

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER
(Virtual Hearing)

आ.अ.सं./I.TA No.185/SRT/2020
निर्धारण वर्ष/Assessment Year: 2015-16

The Sasme Co-Op. Society Ltd, Sasme Bhavan Kotsafil Main Road, Surat – 395 003. [PAN: AAAAS 3507 M]	Vs.	The Principal Commissioner of Income Tax, Surat-2.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent
निर्धारितकीओर से/Assessee by	Shri Hiren R.Vepari – AR	
राजस्वकीओर से /Revenue by	Shri Ritesh Mishra - CIT(DR)	
सुनवाई की तारीख/ Date of hearing:	25.02.2021	
उद्घोषणा की तारीख/Pronouncement on:	03.03.2021	

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMEBER:

1. This appeal by assessee is directed against the order of learned Principal Commissioner of Income Tax, Surat-2, (PCIT), passed under section 263 of Income-tax Act dated 16th March 2020. The assessee has raised following grounds of appeal:

- “(1) The Principal Commissioner of income tax was not justified in assuming jurisdiction under section 263 without satisfying conditions.*
- (2) The appellant submits that the Principal Commissioner of income tax ought not to have invoked provision of section 263 on the very same point on which the assessing officer had made enquiry and had taken position.*
- (3) The appellant further submit the Principal Commissioner of income tax did not appreciate the subtle portion of law we are proceeding under section 263 do not extend to sustain a principal Commissioner of income tax office to take a different view in the same matter.*
- (5) The learned PCIT was driving by extraneous consideration in not dropping the proceeding under section 263.”*

2. Brief facts of the case are that assessee is a cooperative society and engaged in the activities of providing credit facilities to its members for purchase /import of yarn. The assessee filed its return of income for assessment year 2015-16 declaring total income at Nil. In the computation of income the assessee claim deduction under section 80P(2)(d) of ₹ 2426581/-, on account of interest on deposit in a cooperative bank. The case was selected for scrutiny. The assessing officer after issuing statutory notices and considering the reply of assessee passed the assessment order under section 143(3) on 26th June 2017, accepting the return income.
3. The assessment order was revised by learned PCIT vide his order dated 16th March 2020 passed under section 263 of Income tax Act. The learned PCIT before passing the order under section 263, issued show cause notice dated 22nd January 2020, fixing the date of hearing on 30th January 2020. In the show cause notice the learned PCIT recorded that on perusal of assessment order, profit and loss account, balance sheet and the submission made by assessee, it is seen that assessee earned interest income of ₹ 24,26,581/- on the deposits made with cooperative Banks, and that interest income earned does not qualify for exemption under section 80P(2)(d), the contents of show cause notice is recorded in para 2 of the impugned order.
4. The assessee filed this reply dated 28th January 2020, contents of reply furnished by assessee is duly recorded in Para 3 of the impugned order. In the reply the assessee stated that the assessing officer during the assessment examined the similar question vide his show cause notice dated 25th April 2017, seeking clarification regarding

deduction of Chapter VIA. The assessee before assessing officer explained the justification of deductions including the deduction under section 80P(2)(d) of Rs. 24,50,581/-. The assessee also relied on various case laws of coordinate bench of Tribunal, High Court.

5. After considering the reply of assessee, the learned PCIT issued another show cause notice dated 31st January 2020, contents of which are recorded in para 4 of the impugned order. In the 2nd notice the learned PCIT noted that on perusal of the reply furnished by assessee, it was noted by him that deduction claimed under section 80P(2)(d) is also not available and that deduction so allowed in the assessment order dated 28th June 2017, by assessing officer is erroneous and prejudicial to the interest of revenue. The assessee was asked to furnish his reply on 12th February 2020. In response to the second show cause notice, the assessee again filed its reply vide reply dated 15th February 2020. The assessee further reiterated that the assessing officer made specific inquiries on the same issue. The assessing officer after due application of mind took a conscious decision that assessee was eligible for the claim of deduction under section 80P(2)(d). The assessee also filed a notice issued by assessing officer and the reply furnished by assessee.
6. The reply furnished by assessee was not accepted by learned PCIT. The learned PCIT after his detailed discussion and referring the decision of Hon'ble Karnataka High Court in case of Totagars Coop Sales Society Limited Vs PCIT [2017] 83 taxmen.com 140 Karnataka (second Totagars case) held that assessee is not entitled for the deduction under section 80P(2)(d) of the Act. The learned PCIT held

that the assessment order passed by assessing officer under section 143 (3) on 18th June 2017 for assessment year 2015-16 is erroneous and in so far as prejudicial to the interest of revenue. The learned PCIT set aside assessment order and the assessing officer was directed to complete the assessment after taking into consideration the fact including the issue discussed by him after providing opportunity to the assessee. Aggrieved by the order of learned PCIT the assessee has filed present appeal before us.

7. We have heard the submissions of learned authorized representative (AR) for the assessee and the learned Commissioner of Income tax-departmental representative (CIT-DR) for revenue and gone through the assessment order passed by assessing officer and the order of learned PCIT impugned before us. The learned AR of the assessee submit that the order passed by assessing officer while allowing deduction under section 80P(2)(d) is not erroneous. The assessing officer during the assessment examined the issue and took a possible and a reasonable view on the claim made by assessee. The learned PCIT by examining the record, may have a different view, thus the revision order passed by learned PCIT is not valid. The learned AR for the assessee submits that for revising the assessment order, twin condition as provided under section 263 must be fulfilled simultaneously, that is the assessment order is erroneous and insofar as prejudicial to the interest of revenue. The order passed by assessing officer is not at all erroneous; the order is in accordance with the decision of various Tribunals and order passed by jurisdictional High Court on similar issue. The learned AR for the

assessee also invited our attention on para 2 of the assessment, wherein the activities of assessee is duly recognized by assessing officer. The learned AR for the assessee further submits that the assessing officer while issuing show cause notice dated 25th April 2017 raised a specific quarry on this issue. The assessee furnished its explanation with regard to the claim of deduction under section 80P(2)(d). The assessee also explained that assessee is claiming statutory deduction. The learned AR for the assessee further submitted that it is settled law that once assessing officer made enquiry on a particular point and after deliberation allow deduction, on that very point, the proceeding under section 263 cannot exist to form a different view. The ld.AR for assessee further submits that assessee claim similar deduction in A.Y. 2012-13 and 2013-14 and were allowed by Revenue in assessment order passed under section 143(3) of the Act dated 13.12.2014 and 30.12.2015 respectively. The ld.PCIT for the first time revised the assessment order on the issue.

8. On merit of the case the learned AR for the assessee submits that the assessee earned interest from its investment in cooperative bank. The cooperative banks are primarily a cooperative society, as has been held by various benches of Tribunal. Cooperative societies interest income from deposit with the cooperative bank is eligible for claim of deduction under section 80P(2)(d). The learned AR of the assessee further submits he has also furnished his written submission and the same may be considered in support of his various other submissions. In support of his submission the learned AR of the assessee relied upon the following decisions:

- Surendarnagar District Co-operative Milk Producer Union Ltd., vs. DCIT [2019] 111 taxmann.com 69 (Rajkot Tribunal)
- Surat Vankar Sahakari Sangh Ltd., vs. ACIT [2016] 72 taxmann.com 169 (Guj)
- PCIT Vs Totagars Co-operative Sales Society [2017] 78 taxman.com 169 (Karnataka)
- Gujarat JHM Hotels Ltd., vs. PCIT, ITA No.301/SRT/2018.
- Aryan Arcade Ltd., Vs. PCIT, [2019] 412 ITR 277 (Guj).
- CIT Vs Mepco Industries Ltd., [2007] 207 CTR 642 (Mad).
- Ranka Jewellers Vs. Addl. CIT [2010] 38 DTR 293 (Bom).
- Grasim Industries Ltd Vs. CIT [2010] 321 ITR 92(Bom).
- Skyline Builders Vs. CIT [2019] 412 ITR 182 (Ker).
- CIT Vs. Sunil Lamba [2019] 412 ITR 480 (Delhi).
- Siddh International Vs. CIT [2009] 19 DTR 281 (Ahd Trib.).
- Shaileshbhai Shah Vs. ACIT [2005] 98 TTJ 154 (Ahd).
- Jet Electronics Vs. ACIT [2008] 116 TTJ 225 (Ahd).
- Gujarat Guardian Ltd., Vs. DCIT [2008] 11 DTR 370 (Delhi Tribunal).
- Honda Siel Power Products Ltd., Vs. CIT [2009] 22 DTR 164 (Delhi Tribunal).
- Ajit Gupta Vs. ITO [2007] 108 TTJ 301 (Del).
- P.N.Writer & Co. Ltd., Vs. Addl. CIT [2006] 7 SOT 346 (Mum).
- N.P.Santosh Kumar Vs. ACIT [2008] 12 DTR 87 (Cochin Tribunal).
- Smt.Varanandhini Raghavan Vs. ITO [2005] 15 DTR 140 (Chennai Tribunal).
- Harisingh & Associates (AOP) Vs. ITO 154 Taxmann 109 (Jodhpur).
- Indian Shaving Products Ltd., Addl. CIT 61 Taxmann 166 (Jodhpur).
- Saluja Fabrics Ltd., Vs. DCIT [2008] 16 DTR 460 (Chandigarh Tribunal).
- Flextronics Software Systems Ltd., Vs. CIT [2009] 24 DTR 551 (Delhi Tribunal).

➤ Nahar Exports Ltd., Vs. ACIT [2005] 93 TTJ 186 (Chandigarh Tribunal).

9. On the other hand the learned CIT-DR for the revenue supported the order of learned PCIT. The learned DR further submits that the order passed by assessing officer is erroneous as well as prejudicial to the interest of revenue. The assessing officer allow the deduction under section 80P(2)(d) without discussing the very nature of interest earned by assessee on deposit with cooperative bank. The order is not in accordance with the decision of Hon'ble Karnataka High Court Totagars cooperative sales society (second Totagars case) (supra). Thus, the order passed by in allowing deduction under section 80P(2)(d) assessing officer is certainly prejudicial to the interest of revenue. The twin conditions of section 263 that assessment order is erroneous and insofar as prejudicial to the interest of revenue, clearly available in this case. The learned CIT prayed for upholding the order passed by learned PCIT.

10. We have considered the rival submission of both the parties. We have also deliberated on the written submission filed by learned AR of the assessee and various case laws relied by him during his submission. We have also gone through the various documentary evidences furnished by learned AR of the assessee. We have noted that during the assessment the Assessing Officer vide notice under section 143(2) of the Act dated 19.09.2016 required details regarding the deduction claimed Chapter VIA including justification and supporting documents thereof. The assessee vide its reply dated 23.02.2017 furnished complete details regarding deduction under Chapter VIA,

consisting deduction under section 80(2)(c) of Rs.50,000/- and deduction under section 80P(2)(d) of Rs.24,50,581/- with justification. The Assessing Officer again vide notice dated 25.04.2017 issued under section 142(1) further required the details regarding deduction under section Chapter VIA, the assessee furnished the details of interest income on Fixed Deposits with Co-operative Banks. The copy of notice under section 142(1) dated 25.04.2017, and reply dated 23.02.2017 and copy of bank statement of interest income is available on record vide page no.13 to 31 of paper book. The Assessing Officer passed assessment order on 28.06.2017, admittedly, there is no reference about the contents of the reply furnished by assessee, however, in para 1 of the assessment order the reference of both the notices is clearly referred. The Id. PCIT before passing under section 263 of the Act, identified the issue regarding the claim of deduction under section 80P(2)(d). The assessee in its reply dated 15.02.2020 clearly explained that the issue was examined by Assessing Officer and that the assessment order is not erroneous.

11. The Hon'ble Jurisdictional High Court in *Aryan Arcade Ltd., vs PCIT* (supra) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid.
12. The Hon'ble Madras High Court in *CIT Vs Mepco Industries Ltd.*, (supra) held that when two views are possible on an issue and it is not the case of the Commissioner that the view taken by Assessing Officer is not permissible in law, Commissioner cannot invoke his jurisdiction

under section 263 of the Act. As we have noted above the assessing officer has made sufficient enquiries and passed the assessment order, thus, the Assessing Officer has taken a reasonable and possible view which cannot be held as erroneous.

13. The Hon'ble Karnataka High Court in PCIT Vs. Totagars Co-operative Sales Society [2017] 78 taxman.com 169 (Karnataka) held that for the purpose of section 80P(2)(d) a Co-operative Bank should be considered by a Co-operative Society and interest earned by Co-operative Society from Co-operative Bank would necessarily be deductible under section 80P(1) of the Act.
14. Further, the Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd., vs. ACIT [2016] 72 taxmann.com 169 (Guj) held that assessee co-operative society is eligible for deduction under section 80P(2)(d) in respect of gross interest received from co-operative bank without adjusting interest paid to said bank.
15. The Co-ordinate Bench of Rajkot Tribunal in Surendarnagar District Co-operative Milk Producer Union Ltd., vs. DCIT [2019] 111 taxmann.com 69 (Rajkot Tribunal) also held the assessee co-operative society could not claim benefit under section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized/private banks, however, the said benefit was available in respect of interest earned and on deposits made with co-operative bank. Thus, in view of the aforesaid legal discussion we are of the considered view that order passed by Assessing Officer is not erroneous, though it may be prejudicial to the interest of the Revenue. Therefore, the twin conditions that orders is erroneous and so far as prejudicial to the

interest of revenue, as prescribed under section 263 is not fulfilled in the present case.

16. The ld. DR for the revenue relied on the case law in PCIT Vs. Totagars Co-operative Sales Society (second case)/(supra), wherein the Hon'ble Karnataka High Court held that interest earned by a Co-operative Society from surplus deposits kept with Co-operative bank, is not eligible for deduction under section 80P(2)(d).
17. Considering the legal position that when there are conflicting decisions of non-jurisdictional High Courts, on similar issue, the decision of Jurisdictional High Court is having binding precedent. Thus, keeping in view of the decision Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd., vs. ACIT (supra) wherein the assessee-co-operative society is held eligible for deduction under section 80P(2)(d) in respect of gross interest received from co-operative bank without adjusting interest paid to said bank, we conclude that the order passed by assessing officer is not erroneous. Hence, the grounds of appeal raised by assessee are allowed.
18. In the result, appeal of the assessee is allowed.

Order pronounced on 03 March 2021 by placing the result on the notice board.

Sd/-

(Dr. ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER)

Sd/-

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 03 March 2021 /#SGR

Copy of order sent to:- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

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By order

Assistant Registrar, Surat