



आयकर अपीलीय न्यायाधिकरण, नागपुर न्यायपीठ, नागपुर में।

IN THE INCOME TAX APPELLATE TRIBUNAL,  
NAGPUR BENCH, NAGPUR  
(Through Virtual Court at Raipur)

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

आयकर अपील सं. / ITA No. 133/NAG/2019  
आयकर निर्धारण वर्ष / Assessment Year : 2014-2015

M/s Nagpur Vidyapeeth Karamachari Sahakari  
Prataya Sanstha Maryadit  
LIT Premises, Bharati Nagar, Nagpur – 440 001(Mh)  
PAN : AABAN 0404 H

..... अपीलार्थी / Appellant

**बनाम / V/s.**

Pr Commissioner of Income Tax,  
Aayakar Bhavan, Nagpur – 440 001 (Mh)

..... प्रत्यर्थी / Respondent

**द्वारा / Appearances**

Assessee by : Shri Mahavir Atal  
Revenue by : Shri Vithal Bhosale

सुनवाई की तारीख / Date of conclusive Hearing : 16/02/2022  
घोषणा की तारीख / Date of Pronouncement : 28/04/2022

**आदेश / ORDER**

**PER JAMLAPPA D BATTULL, AM;**

The present appeal against the revisionary order of Principal Commissioner of Income Tax, Nagpur [for short "PCIT"] dt. 19/03/2019 passed u/s 263 of the Income-tax Act, 1961 [for short "the Act"], which in turn leapt out of regular order of assessment dt. 12/08/2016 passed u/s 143(3) of the Act by the Income Tax Officer-Ward-1(4), Nagpur [for shot "AO"], the appellant assessee filed before Income Tax Appellate Tribunal [for short "the Tribunal"] u/s 253.



2. The issue in the present controversy is, as to whether the order passed by the assessing officer u/s 143(3) can be said to be erroneous and prejudicial to the interest of the revenue within the preview of section 263 of the Act.

3. The appellant assailed the solitary **legal ground** and it is essential to reproduce the same before we proceed for adjudicate thereon;

*“1. Whether of facts and circumstances of the case, the Learned CIT was justified in revising order of Assessing Officer u/s 263.*

*4. Appellant craves leave to add or alter any other ground that may be taken at the time of hearing.”* *(Emphasis Supplied)*

4. Pithily stated facts of the case are;

4.1 The assessee is a registered Employee Credit Co-operative society formed and registered under the provisions of Maharashtra State Co-operative Societies Act, 1960 and engaged in the business of providing credit facilities to exclusively its members who are the **employee of the Nagpur University (Nagpur Vidyapeeth)**. For the assessment year [for short “AY”] 2014-2015 the assessee e-filed its return of income [for short “ROI/ITR”] on 23/11/2014 declaring total income of ₹NIL, which was selected for complete scrutiny under CASS by issue of statutory notice u/s 143(2) dt 31/08/2015 and finally the assessment u/s 143(3) was completed accepting the returned income as ₹NIL.

4.2 Post culmination of the assessment proceedings, Ld. PCIT called after perusal of assessment record, not subscribing to the views of assessing officer, invoked the revisionary powers vested in him by virtue of



section 263(1) and holding the order as erroneous insofar as it were prejudicial to the interest of the revenue on the ground that, the claim of deduction u/s 80P(2)(a)(i) was allowed without inquiry & verifying them as the assessee society has provision to enrol nominal members in addition to members.

4.3 In response to SCN issued u/s 263 of the Act, no representation was made, and the absence of reply was taken as no objection of the assessee, consequently the Ld. PCIT set aside the 143(3) order of assessment holding it as erroneous insofar as prejudicial to the interest of the revenue and directed the Ld. AO to pass a fresh order after due inquiry into transactions entered by the appellant society with its members vis-à-vis non-members.

4.4 Pending such direction before the Ld. AO, the appellant co-operative society assailed the revisionary action of Ld. PCIT before this Tribunal on the premise that, the subject matter under revision was duly considered while carrying out the regular assessment in the light of prevailing judicial precedents and hence the action of the Ld. PCIT is alleged *contra legem*.

5. After hearing to the rival contentions of both the parties; perused material placed on records and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.



6. *prout patet per recordum, that;*

6.1 During the course of regular assessment proceedings, the appellant society on a specific query raised by the Ld. AO, placed a detailed submissions inter alia copy of return filed, statement of income showcasing its entitlement for the claim made u/s 80P of the Act, copy of audit reports, and the copies of audited financial statements duly accompanied therewith the requisite explanation in reply to the questionnaire raised by the Ld AO. Insofar as the allowability of claim u/s 80P(2)(a)(i) is concern, there were specific queries raised by the Ld. AO vis-à-vis replied by the appellant, and considering material placed on records, checks were carried out and after due inquiry into the entitlement the Ld. AO allowed the deduction accepting the claim of the assessee, unconditionally holding that;

*“The assessee is a Salary Earners Credit Co-operative Employees Society providing credit facilities to its members and accepts deposits therefrom.*

*After discussion, return of income of the assesses is accepted.”*

*(Emphasis Supplied)*

6.2 As far as the revisionary proceeding is concern, it emerges from the show cause notice [for short “SCN”] dt 25/02/2019 issued u/s 263 of the Act and served on 06/03/2019 calling upon the to show case as to why in the **absence of inquiry** the deduction u/s 80P should not be denied. The SCN also mentioned the non-response would lead to no objection to proceed with the matter for disallowing the deduction claimed claim u/s 80P(2)(a)(i) of receipt of interest income earned from non-members of the appellant society. The assessee disregarded the notice on the pretext that the assessment was



carried out after due inquiry into the claims, in the event the Ld. PCIT considering the assessment records inter alia, the By-Laws of the appellant society, made a categorical observation that, by virtue of provisions of its bye-laws, the assessee society carries a right to enrol nominal members in addition to regular members and consequently the interest earned (if any) from such non-members on loans extended to them were ineligible for claim u/s 80P(2)(a)(i) of the Act, as these nominal member do not participate in the surplus of the society and in his opinion such transactions were remained to be inquired into & verified during the course of assessment proceedings.

7. During the course of hearing before the bench, the counsel for the appellant [for short "AR"] contended that, the provisions of section 263 does not empower Ld. PCIT to take action on same facts to arrive at the varying conclusion that the order passed by his sub-ordinate is erroneous and prejudicial to the interests of the Revenue. It is also submitted before that, in the absence of any material before the revisionary authority, the opinion formed on exactly same material tantamounts to change of opinion and such is untenable in law. Since the same material was there on record and the said material was considered by the Ld. AO and a particular view was taken, the mere fact that a different view can be taken, should not be the basis for an action under section 263 of the Act and it cannot be held to be justified. The departmental representative [for short "DR"] on the other hand, advertising to the fact of absence of representation in response to SCN, the Ld. PCIT had no choice but to proceed with the available records and decide the matter, hence the order passed by Ld. PCIT is perfectly valid.

8. Before shooting the balloon, it will be apt to first reproduce the provision of section 263(1) in verbatim as it stood and applicable to the AY under consideration;

**8.1 263. Revision of orders prejudicial to revenue –**

*(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment. (Emphasis Supplied)*

8.2 A plain reading of this provision makes it clear that, the precondition to exercise revisionary jurisdiction by the PCIT/CIT suo moto under it, is that the order of AO must be erroneous insofar as it is prejudicial to the interests of the revenue is concern. Consequently, the provision mandates the satisfaction of existence of twofold conditions before invocation and these explicitly are; (i) the order of the assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If any one of two is absent or unsatisfied, that is where the order of the assessing officer is erroneous but is not prejudicial to the revenue or where order is not erroneous but is prejudicial to the revenue, then the recourse to Section 263(1) of the Act fails. Albeit the foresaid twin satisfaction drawn from the assessment records may trigger the revisionary jurisdiction, yet such shall not automatically empower the revisionary tax

authorities to conclude the revision proceedings without obeying additional dual riders such as; (i) making or causing to be made such enquiry as necessary and (ii) according an opportunity of being heard to the assessee following the principle of natural justice.

8.3 In the light of provision of law, it is of paramount importance to note that, an incorrect assumption of facts or an incorrect application of law or passing an order without application of mind or without applying the principle of natural justice, shall discretely be sufficient to hold the order being erroneous. Albeit the term prejudicial to the interests of the revenue is not at all defined in the Act, but it needs to be understood in its ordinary meaning and it is of wide import and is not confined to mere loss to exchequer.

8.4 In the light of ration laid down by Hon'ble Supreme Court of India on the subject matter, we have the audacity to summarise the inferential but harmonious analysis of revisionary provision laid in section 263 of the Act, into a five steps "Queen Principle", falling out of which the assuming revisionary jurisdiction u/s 263 shall be *contra legem*, and these steps are; (1) There must be an explicit query from the adjudicating tax authority as regards to any claim made including information supplied in the return of income filed or to be filed, and (2) There must be direct, clear and an unreserved submission from the assessee in reply to aforesaid query, and (3) The submission must be followed by detailed inquiry (and not mere enquiry) by the tax authorities into assessee's eligibility of claim, basis of



claim and compliance of pre as well post conditions as may be attached to the claim under scrutiny, and (4) There should be **even-handed application** of mind by the adjudicating authority in reaching out the allowability or disallowability of claim under consideration, (5) And finally, the adjudication must ensure the correct application of law as regards to aforesaid following principle of **natural justice**.

8.5 In the instant case, during the course of assessment proceedings, **explicit queries** were raised and **unreserved submission** were matured before the Ld AO, consequent to which **inquiries into entitlement** having regards to nature of banking business and members were conducted and thereupon in the light of supportive material, drawing even-handed conclusions, assessment allowing the deduction u/s 80P of the was carried out, leaving no air in the assessment.

8.6 Considering the facts of the case extenso, we concede with the contention of the Ld. AR that, in support of appellant claim as expounded hereinbefore at para 6, there was indeed unvarying and indistinguishable material before both these tax authorities during the course of regular assessment vis-à-vis revisionary proceeding, which in turn demonstrates that, the Ld. AO considering the same submission of the assessee carried out inquiry with respect to eligibility of claim, basis of claim and compliance relating thereto(if any) and then finalized the assessment taking one of the plausible view in the light of settled legal position in allowing the deduction u/s 80P, this evidently concludes that the adjudication squarely fell within



aforementioned “Queen Principle”. Whereas under revisionary proceedings Ld. PCIT yet again conducted an inquiry into the claim of the appellant based on the like material and sitting on the same fence displaced with the views of Ld. AO and directed for modification of assessment which is seemingly impermissible under a law following the ration laid in down by Hon’ble Jurisdictional High Court in “CIT Vs Gabriel India Ltd.” reported in 203 ITR 108 (Bom) and the Hon’ble Apex Court in “Malabar Industrial Co Ltd. Vs CIT” reported in 243 ITR 83. Ergo, we find the order of Ld. PCIT is unsustainable in law, consequently we quash the 263 revisionary order and restore the order of assessment passed u/s 143(3).

9. Resultantly, the appeals of the appellant are allowed in above terms.

Order pronounced on this Thursday, 28<sup>th</sup> day of April, 2022.

-S/d-

RAVISH SOOD  
JUDICIAL MEMBER

रायपुर / RAIPUR ; दिनांक / Dated : 28<sup>th</sup> April, 2022

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT, Nagpur (C.G)
4. The Pr. CIT, Nagpur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, नागपुर बेंच, नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

-S/d-

JAMLAPPA D BATTULL  
ACCOUNTANT MEMBER

आदेशानुसार / BY ORDER,

// True Copy // निजीसचिव / Private Secretary

आयकर अपीलीय न्यायाधिकरण, नागपुर बेंच, नागपुर / ITAT, Nagpur