

आयकर अपीलीय अधिकरण न्यायपीठ, नागपुर में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR

(Through Virtual Hearing at Raipur)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.122/NAG/2018

निर्धारण वर्ष / Assessment Year : 2013-14

M/s. Bhagyashri Nagri Sahakari Pt. Sanstha Maryadit  
At Nawargaon, Dist. Chandrapur,  
PAN : AAALB0066F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Pr. Commissioner of Income Tax-3,  
Nagpur.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 112/NAG/2019

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Bhagyashri Nagri Sahakari Pt. Sanstha Maryadit  
At Nawargaon, Dist. Chandrapur,  
PAN : AAALB0066F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Pr. Commissioner of Income Tax-3,  
Nagpur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri K.P Dewani, AR  
Revenue by : Shri Pradeep Headoo, DR

सुनवाई की तारीख / Date of Hearing : 15.02.2022

घोषणा की तारीख / Date of Pronouncement : 06.04.2022

### **आदेश / ORDER**

#### **PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the Pr. Commissioner of Income Tax-3, Nagpur (for short 'Pr. CIT'), passed u/s. 263 of the Income-tax Act, 1961 (for short 'the Act') dated 20.03.2018 & 18.03.2019, which in turn arises from the respective orders passed by the A.O under Sec.143(3) of the Act, dated 09.02.2016 & 08.12.2016 for assessment years 2013-14 & 2014-15, respectively. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

#### **ITA No.122/NAG/2018** **Assessment Year: 2013-14**

2. We shall first take up the appeal filed by the assessee in ITA No. 122/Nag/2018 for assessment year 2013-14, wherein the impugned order has been assailed before us on the following grounds of appeal:

“1. That the notice and the order of the learned Pr. Commissioner of income tax, Nagpur-1, Nagpur passed u/s.263 is bad in law and wrong on facts. On the facts and circumstances of the case, the assessment order passed by the AO u/s.143(3) was neither erroneous nor prejudicial to the interest of the revenue and the notice u/s.263 and the proceedings thereafter, are illegal and liable to be quashed.

2. The learned Pr. Commissioner of income tax erred in law and on facts in directing the AO to recompute the business profits by verification and re-computation of deduction allowable u/s.80P(2)(a)(i) of the Act. On the facts and circumstances of the case, the deduction claimed u/s.80P was correct and justified.

3. The learned Pr. Commissioner of income tax erred in law and on facts in directing the AO to make disallowance of contribution to Provident Fund of Rs.3,38,064/- u/s.36(i)(va) being paid late. On the facts and circumstances of the case, the AO had duly verified the details of payments made to Provident Fund and had allowed the same accordingly. The action of Pr. Commissioner of Income Tax is unjustified.

4. The learned Pr. Commissioner of income tax erred in law and on facts in stating that the nominal members are not members in real sense & 80P deduction is not available if society provides credit facilities to non-members. On facts and circumstances of the case, this observation of Pr. Commissioner of Income Tax is misplaced and unjustified.

5. That for any other ground with kind permission of your honour at the time of hearing of appeal.”

2.1 Succinctly stated, the assessee which is a co-operative society had filed its return of income for the assessment year 2013-14 on 31.10.2013, declaring an income of Rs.1,31,200/- ( after claiming deduction u/s.80P of the Act of Rs.,2,75,13,497/-). Subsequently, the case of the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

Original assessment was framed by the Assessing Officer u/s. 143(3), dated 09.01.2016 determining the income of the assessee at Rs.1,31,200/- i.e. as returned.

3. After culmination of the assessment proceedings the Pr. CIT called for the assessment records of the assessee. On a perusal of the assessment records it was observed by the Pr. CIT, viz. (i). that as held by the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT, Civil Appeal No.10245 of 2017 that nominal members of a co-operative society were not members in the real sense, therefore, the Assessing Officer had erred in not placing on record the transactions which were entered into by the assessee society with its nominal members i.e., deposits received, loan given to nominal members etc. specifically when the bye-laws of the society had provision for admitting nominal members in addition to regular members; (ii). that the Assessing Officer had held to appreciate that the interest income received by the assessee society from deposits with scheduled commercial banks as per the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO, 322 ITR 283(SC) was not eligible for deduction u/s.80P(2)(a)(i) of the Act; (iii). that the Assessing Officer had failed to appreciate that the interest income received by the assessee society on its deposits with scheduled commercial banks was also not eligible for deduction

