, section 263 cannot be exercised to invoke such an issue.
6. The learned CTT has grossly erred in revising the order passed by the learned assessing officer without

appreciating that there is no error, much less prejudicial to the interests of the Revenue to warrant a revision and therefore the order passed by the learned CIT is ultra vires to the scope of Section 263 and requires to be cancelled under the facts and circumstances of the Appellant's case.

7. The learned CIT failed to appreciate that the learned assessing officer had adjudicated the issue of admissibility of both expenditures viz., general body meeting expenditure and provision for payment of interest to depositors and hence section 263 cannot be invoked.
8. Without prejudice to the above the learned CIT ought to have appreciated that the aforesaid issue on which the learned CIT had sought to revise the assessment order is a conscious view adopted by the learned assessing officer, which is not shown to be erroneous and consequently, the jurisdiction under section 263 of the Act stands ousted and accordingly the impugned order passed deserves to be cancelled.
9. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
10. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

3. Brief facts of the case are that the assessee is a co-operative society engaged in the business of banking and filed Return of income on 30/09/2008 with total income of Rs.68,65,320/-. Subsequently, revised return of income was filed on 31/03/2009 with total income of Rs.37,51,900/- and the return of income was processed u/s 143(1) of the Income-

tax Act,1961 ['the Act' for short]. The main area of working as a co-operative society providing banking facilities to its members. The case was selected for scrutiny and notices 143(2) and u/s 142(1) were issued. In response, the learned AR appeared from time to time and represented the case and produced required documents and books of account for verification with the assessing authority.

4. The AO, on perusal of the financial statements, found that the assessee has claimed an amount of Rs.33,65,857/- as deduction from net profit on the ground that it is interest earned on deposit with member co-operative banks. Therefore, on the concept of mutuality, it is exempt. Whereas the AO was of the opinion that as per provisions of the Act, it cannot be allowed added to the returned income. Similarly, the AO disallowed the Fringe benefit tax debited to P&L Account of Rs.10,687/- and assessed the total income at Rs.68,75,200/- and passed the order u/s 143(3) of the Act dated 29/12/2010.

5. Whereas the CIT, on perusal of the assessment records of the assessee found that the order passed by the AO u/s 143(3) dated 29/12/2010 is erroneous and prejudicial to the interests of revenue, on the issue that the assessee had claimed provision for payment of interest on fixed deposits Rs.35,92,360/- and provision for election/general body

expenditure of Rs.19,06,834/-. The CIT, considering the assessment records found that only actual expenditure incurred by the assessee has to be allowed and the provision made towards ascertained liability is allowable as deduction whereas provision for unascertained liability is not allowable. The AO has not examined the above provisions, the system of accounting as per Form 3CA and 3CD report filed in the scrutiny proceedings being mercantile except to the extent of interest on loans and advances is accounted on receipt basis.

6. The CIT is of the opinion that the assessee is following mixed system of accounting and dealt with Audit report. Whereas the assessee, in pursuance to the revision notice, filed the details referred at para.6 & 7 of the order. The CIT considering the submissions of the assessee found that in respect of payment of interest on fixed deposits, it is only calculation of interest payable on fixed deposits outstanding at the end of the year which has been subsequently paid to deposit holders and the CIT also observed at page 5 of the order that the assessee has not produced any proof in support of the claim. The CIT could not understand the reasons for classification of expenses under provision instead of debit to the income and expenditure account and dealt on accounting system as per rule 22 of the Karnataka Societies Rules 1960.

7. Whereas the CIT observed that the assessee is following cash system of accounting for recognizing the income and follows the mercantile system of accounting for booking expenditure like creating provision for expenses etc., which paid in subsequent year and also assessee violated the provisions of section 145 of the Act and these aspects the AO has not verified and therefore the assessment order is erroneous. On the second issue of provision for election/general body expenditure, the contention of the learned AR that the provision is towards actual expenditure which was incurred and spent during the financial year but no supporting evidence in respect of claim was produced and the AO has not examined. Therefore, the CIT having satisfied that the order passed by the AO is erroneous and prejudicial to the interest of revenue confirms the twin conditions required for revision proceedings and set aside the order of assessment u/s 143(3) dated 29/12/2010 and directed the AO to do fresh assessment after conducting enquiries and also provide reasonable opportunity of hearing to the assessee and accordingly passed the order u/s on 28/03/2013.

