

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**  
(CONDUCTED THROUGH E- COURT AT AHMEDABAD)

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
And  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 126/Rjt/2022  
निर्धारण वर्ष/Asstt. Years:2012-2013

Shree Keshav Co-operative Credit Society Ltd., 1 Keshav Bhavan, 5 Govardhan Park, Near Sardar Baug Jakat Naka, Junagadh.  <b>PAN: AAAAS3172N</b>	Vs.	The Principal Commissioner of Income Tax, Rajkot.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Ms Devina Patel, A.R
Revenue by :	Shri V.K. Jaiswal, C.I.T.D.R with Shri B.D. Gupta Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **27/05/2022**  
घोषणा की तारीख/**Date of Pronouncement**: **31/05/2022**

**आदेश/ORDER**

**PER MAHAVIR PRASAD, JUDICIAL MEMBER:**

The captioned appeals have been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax, Rajkot arising in the matter of assessment order passed under s.263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

1. *The learned Principal Commissioner of Income-tax - 1, Rajkot erred in assuming jurisdiction u/s 263 of the Act, particularly in the light of reasons stated by him in the show cause notice and in the order passed u/s 263 of the Act and hence the impugned order is bad in law.*
2. *The learned Principal Commissioner of Income-tax - 1, Rajkot erred in setting aside the assessment order framed u/s.143(3) r.w.s 147 of the Act by holding that the AO did not conduct any inquiries or verification in respect of eligibility of deduction claimed by the Appellant of interest income u/s.80P(2)(a)(i)/80P(2)(d) of the Act.*
3. *The learned Principal Commissioner of Income-tax - 1, Rajkot-1, Rajkot failed to appreciate that the impugned issue was duly examined by the assessing officer by way of specific inquiry/notice and reply thereto, while finalizing assessment proceedings u/s.143(3) of the Act and case of the Appellant was reopened specifically for verification of deduction u/s.80P of the Act in respect of interest income earned from co-operative bank.*
4. *The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.*

3. The assessee by way of an application dated 6 May 2022, received by the registry of ITAT Rajkot dated 20 May 2022, has requested to grant the early hearing date so as to avoid the consequential proceedings arising against the order passed by the learned PCIT under section 263 of the Act in the event it succeeds before the Tribunal. There was no objection raised by the learned DR if an early hearing date is granted to the assessee. After hearing both the parties and taking the note of the administrative order dated 14/06/2016 passed by the then Hon'ble President of ITAT for giving priority to the appeals filed against the order passed under section 263 of the Act, we are inclined to grant the early date of hearing in the case on hand.

4. However, the learned AR further requested that the issue involved in the impugned appeal is covered issue and the same can be disposed of today only subject to the concurrence of the learned DR appearing on behalf of the revenue. There was no objection raised by the learned DR, if the matter is taken up for hearing today only. Upon receiving the concession of the learned DR, we decided to take up the main appeal of the assessee.

5. The only issue raised by the assessee is that the learned PCIT erred in holding the assessment framed by the AO under section 143(3) of the Act as erroneous insofar prejudicial to the interest of Revenue under the provisions of section 263 of the Act.

6. The facts in brief are that the assessee in the present case is a co-operative society and engaged in the business of providing credit facilities to its members. The assessee in the year under consideration declared interest income of Rs. 35,08,387/- from fixed deposit made with Co-operative Bank namely Rajkot Nagrik Sahakari Bank Ltd and Junagarh Jilla Sahakari Bank Ltd which was claimed as exempted under the provision of section 80P(2)(a)(i)/80P(2)(d) of the Act. The AO in the assessment framed under section 143(3) of the Act accepted the claim of the assessee.

7. However, the learned PCIT was of the view that assessee being credit society was eligible for deduction under section 80P(2)(i)(a) of the Act for interest income earned from credit facilities provided to its members only. However, the interest income from fixed deposit made with Co-operative bank is not allowable deduction under section 80P(2)(a)(i) of the Act. As such, the co-operative bank is not the member of the assessee and such interest income was not derived from its activity of providing credit to member and accepting deposit from its member. Rather, such interest income was arising from investment made by the assessee with the co-operative bank, hence, the same is not eligible for deduction under section 80P(2)(a)(i) of the Act. The learned Pr. CIT in this regard referred the judgment of Hon'ble Supreme court in case of Totaghar's Co-operative Sales Society Ltd. reported in 188 taxman 282. The learned Pr. CIT further held that though the provision of section 80P(2)(d) of the Act provides that co-operative society deriving income being dividend or interest from investment made with other co-operative society will be eligible for deduction, however the benefit of provision of section 80P(2)(d) cannot be extended to the interest earned from co-operative bank as the

same has been excluded from the co-operative society by insertion of section 80P(4) of the Act by the Finance Act 2006. Accordingly, the Learned Pr. CIT was of the view the AO, without proper application of law and due verification of the fact, allowed the deduction claimed by the assessee which amounts to an error committed by the AO, causing prejudice to the Revenue. Accordingly, the Id. PCIT set aside the assessment order as erroneous insofar prejudicial to the interest of the revenue.

8. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

9. The learned AR before us inter-alia contended that the Hon'ble Karnataka High Court in the case of PCIT vs. Totaghar's Co-operative Sales Society Ltd. reported in 78 taxmann.com 169 after distinguishing the facts of the case observed by the Hon'ble Supreme Court cited above has held that interest income from co-operative bank is eligible for deduction under section 80P(2)(d) of the Act.

The learned AR also contended that the Hon'ble High Court of Gujarat in the case of Surat Vankar Sahkari Sangh Ltd. vs. ACIT reported in 72 taxmann.com 169 has also held that interest from the co-operative bank is eligible for deduction under section 80P(2)(d) of the Act. According to the learned AR, the AO has taken one of the possible view and therefore the assessment framed under section 143(3) of the Act cannot be held as erroneous insofar prejudicial to the interest of Revenue.

10. On the contrary, the learned DR vehemently supported the order of the Id. PCIT.

11. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the different Hon'ble High Courts have taken different view with respect to the deduction of the interest income earned by the assessee from the co-operative

bank. Some of the judgements are in favour of the assessee and some of them are against the assessee. It is also an admitted fact that the Hon'ble High Court of Gujarat is in favour of the assessee with respect to the interest on deposits made with the co-operative bank. The relevant extract of the judgement of Hon'ble Gujarat High Court in case of in case of CIT vs. Sabarkantha District Cooperative Milk Producers Union Ltd. in Tax Appeal No. 473 of 2014 reads as under:

*"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 an error in deleting the disallowance of Rs. 1,42,19,515/- under section 80(P)(2)(d) of the Act."*

11.1 Based on the above, it is transpired that the AO has taken one of the possible view for allowing the deduction to the assessee under the provisions of section 80P(2)(d)/80P(2)(a)(i)(a) of the Act. Where two view are possible on the issue and the AO has taken one of the possible view, but the PCIT do not agree with the view adopted by the AO, in such scenario, the order of the AO cannot be held erroneous. In this regard we find support and guidance from the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Mehsana District Co. Op. Milk Producers Union Ltd. where it was held as under:

*It is well-settled that the provisions of section 263(1) cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, and it is only when the order is erroneous that the section will be attracted. When two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law. It was not shown how the method followed by the assessee to divide the expenses for the purpose of claiming relief under section 80HH was improper or unacceptable. The Assessing Officer as well as the Tribunal had found that the expenses were apportioned on a rational basis and it would not be open for the Court to go beyond that finding which appeared to have been reached on the basis of the material on record which showed that in the earlier years the same proportion for dividing the expenses was consistently followed. The department had not been able to show that for those earlier two years any objection was raised against such apportionment. [Para 7]*

11.2 In view of the above detailed discussion and judicial precedent, we find no error in the order of AO so as to justify the initiation of proceedings under section 263 of the Act by the Ld. Pr. CIT. Thus, the revisional order passed by the learned

PCIT is not sustainable and therefore we quashed the same. Hence, the ground of appeal of the assessee is hereby allowed.

12. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Court on 31/05/2022 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER**

Ahmedabad; Dated 31/05/2022  
*Manish*

**(True Copy)**