u/s.80P(2)(d) of the Act; and (iv). that the Assessing Officer had lost-sight of the fact that the delayed deposits of the employees contribution towards PF was not eligible for deduction in the hands of the assessee u/s. 36(1)(va) of the Act. On the basis of the aforesaid observations the Pr. CIT called upon the assessee to explain as to why the order passed by the Assessing Officer u/s.143(3) of the Act, dated 09.02.2016 may not be revised by him u/s.263 of the Act.

4. As the explanation of the assessee did not find favour with the Pr. CIT, therefore, he vide his order passed u/s.263 of the Act, dated 20.03.2018 set-aside the order passed by the Assessing Officer u/s.143(3) dated 09.02.2016 and directed him to recompute the business profits of the assessee by making necessary disallowance u/s.36(1)(va) of the Act a/w. modification of its claim for deduction u/s.80P(2)(a)(i) of the Act.

5. The assessee being aggrieved with the order of the Pr. CIT has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representative of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As observed by us hereinabove, the Pr. CIT had held the order passed by the

Assessing Officer u/s.143(3), dated 09.02.2016 as erroneous in so far it was prejudicial to the interest of the revenue u/s.263 of the Act for two fold reasons, viz. (a) that the Assessing Officer had wrongly allowed the assessee's claim for deduction of interest on deposits with scheduled commercial banks u/s.80P(2)(a)(i) of the Act; and (b). that the Assessing Officer had wrongly allowed the assessee's claim for deduction of the delayed deposit of the employees share of contribution towards PF.

7. Before us, it was the claim of the Ld. AR that the assessee is a co-operative society registered under the Maharashtra Co-operative Credit Society Act, 1960. It is the claim of the Ld. AR that the assessee society was established in the year 1993 and had consistently been allowed deduction u/s. 80P of the Act since A.Y.1994-95 onwards. It was further submitted by the Ld. AR that the income derived by the assessee society from providing credit facilities to its members is duly eligible for deduction u/s.80P(2)(a)(i) of the Act. Adverting to the type of members of the assessee society, it is the claim of the Ld. AR that as per bye-laws of the assessee society it has two kinds of members, viz. (i) original members; and (ii) nominal members. It is the claim of the Ld. AR that the provisions of Maharashtra Co-operative Society Act, 1960 permits admission of nominal members. Backed by his aforesaid contentions, it was submitted by the Ld. AR that now when Maharashtra Co-operative Society Act, 1960 permits the

admission of nominal members, therefore, transactions of the assessee with such nominal members was eligible for deduction u/s.80P(2)(a)(i) of the Act. In support of his aforesaid contentions the Ld. AR had relied on the orders of the Co-ordinate Bench of the Tribunal, viz. (i) Vainganga Nagari Sahakari Pat Sanstha Ltd. Vs. ITO, Ward-2, Bhandara, ITA No.49/NAG/2020, dated 21.06.2021; and (ii) M.S.E.B Employees Co-operative Credit Society Ltd. Vs. ITO, Ward-3, Nagpur, ITA No.369/NAG/2019, dated 19.02.2020. On the basis of his aforesaid contentions, it was submitted by the Ld. AR that the Pr. CIT had wrongly observed that as the assessee society pursuant to its bye-laws had carried out transactions with its nominal members, therefore, for the said reason it was to the said extent not eligible for deduction u/s.80P of the Act. It was submitted by the Ld. AR that involving identical facts the ITAT, Nagpur in the assessee's own case for the assessment year 2010-11 i.e. ITA No.49/NAG/2014, dated 26.06.2015 had allowed its claim for deduction u/s.80P of the Act. It was submitted by the Ld. AR that pursuant to the order of the Tribunal in its own case for the assessment year 2010-11, the Assessing Officer had thereafter, while giving appeal effect allowed its claim for deduction u/s.80P and determined its income at Rs. Nil. On a similar footing, it was submitted by the Ld. AR that the Assessing Officer while framing assessment u/s.143(3) of the Act in the

case of the assessee for the assessment year 2007-08 had after accepting the nominal members as members of the assessee society allowed its claim for deduction u/s.80P of the Act. It was submitted by the Ld. AR that now when during the year under consideration there was no change in the activities of the assessee society with its members, therefore, the inconsistent approach adopted by the department could not be permitted. Apart from that, it was averred by the Ld. AR that now when the assessee's claim for deduction u/s.80P was after deliberations allowed by the Assessing Officer in the course of original assessment proceedings, therefore, the Pr. CIT could not have invoked his revisional jurisdiction u/s 263 for the purpose of his substituting his view as against that of the A.O.

8. Adverting to the view taken by the Pr. CIT that interest income derived by the assessee from deposits with scheduled banks would not be eligible for deduction u/s. 80P(2)(a)(i) of the Act, it was submitted by the Ld. AR that the Assessing Officer had accepted the aforesaid claim of the assessee only after exhaustive deliberations. It was submitted by the Ld. AR that even otherwise the aforesaid view of the Assessing Officer is found to be in conformity with the orders of the Co-ordinate Benches of the Tribunal, viz. (i) Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. Vs. ITO, (2021) 186 ITD 0220 ( Pune Trib.); and (ii) Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit, ITA No.604/PUN/2014. It was submitted

by the Ld. AR that now when the Assessing Officer had taken a possible and a plausible view qua the entitlement of the assessee towards deduction of interest on deposits with scheduled banks u/s.80P(2)(a)(i) of the Act therefore, the Pr. CIT was divested of his jurisdiction in holding the same as erroneous in so far it was prejudicial to the interest of the revenue u/s. 263 of the Act. Rebutting the view taken by the Pr. CIT that the Assessing Officer had bypassed the mandate of Sec. 36(1)(va) of the Act and wrongly allowed the assessee's claim for deduction qua the delayed deposits of employees contributions towards PF, it was submitted by the Ld. AR that the aforesaid view so taken by the Pr. CIT was inconsistent with the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Alom Extrusions Ltd. (2009) 319 ITR 0306 ( SC) and that of the Hon'ble High Court of Bombay in the case of CIT Vs. Ghatge Patil Transports Ltd. (2014) 368 ITR 0749 (Bom). In the backdrop of his aforesaid contentions, it was submitted by the Ld. AR that as the Pr. CIT had wrongly assumed jurisdiction u/s.263 of the Act and had sought to dislodge the assessment order passed by the Assessing Officer u/s. 143(3), dated 09.02.2016, therefore, the same could not be sustained and was liable to be set-aside.

9. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

10. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Adverting to the view taken by the Pr. CIT that as the assessee society was as per its bye-laws permitted to admit nominal members in addition to its regular members, the failure on the part of the Assessing Officer in not bringing on record the transactions entered into by the assessee society with its nominal members i.e. total deposits received, loans given to the nominal members etc. had rendered his order erroneous in so far as it was prejudicial to the interest of the revenue, for the reason, that pursuant to the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT (supra), as nominal members are not akin to members in real sense, therefore, deduction u/s.80P of the Act would not be available to the assessee qua its transactions with the nominal members. In our considered view the Pr. CIT had arrived at the aforesaid conclusion on the basis of misconceived and part baked facts. As stated by the Ld. AR, and rightly so, as the assessee society is registered under the Maharashtra Co-operative Credit Societies Act, 1960 which takes within the sweep of the definition of "Member" even "Nominal Members" and does not provide for any distinction between the duly

registered member and nominal members, therefore, the view taken by the Pr. CIT that the transactions of the assessee society with its nominal members would not qualify for deduction u/s.80P cannot be accepted. At this stage, we may herein observe, that the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (supra) being distinguishable on facts would not assist his case. In the case of Citizen Co-operative Society Ltd. (supra), the society therein involved was registered under Andhra Act, wherein the term "Member" did not take within its sweep nominal members. Our aforesaid view that the definition of "Member" u/s. 2(19) of the Maharashtra Co-operative Societies Act, 1960 takes within its sweep even a nominal member and does not provide for any distinction between the duly registered members and the nominal members is supported by the judgment of the Hon'ble High Court of Bombay in the case of Jalgaon District Central Co-operative Bank Ltd. Vs. Union of India (2004) 134 Taxman 1 (Bom). Apart from that, we find the Hon'ble Supreme Court in its recent judgment in the case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (2021) 123 taxmann.com 161(SC) after referring to and considering its earlier judgment in the case of Citizen Co-operative Society Ltd. (supra), had observed, that unlike as in the case of Citizen Co-operative Society Ltd. (supra) which dealt with the Andhra Act wherein the term 'Member'

did not take within its sweep “Nominal Member”, in the case before them the assessee society was registered under Kerala Act where the term ‘Member’ included Nominal member, therefore, the assessee society was eligible for claim of deduction of the interest income earned on the loans e given to its nominal members u/s.80P(2)(a)(i) of the Act. Backed by our aforesaid view, we are of a strong conviction that where the State Act under which the assessee society is registered includes within the definition of “Member” a “Nominal Member”, there can be no question of denial of benefit u/s. 80P(2)(a)(i) of the Act qua the interest income pertaining to the transactions entered into by the assessee society with its Nominal Members. Our aforesaid view is supported by the orders of the co-ordinate bench of the Tribunal in the case of Vainganga Nagari Sahakari Pat Sanstha Ltd. Vs. ITO, Ward-2, Bhandara, ITA No.49/NAG/2020, dated 21.06.2021 and that in the case of M.S.E.B Employees Co-operative Credit Society Ltd. Vs., ITO, Ward-3, Nagpur, ITA No.369/NAG/2019, dated 19.02.2020. We, thus, in terms of our aforesaid observations are unable to persuade ourselves to subscribe the view taken by the Pr. CIT as regards the aforesaid issue in hand on the basis of which he had held the order passed by the Assessing Officer as erroneous in so far it was prejudicial to the interest of the revenue u/s.263 of the Act.

11. Adverting to the view taken by the Pr. CIT that the interest income earned by the assessee society on its deposits with scheduled banks would not be eligible for deduction u/s.80P(2)(a)(i) of the Act, we are unable to persuade ourselves to subscribe to the view so arrived at by the Pr. CIT. In our considered view the issue in hand i.e., as to whether or not interest income on deposits with the scheduled banks would be eligible u/s.80P(2)(a)(i) of the Act has been subjected to two schools of thoughts at the relevant point of time when the assessment order was passed by the Assessing Officer. In so far the interest income arises from short-term deposit of money for which there are no takers at the relevant point of time, the same had ben held to be duly eligible for deduction u/s.80P(2)(a)(i) of the Act. Our aforesaid view is fortified by the judgement of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Cooperative Ltd. Vs. ITO, Tumkur, ITA No.307/2014, dated 28.10.2014. In its aforesaid judgment, the Hon'ble High Court had after duly considering the judgment of the Hon'ble Supreme Court in the case of M/s. Totgars Co-operative Sale Society Ltd. Vs. ITO, Karnataka (2010) 188 taxmann.com 282 (SC) had concluded, that the assessee society before them was eligible for deduction u/s.80P(2)(a)(i) of the Act qua the interest income on deposits with the scheduled banks. Backed by our aforesaid observations, we are of the considered view, that now when the issue in

hand is a debatable one and the Assessing Officer had taken one of the plausible view, therefore, the same could not be held as erroneous in so far it is prejudicial to the interest of the revenue by the Pr. CIT in exercise of his jurisdiction u/s.263 of the Act. Our aforesaid view is fortified by the orders of the co-ordinate benches of the Tribunal, viz. (i) Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. Vs. ITO, (2021) 186 ITD 0220 (Pune Trib.); and (ii) Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit, ITA No.604/PUN/2014. In the backdrop of our aforesaid deliberations, we are of the considered view that now when the Assessing Officer had taken one of the plausible view qua the issue in hand i.e. entitlement of the assessee co-operative society for deduction of interest income earned on deposits with scheduled banks u/s. 80P(2)(a)(i) of the Act, therefore, the same could not have been revised by the Pr. CIT u/s.263 of the Act. We, thus, in terms of our aforesaid observations set-aside the order passed by the Pr. CIT u/s.263 of the Act, dated 20.03.2018 qua the aforesaid issue in hand.

12. Adverting to the view taken by the Pr. CIT that the Assessing Officer had failed to disallow the assessee's claim for deduction of delayed deposit of employees share of contribution towards PF of Rs.3,38,064/- u/s.36 (i)(va) of the Act, therefore, the same has rendered his order as erroneous in so far it was prejudicial to the interest of the revenue u/s.263 of the Act,

we are afraid that the same does not find favor with us. As stated by the Ld. AR, and rightly so, the Hon'ble Supreme Court in the case of CIT Vs. Alom Extrusions Ltd. (2009) 319 ITR 0306 (SC), had held, that the omission of the "second proviso" to section 43B and the amendment of the "first proviso" by the Finance Act, 2003, had brought uniformity in payment of tax, duty, cess and fee on the one hand and contributions to employees welfare funds on the other hand, which being curative in nature would be effective retrospectively w.e.f. 01.04.1988 i.e. the date of insertion of the "first proviso". At this stage, we may herein observe, that the Hon'ble Apex Court in its aforesaid judgment had set-aside the order of the Hon'ble High Court of Bombay in the case of CIT Vs. Pamwi Tissues Ltd. (2009) 313 ITR 0137(Bom), wherein the High Court had observed that the employees contribution towards PF & EPF and ESI not paid within the 'due date' was disallowable u/s.43B of the Act. Apart from that, we find, that the aforesaid issue is also covered in favour of the assessee by the judgment of the Hon'ble Bombay High Court in the case of CIT Vs. Ghatge Patil Transports Ltd. (2014) 368 ITR 0749 (Bom). In the aforesaid order, the Hon'ble High Court had observed that deduction for payment of employees contribution cannot be disallowed in case the contribution to the employee's welfare fund was credited on or before the 'due date' of filing of return of income by the assessee. Backed by the aforesaid position

of law, we are of the considered view that the Pr. CIT had wrongly held that the failure on the part of the Assessing Officer to add back the delayed deposit of the employees share of contribution towards PF that was disallowable u/s.36(1)(va) of the Act, had rendered his order as erroneous in so far it was prejudicial to the interest of the revenue u/s 263 of the Act. We, thus, in terms of our aforesaid observations not being able to persuade ourselves to subscribe to the view taken by the Pr. CIT qua the aforesaid issue in hand, thus, set-aside the same to the said extent.

13. In the backdrop of our aforesaid deliberation, we not being able to uphold the order passed by the Pr.CIT u/s. 263 of the Act, dated 20.03.2018 as regards either of the aforesaid three issues on the basis of which he had held the assessment order passed by the Assessing Officer u/s. 143(3), dated 09.02.2016 was erroneous in so far it was prejudicial to the interest of the revenue, thus, set aside the order passed by him u/s.263 of the Act, dated 20.03.2018 and restore the order passed by the Assessing Officer u/s.143(3) of the Act, dated 09.02.2016.

14. In the result, appeal of the assessee in ITA No.122/NAG/2018 for the assessment year 2013-14 is allowed in terms of our aforesaid observations.

**ITA No. 112/NAG/2019**  
**Assessment Year: 2014-15**

15. As the facts and the issue involved in the present appeal remains the same as were there before us in the assessee's appeal for assessment year 2013-14 in ITA No.122/NAG/2018, therefore, our order therein passed while disposing off the appeal of the assessee for assessment year 2013-14 shall apply mutatis-mutandis for disposing off the present appeal in ITA No.112/NAG/2019 for the assessment year 2014-15. In this case also, we, herein, set-aside the order of the Pr. CIT passed u/s.263 of the Act, dated 18.03.2019 and restore the order passed by the Assessing Officer u/s. 143(3) of the Act dated 08.12.2016.

16. In the result, appeal of the assessee in ITA No.112/NAG/2019 for the assessment year 2014-15 is allowed in terms of our aforesaid observations.

17. In the combined result, both the appeals of the assessee are allowed in terms of our aforesaid observations.

Order pronounced in open Court on 06<sup>th</sup> day of April, 2022.

Sd/-  
**JAMLAPPA D. BATTULL**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 06<sup>th</sup> April, 2022  
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-3, Nagpur.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
नागपुर/DR, ITAT, Nagpur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	22.03.2021	Sr.PS/PS
2	Draft placed before author	22.03.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		