

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 490/Bang/2021</b>
<b>Assessment Year : 2015-16</b>

M/s. Kakkabe VSSN Bank Ltd., Main Road, Kakkabe, Kodagu - 571 212. PAN: AAABK0958P	<b>Vs.</b>	The Principal Commissioner of Income-tax, Mysore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	None
Revenue by	:	Shri Sumer Singh Meena, CIT I

Date of Hearing	:	31-01-2022
Date of Pronouncement	:	28-02-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order dated 06.03.2020 passed by Ld.Pr.CIT, Mysore on following grounds of appeal:

*"1. The Impugned Order as passed by the Hon'ble Pr.CIT u/s 263 of the Income-tax Act, 1961 is arbitrary, unjust and illegal under the facts and circumstances of the appellant case.*

*2. On the facts and circumstances of the case and on law, the Hon'ble Pr.CIT has assumed the jurisdiction u/s 263 under incorrect application of law as twin condition of "erroneous Order and Prejudicial to interest of revenue" as enunciated u/s 263 were not satisfied simultaneously and therefore assumption of jurisdiction u/s 263 and impugned Order passed thereunder liable to be quashed as void-ab-initio.*

*3. On the facts and circumstances and law, the original Order passed by the learned AO was after proper application of mind and proper appreciations of law and the intervention caused by the Hon'ble Pr. CIT by invoking the provisions of section 263 has no sanction of settled*

*position of Law and therefore liable to be quashed as non-est.*

*4. On the facts and circumstances and on law, the Hon'ble Pr.CIT observations and directions by way of impugned Order u/s 263 is incorrect on facts and further untenable in law and the case law relied on by the Hon'ble Pr.CIT is distinguishable on facts and circumstances of the appellant case and therefore premise on which impugned Order u/s 263 passed is an impermissible act and therefore final impugned Order u/s 263 deserved to be annulled.*

*5. On the facts and circumstances and on law, the Hon'ble Pr.CIT has assumed the jurisdiction u/s 263 on the issues which were not part of CASS Limited scrutiny mandate resulting-in violating the CBDT guidelines/instructions and therefore assumption of improper jurisdiction u/s 263 by breaching CBDT Instructions and impugned Order thus passed thereof is bad in law and liable to be annulled.*

*6. On the facts and circumstances and on law, the Order passed by the learned AO as on 28.06.2017 u/s 143(3) was neither erroneous nor prejudicial to the interest on revenue and therefore the intervention by the Hon'ble Pr.CIT by invoking provisions of the Section 263 is without proper jurisdiction and impugned Order thus passed u/s 263 is void-ab-initio liable to be annulled.*

*7. On the facts and circumstances and on law, the Hon'ble Pr.CIT assumed the jurisdiction u/s 263 on the issues on which the escapement of income are on probability and further based on pure guess-work which is not permissible u/s 263 and therefore improper assumption jurisdiction on surmises and conjectures is bad in law and further void-ab-initio and Impugned Order thus passed liable to be set-aside in Coto.*

*8. On the facts and circumstances and on law, the Hon'ble Pr.CIT assumed the jurisdiction u/s 263 on an opinion which is different from that of the learned AO which is not permissible on a settled law on subject and therefore improper assumption of jurisdiction u/s 263 on a debatable issue and indifferent view discern on issues which is already dealt by AO is bad in law and directions thereof u/s 263 is liable to be annulled.*

*9. On the facts and circumstances of the appellant case, the Hon'ble Pr.CIT ought not to have directed the learned AO to deny the deduction u/s 80P(2)(a)(i) on a claim based on the settled law on the subject and further decision relied on by the Hon'ble Pr.CIT is distinguishable to the facts of the appellant case and therefore interest on bank deposit of Rs.9,51,660/-/- denied by the Hon'ble Pr.CIT*

*u/s 260 impugned Order is liable to be deleted and deduction be eligible to the appellant as originally allowed by learned AO.*

*10. On the facts and circumstances and on law, the Hon'ble Pr.CIT ought not to have brought Rs.8,72,718/- trading sale of provisions under the head different from that of business income and thereby denying the benefit u/s 80P(2)(a)(i) without appreciating that the appellant aforesaid income squarely covered u/s 80P(1) and cogent reading with provisions of Section 80P(2) and therefore the impugned Order u/s 260 direction which is based on inappropriate assumptions of facts liable for total deletion.*

*(ii) Without prejudice to above, the Hon'ble Pr.CIT failed to take cognizance of expenses involved for earning aforesaid income of Rs.8,72,718/- and taxing Gross Income without allowing allowance to earn such income is much against the canons of taxation and therefore such direction of the Hon'ble Pr.CIT u/s 260 liable to be struck-down.*

*11. On the facts and circumstances of the case and on law, the Hon'ble Pr.CIT failed to appreciate that the provision for gratuity of Rs. Rs.1,00,125/- which was added back to income before filing Rol and applicable taxes have been paid and therefore direction u/s 260 to verify the claim of the appellant is required to be deleted as there cannot be double taxation on the same set of Income.*

*12. On the facts and circumstances of the case and on law, the Hon'ble Pr.CIT ought not to have directed the AO u/s 263 to verify the Provisions of the Audit fee of Rs.74,000/- which is an ascertain liability and Rs.84,000/- of VAT which was paid before filing the Rol and thus direction based on the surmises, conjectures and further on assumptions and presumptions liable to be set aside as non-est under law.*

*13. That the grounds of appeal herein are without prejudice to each other and are independent of each other.*

*14. The appellant craves leave to amend, alter, modify, substitute, and to, abridge and/or rescind any or all of the above grounds.”*

## **2. Brief facts of the case are as under:**

From the assessment records, it is observed that assessee claimed an amount of Rs.22,51,165/- as deduction u/s. 80P(2)(a)(e) of the Act. The Ld.Pr.CIT was of the opinion that assessee does not qualify for deduction under the said section however, an amount of Rs. 50,000/- was only allowable to assessee u/s. 80P(2)(c) of the Act.

**3.** The Ld.Pr.CIT also noted that assessee made a provision for gratuity amounting to Rs. 1,00,125/- and audit fee of Rs.74,000/- and IT and ST of Rs.81,000/-. The Ld.Pr.CIT was of the opinion that the said amounts needed to be added back to the net profit as assessee did not furnish any proof of expenditure having incurred in respect of the same.

**4.** The Ld.Pr.CIT accordingly issued notice u/s. 263 of the Act dated 24.01.2020. In lieu of the said notice, assessee submitted its reply on 06.02.2020 and 25.02.2020.

The Ld.Pr.CIT relying on the decisions of *Hon'ble Karnataka High Court* in case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd. vs. ITO* reported in [2015] 55 taxmann.com 447 (Karn) itself agreed with the contentions submitted by assessee.

**5.** The Ld.Pr.CIT was of the opinion that though assessee is a co-operative society and carries on the business of providing credit facility to its members, the interest earned from the institutions cannot be allowed as deduction u/s. 80P(2)(a)(i) of the Act. The Ld.Pr.CIT therefore directed the Ld.AO to disallow the provision made for gratuity to compute the correct deduction u/s. 80P(2)(a)(i) of the Act. He also directed the Ld.AO to verify the nature of income and its eligibility for deduction u/s. 80P(2)(e) being income from trading activity.

The Ld.Pr.CIT with such direction to add back the provisions for audit fee and IT and ST remanded the assessment order and directed the Ld.AO to revisit the assessment order.

Aggrieved by the order of Ld.Pr.CIT, assessee is in appeal before us now.

We have perused the submissions advanced by both sides in the light of records placed before us.

6. We note that though prima facie, the issues needs to be revisited by the Ld.AO, however, the directions of the Ld.Pr.CIT to make addition in respect of the provision for gratuity as well as expressing the intention of disallowing certain income while computing 80P(2)(e) as well as (a)(i) is not in accordance with law. We also refer that *Hon'ble Supreme Court* in the case of *Mavilayi Service Cooperative Bank Ltd. Vs.CIT (2021)* reported in 123 [taxmann.com](http://taxmann.com) 161 (SC) considered the issue relating to interest income earned and has distinguished the decisions of *Hon'ble Karnataka High Court* in case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd. vs. ITO (supra)*. In view of the above, we modify the directions of Ld.Pr.CIT by directing the Ld.AO to carry out *de novo* verification on the issues considered by the Ld.Pr.CIT in the impugned order having regard to the principle laid down by *Hon'ble Supreme Court* in case of *Mavilayi Service Cooperative Bank Ltd. Vs.CIT (supra)*. The assessee is directed to file all requisite details in support of the claim which would be verified by the Ld.AO in accordance with law. Needless to say that proper opportunity of being heard to be granted to assessee in accordance with law.

**In the result, the appeal filed by the assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 28<sup>th</sup> February, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 28<sup>th</sup> February, 2022.  
/MS /

**Copy to:**

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

By order

Assistant Registrar,  
ITAT, Bangalore