

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.662/PUN/2015

निर्धारण वर्ष / Assessment Year : 2005-06

The Cosmos Co-operative Bank Ltd.,  
Cosmos Tower, Plot No. 6, I.C.S. Colony,  
University Road, Ganeshkhind,  
Shivajinagar, Pune – 411007

PAN : AAAAT0742K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Pr. Commissioner of Income Tax-4,  
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo  
Revenue by : Mrs. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 27-06-2019

घोषणा की तारीख / Date of Pronouncement : 02-07-2019

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of Pr. Commissioner of Income Tax-4, Pune dated 27-03-2015 for the assessment year 2005-06 passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The assessee in appeal has assailed the order of Pr. Commissioner of Income Tax by raising following grounds :

- “1. *In the facts and circumstances of the case and in law, the impugned revision order passed by the learned Pr. C.I.T. u/s. 263 of the I.T. Act 1961 is hopelessly barred by limitation and hence the same may please be annulled.*
2. *In the absence of conditions precedent for assumption of jurisdiction u/s. 263 of the I. T. Act 1961, the impugned revision order passed by the learned Pr. C.I.T. is bad in law, void ab initio and without jurisdiction and hence the same may please be annulled.*
3. *Since the issue whether the insurance commission earned by the appellant constitutes its income from the banking business and qualifies for deduction u/s. 80P[2][a] of the I. T. Act 1961 being a debatable issue and the learned Assessing Officer having applied his mind and having taken a conscious decision that the same qualifies for deduction u/s. 80P[2][a] of the I. T. Act 1961, the learned Pr. C.I.T. had no jurisdiction u/s. 263 of the LT. Act 1961 to revise the order passed by the learned Assessing Officer, the impugned revision order is bad in law, void ab initio, and without jurisdiction and hence the same may please be annulled.*
4. *It may please be held that the insurance commission earned by the appellant bank constitutes its income from business of banking and hence the same qualifies for deduction u/s. 80P[2][a] of the I. T. Act 1961 and consequently the impugned revision order passed by the learned Pr. C.I.T. may please be vacated.*
5. *The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”*

3. Shri Sunil Ganoo appearing on behalf of the assessee after making his submissions for sometime in respect of ground Nos. 1 and 2 challenging the validity of impugned order passed u/s. 263 of the Act, stated at the Bar that he is not pressing ground Nos. 1 and 2 of the appeal.

3.1 In respect of ground Nos. 3 and 4, the ld. AR submitted that the assessee is a Co-operative Society engaged in banking business, hence, eligible for claiming deduction under the provisions of section 80P(2)(a)(i) in

respect of income from banking activities. The income which is subject matter of dispute is the commission income from the insurance business. The Government of India vide Notification dated 3<sup>rd</sup> August, 2000 has declared insurance as part of business of banking. This issue was considered by the Assessing Officer in detail during assessment proceedings and no addition was made by Assessing Officer. The Pr. Commissioner of Income Tax invoked the provisions of section 263 merely on the basis of change of opinion. The ld. AR submitted that revisional jurisdiction was invoked by the Pr. Commissioner of Income Tax to substitute his opinion, contrary to the spirit of the provisions of the Act. The ld. AR contended that the issue in appeal is covered by the decision of Hon'ble Supreme Court of India in the case of Mehsana District Central Co-Operative Bank Ltd. Vs. Income Tax Officer reported as 251 ITR 522.

4. On the other hand Mrs. Nandita Kanchan representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in ground Nos. 1 and 2 of the appeal has assailed the validity of order passed u/s. 263 of the Act. The ld. AR of assessee stated at the Bar that he is not pressing ground Nos. 1 and 2 of the appeal. Thus, in view of statement made by the ld. AR of assessee, ground Nos. 1 and 2 of the appeal are dismissed as not pressed.

6. In ground Nos. 3 and 4 of the appeal, the assessee has assailed disallowance of deduction u/s. 80P(2)(a)(i) of the Act in respect of income from insurance commission. The Pr. Commissioner of Income Tax has disallowed assessee's claim u/s. 80P(2)(a) in respect of insurance business on the premise that the income from insurance business is not part of banking business. The ld. AR has brought to our notice Gazette Notification by Ministry of Finance dated 3<sup>rd</sup> August, 2000 whereby 'Insurance' has been brought into the fold of banking business. The said notification is reproduced here-in-below for the sake of completeness.

*Ministry of Finance  
(Department of Economic Affairs)  
(Banking Division)*

*NOTIFICATION*

*New Delhi, the 3<sup>rd</sup> August, 2000*

*S.O. 724(E). – In exercise of the powers under Section 6(I)(O) of the Banking Regulation Act, 1949, the Central Government hereby specifies 'Insurance' as a form of business in which it is lawful for a banking company to engage.*

*[No. 7/24/97-BOA]  
M. DAMODARAN, Jt. Secy."*

7. A bare perusal of Gazette Notification would clearly show that the business of insurance has been allowed to be carried out by the banking companies and hence, it has become part and parcel of banking business which inter alia includes, providing credit facilities. We observe that the Assessing Officer in reassessment proceedings has considered the issue of assessee's claim of deduction u/s. 80P and after examining assessee's claim thoroughly allowed the same. The order of Assessing Officer may be prejudicial to the interest of revenue but the same is not erroneous as the Assessing Officer has taken a possible view after examining the issue in

detail. It is a well settled law that the Pr. Commissioner of Income Tax/Commissioner of Income Tax can invoke revisional jurisdiction u/s. 263 only, if twin conditions i.e. the assessment order is erroneous and order is prejudicial to the interest of revenue, are satisfied. Both these conditions have to be read together. In the present case we find that former condition is non-existent. Thus, the condition mandatory to invoke revisional jurisdiction u/s. 263 is not satisfied. Hence, the impugned order is not sustainable and hence, is set aside. Accordingly, the ground Nos. 3 and 4 of the appeal by the assessee are allowed.

8. In the result, the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced on Tuesday, the 02<sup>nd</sup> day of July, 2019.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(Vikas Awasthy)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 02<sup>nd</sup> July, 2019  
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. Commissioner of Income Tax-4, Pune
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy// आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune