

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1260/Mum/2022
(Assessment Year :2017-18)**

Shri Murli Manohar Nagari Sahakari Patasantha Maryadit 1295, Pimpal Par M.G. Road, Juni Peth, Mahad Raigad Maharashtra- 402 301	Vs.	Principal Commissioner of Income Tax-1 Ashar I.T. Park A-Wing, 6 th Floor, Wagle Industrial Estate Thane(W) Maharashtra- 400 604
PAN/GIR No.AABAS5404L		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Manoj Kumar
Date of Hearing	08/08/2022
Date of Pronouncement	23/08/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1260/Mum/2022 for A.Y.2017-18 preferred by the order against the revision order of the Id. Commissioner of Income Tax(Exemptions), Mumbai u/s.263 of the Act dated 24/03/2022 for the A.Y.2017-18.

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

1. *On the facts and in the circumstances of the case and in law the Ld. Principal Commissioner of Income Tax-1, Thane was not justified in invoking the provision of section 263 of the Income Tax Act 1961 even though the assessment order passed u/s. 143(3) of the Act was pursuant to the proper enquiry and verification and therefore, the said order is neither erroneous nor prejudicial to the interest of revenue.*

2. *On the facts and in the circumstances of the case and in law the Ld. Principal Commissioner of Income Tax-1, Thane was not justified to set aside the assessment order passed by the Income tax Officer, Ward-2, Panvel dated 27-11-2019 and direct the Assessing Officer to examine applicability of provisions of section-80P9(2)(d) and section-269SS and to verify the applicability of deduction u/s. SOP of the Income Tax Act, 1961.*

3. *The Ld. PCIT has passed an unsustainable order based on the audit party observations that the interest earned by the assessee Society is out of surplus funds invested in Co-operative Banks though the Assessing Officer has not accepted the audit party objections in the report submitted to CIT (Audit) and without further application of mind and purely on assumptions and presumptions and consequently the order passed is perverse order on facts and circumstances of case.*

4. *The PCIT while passing the orders has wrongly observed that the appellant Society has invested idle funds in order to earn the interest income though the assessee Society has made investments as per the statutory requirements governing the Society.*

5. *The PCIT while passing the orders has wrongly relied on the Hon'ble Supreme Court decision in the case of Totgar Co-op. Sales Society Ltd. and latest Hon'ble Karnataka High Court decision in the case of PCIT, Hubli v/s. Totgar Co-op. Sales Society 392 ITR 74 (ITA No-100069/2016) as the Appellant Society has not made investment of idle funds.*

6. *The order of revision has been passed in violation of the principles of natural justice as the order has been passed without giving adequate opportunity of being heard and thus order passed by the PCIT is required to be set aside on the facts and circumstances of the case.*

7. *The appellant craves leave to add, amend, alter, modify, substitute, vary, delete, and rescind all or any of the above ground(s) of appeal before or at the time heading.*

3. None appeared on behalf of the assessee despite issue of notice to the assessee. Since the issue is covered issue, we proceed to dispose of this

appeal on hearing the Id. DR and after perusing the materials available on record.

4. The assessee is a co-operative credit society engaged in the activity of providing credit facility to its members. The assessee society electronically filed its return of income for the Asst Year 2017-18 on 14.10.2017 declaring total income at Rs Nil after claiming deduction u/s 80P of the Act. The return of income was selected for scrutiny by CASS to examine the following issues :-

- a) Expenses debited to P&L A/c earning exempt income as per schedule BP of ITR is significantly lower as compared to investments made to earn exempt income.
- b) High value receipt of cash shown from third parties in response data.
- c) Low income in comparison to very high investments appearing in balance sheet.
- d) Low income in comparison to high loans/advances/investment in shares appearing in balance sheet.
- e) Large deduction under Chapter VI-A from Total Income.
- f) Large value cash deposit during demonetization period reported.

5. The Id. AO sought to examine the aforesaid items in the course of assessment proceedings. Notice u/s 133(6) of the Act by the Id. AO to the respective banks. The Id. AO observed that on analysis of bank accounts of the assessee, it was noticed that assessee had deposited cash in Karnala Nagri Sahakari Bank and The Raigad District Central Cooperative Bank Ltd. The Id. AO issued notice u/s 142(1) of the Act directing assessee to explain the source of cash deposits inter alia, among other issues. The assessee furnished reply in that regard before the Id. AO. The Id. AO gave a categorical finding that the cash deposited in the

bank accounts are sourced out of amounts received by the assessee society from its members, which is evident from the list of members submitted by the assessee during the course of assessment proceedings. After verification of various details with evidences submitted by the assessee society, the Id. AO completed the assessment u/s 143(3) of the Act on 27.11.2019 accepting the Nil returned income of the assessee society.

6. Later, Internal Audit Party of Income Tax Department raised an objection that interest income earned by the assessee society out of deposits kept with Co-operative Banks at Rs 1,45,49,749/- for which assessee had claimed deduction u/s 80P(2)(d) of the Act, was not eligible to the assessee. Similarly in respect of Dividend income of Rs 16,78,490/- ; processing & other income of Rs 34,42,986/-, aggregating to Rs 51,21,476/-, the Internal Audit Party of Income Tax Department observed that assessee is not eligible for deduction u/s 80P of the Act and the same would have to be taxed as income from other sources.

7. With regard to the aforesaid objections of Internal Audit Party, the Id. AO defended his assessment order by furnishing a reply to CIT(Audit) Pune vide office letter dated 4.2.2022, stating that interest received on deposits with co-operative bank would be eligible for deduction u/s 80P(2)(d) of the Act. It was also submitted by the Id. AO that deduction u/s 80P(2)(d) of the Act has been allowed to the assessee in previous and subsequent years. The Id. AO further stated that the objection of the Internal Audit Party is not acceptable in view of various judgements rendered on this issue by various tribunals. The Id. AO also stated that the decision of Hon'ble Supreme Court in the case of Totgars Co-op Sales Society Ltd vs ITO reported in 322 ITR 283(SC) relied upon by the audit

party is factually distinguishable as the Hon'ble Apex Court was concerned with the fact of allowability of deduction u/s 80P(2)(a)(i) of the Act, whereas the assessee's case is concerned with eligibility of deduction u/s 80P(2)(d) of the Act. The Id. AO also submitted that the Hon'ble Gujarat High Court in the case of State Bank of India vs CIT reported in 389 ITR 578 (Guj) on the very same issue had held in favour of the assessee. Similarly the Pune Tribunal in the case of Rena Sahakari Sakhar Karkhana Ltd vs PCIT Aurangabad in ITA No. 1249/PUN/2018 dated 7.1.2022 had decided the identical issue in favour of the assessee. In that case, the PCIT Aurangabad vide order dated 27.3.2018 u/s 263 had set aside the order of AO dated 7.3.2016 wherein the AO had allowed interest income amounting to Rs 75,38,534/- received from FDs with Co-operative Banks which was claimed as deduction u/s 80P(2)(d) of the Act. The Pune Tribunal by placing reliance on aforesaid decision of Hon'ble Gujarat High Court decided the issue in favour of the assessee. Hence it was submitted that the objection of Internal Audit Party was not acceptable to the department. Accordingly, it was specifically pleaded in the last para of the said submission made to CIT(Audit) Pune that the order of the Id. AO is neither erroneous nor prejudicial to the interest of the revenue and requested for dropping /withdrawal of the audit objection. It is pertinent to note that this submission was made to CIT(Audit) Pune through proper channel i.e the reply was sent through the office of Id. PCIT having jurisdiction over the assessee herein.

8. The CIT(Audit) Pune vide letter dated 17.2.2022 did not accede to withdraw the objection of the AO. In the last para of this letter, the CIT(Audit) Pune had reported that the reply given by the PCIT on the objections raised is not acceptable and therefore requested the PCIT to take necessary remedial action as per law.

9. With reference to audit objection raised by the Internal Audit Party in various cases, directions were sought from Chief Commissioner of Income Tax (CCIT), Pune. The CCIT Pune vide letter dated 3.3.2022 directed the PCIT to take necessary remedial action as per law.

10. Based on this letter of CCIT Pune dated 3.3.2022, the Id. PCIT having jurisdiction over the assessee herein, proceeded to invoke his revision jurisdiction u/s 263 of the Act by treating the order passed by the Id. AO u/s 143(3) of the Act dated 27.11.2019 as erroneous and prejudicial to the interest of the revenue by holding as under:-

a) Interest income from cooperative banks amounting to Rs 1,45,49,749/- is not eligible for deduction u/s 80P(2)(d) of the Act in view of provisions of section 80P(4) of the Act.

b) Dividend income and Other income of Rs 51,21,476/- does not qualify for deduction u/s 80P of the Act as it is non-operational income.

c) To examine the applicability of provisions of section 269SS of the Act.