8. Aggrieved by the order, the assessee has filed the appeal before the Tribunal. Before us, the learned AR argued that the order passed by the CIT has erred in passing revision order

irrespective of the fact that the assessee is a co-operative society and has been complying with the income-tax guidelines and rules and there is no violation in respect of any section and are covered under the Karnataka Co-operative Societies Rules, 1960. The learned AR's contention on the issue of payment of interest on FD that the assessee is following mercantile system of accounting. In this regard he supported his argument with paper book with tax audit report whereas for the provision for election/general body expenditure, the learned AR's contention that it is actual expenditure incurred by the co-operative society but inadvertently it was shown as provision for election/general body expenditure which is incorrect. Therefore, prayed that the AO, in the original assessment proceedings u/s 143(3) has called for details and passed the order and the order of the CIT does not satisfy the twin conditions of erroneous and prejudicial to interests of revenue and prayed for allowing of the appeal.

Contra, the learned DR supported the order of the CIT.

9. We heard rival submissions and perused material on record. Prima facie, the order passed by the AO on 29/12/2010 was considered as erroneous and prejudicial to the interests of revenue. The CIT observed that the assessee has made (i) provision for payment of interest on fixed deposit and (ii)

provision for election/general body expenditure which was not examined. The learned AR supported his arguments with paper book with details of financial statements and explained that the assessee-society, on the issue of provision for payment of interest on fixed deposits mentioned that it is interest provision made towards end of the financial year and subsequently has been paid. When a query was raised to the learned AR whether these aspects are verified by the AO, the learned AR submitted that the AO has complied and verified and called for information but the submissions of learned AR are not supported with documentary evidence. We found that in the revision proceedings the assessee has not produced any proof in support of its claim and the method of accounting. Further, in respect of second issue of provision for election/general body expenditure even before the Tribunal, the learned AR could not substantiate with evidence in respect of the claim. Therefore, we, considering the facts and circumstances and the financial statements, are of the substantive opinion that though the AO has called for information in assessment proceedings in respect of other issues and there is no finding/observation on the above two disputed issues in the assessment order. We find that the CIT's action in revision proceedings that the AO has not made proper inquiry cannot be overlooked. Accordingly, we are not

inclined to interfere with the order of the CIT on the disputed issues and affirm the same and dismiss the ground of appeal of the assessee.

10. We shall now take up the assessee's appeal in ITA No.2000/Bang/2017. At the time of hearing we found that the order passed by the CIT is *ex-parte* order. When a query was raised and reasons for not appearing, the explanations of the learned AR are that the assessee could not submit the details and prayed that the assessee be provided an opportunity before the assessing authority on disputed issue of interest on fixed deposits and other aspects. Whereas the learned DR has objected to the submissions of learned AR and vehemently argued that the accountability and the method adopted by the assessee-society has a cascading effect in the subsequent assessment years.

11. We considered the rival submissions and perused the material on record. Prima facie, the CIT(A) has passed the order considering the findings of the AO and there is no representation by the assessee or by the learned AR on the date of hearing. Further, the notice of hearing was sent on 11/08/2016 posting the case on 24/08/2016, being only one hearing provided to the assessee. Therefore, we, considering the principles of natural justice and the facts of the case and

the assessee being a co-operative society, restore this disputed issue to the file of the AO to meet the ends of justice and AO shall call for the details and examine the claims. Further the assessee should co-operate in submitting information as expeditiously and the AO should provide adequate opportunity of hearing to assessee and we set aside the order of the CIT(A) and restore to AO and the grounds of appeal of the assessee are allowed for statistical purposes.

12. In the result, the assessee's appeal in ITA No.552/Bang/2014 is dismissed and ITA No.2000/Bang/2017 is allowed for statistical purposes.

*Order pronounced in the open court on 1<sup>st</sup> March, 2019.*

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru  
Date : 01/03/2019  
*srinivasulu, sps*

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore