

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI J. SUDHAKAR REDDY, AM & SHRI S. S. GODARA, JM

आयकर अपीलसं./I.T.A No.1809/Kol/2018

(निर्धारण वर्ष / Assessment Year: 2014-15)

Nandanpur Samabay Krishi Unnayan Samity Limited	Vs.	ITO, Ward-2(3), Kolkata
Vill-Nandanpur, PO- Sonargoria, PS.- Jamalpur, Dist.- Burdwan – 713408.		
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAABN0164C		
(Appellant)	..	(Respondent)

Appellant by : Shri Shuvo Chakraborty, Advocate

Respondent by : Shri Dhrubajyoti Ray, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 04/12/2019

घोषणाकीतारीख/Date of Pronouncement : 11/12/2019

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2014-15 arises against the Principal Commissioner of Income Tax, Kolkata dated 13.06.2018 involving proceedings u/s 263 of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. Case file suggests that the PCIT has assumed section 263 revision jurisdiction in facts of the instant case whilst annulling the regular assessment dated 13.06.2018 framed by the Assessing Officer only on the ground that he had wrongly held the assessee's interest income of Rs.22,21,586/- earned on term deposits with the District Central Cooperative bank Ltd. as eligible for section 80P(2)(a)(i) deduction. Learned PCIT holds that hon'ble apex court's decision in

[Totgars Co-operative Sale Society Ltd. vs. ITO](#) (2010) 322 ITR 283(SC) read with section 80P(4) of the Act inserted in Finance Act, 2006 w.e.f. 01.04.2007 makes it clear that the impugned deduction is not allowable in case of interest income derived from co-operative banks. He is of the opinion that since the assessee had derived the impugned interest income from a cooperative bank and therefore, the Assessing Officer is required to frame a fresh assessment as per law. Learned CIT-DR strongly supports the PCIT's detailed discussion to the above effect that the assessee's interest income is not entitled for section 80P deduction. We find no force in Revenue's instant arguments. Hon'ble Gujarat high court's judgment in Tax Appeal No.473 of 2014 [CIT vs. Sabarkantha District Cooperative Milk Producers Union Ltd.](#) has rejected the Revenue's very stand based on section 80P(4) amendment as follows:

"4.0. Now, so far as proposed question no. B i.e. whether the Appellate Tribunal has substantially erred in upholding the order of the CIT(A) in deleting the disallowances of Rs.1,42,19,5157- under Section 80(P)(2)(d) of the Act is concerned, it is required to be noted that the assessee claimed deduction under Section 80(P)(2)(d) of the Act on the interest earned on the fixed deposit with Cooperative Bank and the Societies and it has been found that as such the income was received from the investment in Cooperative Societies and Cooperative Bank.

Considering Section 80(P)(2)(d) of the Act when the only requirement was that the income should be received from investment in Cooperative Societies and the Cooperative Bank which in the present case has been fulfilled, it cannot be said that the learned Tribunal has committed any error in deleting disallowance of Rs.1,42,19,515/- under section 80(P)(2)(d) of the Act. We are in complete ITA No.1891/Ahd/14 & 3 Ors. [The Peoples Co-Op. Credit Society Ltd. & Another]

agreement with the view taken by the learned Tribunal. Under the circumstances, proposed question B is also answered against the revenue."

3. All these make it sufficiently clear that the PCIT's action that the Assessing Officer has erred in treating assessee's interest income derived from deposits in District Central Cooperative bank Ltd., is not sustainable in law. Hon'ble apex court's landmark judgment settling the section 263 revision jurisdiction in [Malabar Industries Co. vs. CIT](#) [2000] 243 ITR 83 (SC) holds that before an assessment is sought to be revised, it has to be both erroneous as well as prejudicial to interest of the Revenue; simultaneously. We observe in view of foregoing legal position that the Assessing Officer has not committed any error in accepting the assessee's section 80P deduction claim. We accordingly reverse the PCIT's assumption of

revision jurisdiction under challenge. The impugned regular assessment dated 26.02.2016 in question is restored.

4. This assessee's appeal is allowed.

Order is pronounced in the open court on 11.12.2019.

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date:11/12/2019

RS, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - Nandanpur Samabay Krishi Unnayan Samity Limited
2. The Respondent- ITO, Ward-2(3), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.