11. We find from the above narration of facts that the Id. PCIT had assumed revision jurisdiction u/s 263 of the Act purely based on audit objection i.e Internal Audit Party of Income tax department. Merely because the Id. CCIT Pune had granted permission to take remedial action by accepting the audit objection raised by Internal Audit Party of Income Tax Department, the Id. PCIT having jurisdiction over the assessee herein, is bound to independently examine the records of the assessee and apply his independent mind before invoking revisionary

jurisdiction u/s 263 of the Act. This is admittedly not done in the instant case. Hence we have no hesitation in holding that the revision jurisdiction u/s 263 of the Act had been assumed by the Id. PCIT purely on borrowed satisfaction and not based on independent examination of records which is the mandate provided in section 263(1) of the Act. Hence the revision order passed u/s 263 of the Act deserves to be quashed on this count itself.

11.1. From the perusal of the entire order of Id. PCIT u/s 263 of the Act, we find that there is no mention of even issuance of show cause notice u/s 263 of the Act to the assessee by the Id. PCIT. Hence the reply of the assessee to the said show cause notice, if any, is also not reflected / considered by the Id. PCIT before concluding that the order passed by the Id. AO is erroneous and prejudicial to the interest of the revenue warranting revision u/s 263 of the Act. Hence the entire order passed u/s 263 of the Act by the Id. PCIT suffers from this basic legal infirmity and deserves to be quashed on this count also.

11.2. From the perusal of the order of Id. PCIT u/s 263 of the Act, we find that the PCIT himself had defended the assessment order framed u/s 143(3) dated 27.11.2019 before the Internal Audit Party of Income Tax Department specifically stating that the order passed by the Id. AO on 27.11.2019 is neither erroneous nor prejudicial to the interest of the revenue. Having done so, how the same PCIT could say that the order of the Id. AO is erroneous and prejudicial to the interest of the revenue while passing revision order u/s 263 of the Act. Hence the order passed by the Id. PCIT u/s 263 of the Act suffers from this legal infirmity also.

12. In any case, on merits, with regard to interest income from co-operative banks and its consequential eligibility of deduction u/s 80P(2)(d) of the Act, the issue is squarely covered in favour of the assessee by various decisions of tribunals and also by the decision of Hon'ble Gujarat High Court in the case of State Bank of India reported vs CIT reported in 389 ITR 578 (Guj). The relevant operative portion of the said judgement is reproduced below:-

*14. Thus, in the light of the principles enunciated by the Supreme Court in Totgars Co-operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. **Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act.***

(emphasis supplied by us herein)

Respectfully following the aforesaid decision, we hold that the interest income derived from co-operative banks would be eligible for deduction u/s 80P(2)(d) of the Act.

12.1. On merits, with regard to dividend income, the same is also squarely covered in the provisions of section 80P(2)(d) of the Act itself. The provisions of section 80P(4) of the Act which has been heavily relied upon by the Id. PCIT is applicable only for co-operative banks claiming deduction u/s 80P of the Act. The said sub-section (4) does not deny the benefit of deduction u/s 80P of the Act to co-operative credit societies. Hence the objection of the Id. PCIT in this regard deserves to be dismissed on merits also.

12.2. On merits, with regard to processing and other income, the same is squarely covered in the provisions of section 80P(2)(e) of the Act. The decision rendered hereinabove for dividend income would hold good for this issue also.

12.3. On merits, with regard to examination of applicability of provisions of section 269SS of the Act is concerned, we find that there is absolutely no discussion regarding this issue of violation, if any, of provisions of section 269SS of the Act by the Id. PCIT in his entire order. This only goes to prove that the Id. PCIT had misused his revisionary jurisdiction u/s 263 of the Act to enable the Id. AO to make fishing and roving enquiries. In any case, there is no opportunity given to the assessee to address this issue. Moreover, we find that the entire receipts by the assessee society in cash was subject matter of examination and verification by the Id. AO in the course of assessment proceedings. This fact is duly addressed by the Id. AO in page 2 of his order. Hence it could be safely concluded that the Id. AO had made adequate enquiries in this regard in the assessment proceedings itself and had arrived at only possible view on the matter. Hence the same cannot be disturbed by the Id. PCIT by invoking revision jurisdiction u/s 263 of the Act. Infact, we further find that in none of the audit objections (which is the primary basis of Id. PCIT invoking revision jurisdiction u/s 263 of the Act in the instant case) , the aspect of violation of provisions of section 269SS of the Act , was even addressed. Hence we hold that the Id. PCIT grossly erred in directing the Id. AO to examine the applicability of provisions of section 269SS of the Act.

13. Hence we hold that the revision order passed by the Id. PCIT u/s 263 of the Act deserves to be quashed for more than one reason as detailed

supra and hence is hereby quashed. Accordingly, the grounds raised by the assessee are allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced on 23/08/2022 by way of proper mentioning in the notice board.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 23/08/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai