

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.365/Bang/2022 : Asst.Year 2017-2018

M/s.Vasavi Credit Co-operative Society Limited #11-12, Patel Road, 1 st Floor Raichur – 584 101. PAN : AAAAV5226E.	v.	The Income Tax Officer Ward 2 Raichur.
(Appellant)		(Respondent)

Appellant by : Sri.V.Srinivasan, Advocate

Respondent by : Smt.Priyadarshini Baseganni, Addl.CIT-DR

Date of Hearing : 24.08.2022	Date of Pronouncement : 25.08.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against Principal Commissioner of Income Tax's (PCIT) order dated 30.03.2022 passed u/s 263 of the I.T.Act. The relevant assessment year is 2017-2018.

2. The grounds raised read as follows:-

"1. The order of the learned P.C.I.T in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned P.C.I.T. failed to appreciate that there was no error much less an error prejudicial to the interest of the revenue in the order passed by the learned Assessing Officer warranting revision u/s.263 of the Act and consequently, the order passed by the P.C.I.T. is opposed to law and facts of the appellant's case and requires to be cancelled.

3. Without prejudice to the above, the learned PCIT failed to appreciate that the learned A.O. had passed the order u/s 143(3) after making sufficient inquiries and with proper

application of mind, and thus the same could not be held as erroneous by labelling the same to be not in accordance with law to warrant revision u/s 263 of the Act under the facts and in the circumstances of the appellant's case.

4. The learned PCIT is not justified in holding that the deposits made in the bank account of the appellant in SBN's during demonetization was liable to be treated as unexplained cash credits u/s. 68 of the Act.

5. The learned P.C.I.T is not justified in law in directing the learned A.O. to tax the interest income under the head "Other Sources" without appreciating that the said interest income earned by the appellant was from out of the funds of the business of providing credit facilities to the members and therefore, the said interest income formed part of the income earned from business and therefore, the same cannot be assessed under the head "Other Sources" under the facts and in the circumstances of the appellant's case.

5.1 The learned P.C.I.T ought to have appreciated that the interest income earned by the appellant on deposits in banks was part of the business of providing credit facilities to the members of the appellant and hence, the said interest was liable for assessment under the head "Business" and not under the head "Other Sources" and therefore, the deduction claimed by the appellant u/s 80P(2)(a)(i) of the Act is allowable under the facts and in the circumstances of the appellant's case.

6. Without prejudice, the learned PCIT is not justified in law in directing the learned A.O to deny the alternate claim for deduction u/s 80P(2)(d) of the Act to the extent of income earned from co-operative banks which are nothing but co-operative societies in possession of a license from the RBI under the facts and in the circumstances of the appellant's case.

7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered."

3. The brief facts of the case are as follows:

The assessee is a Co-operative Society, engaged in the business of providing credit facilities to its members. For the relevant assessment year 2017-2018, the return of income

was filed by the assessee on 14.10.2017 declaring 'Nil' income, after claiming deduction u/s 80P(2)(a)(i) of the I.T.Act amounting to Rs.14,65,544. The assessment was selected for scrutiny for verification of cash deposits made during the demonetisation period, deduction under Chapter VA, investments / advances / loan etc. The assessment was completed u/s 143(3) of the I.T.Act vide order dated 26.12.2019 on total income of Rs.11,896 by disallowing the miscellaneous income of Rs.11,896.

4. The PCIT issued show cause notice u/s 263 of the I.T.Act stating that the assessment order u/s 143(3) of the I.T.Act dated 26.12.2019 is erroneous and prejudicial to the interest of the revenue. The CIT(A) noticed that the assessee-society had made cash deposits with specified bank notes (SBNs) amounting to Rs.57,54,000 during the demonetisation period in its bank account. According to the PCIT, the A.O. did not make necessary enquiries about the source / genuineness of the cash deposits. Secondly, the PCIT noticed that the assessee had credited in the profit and loss account an amount of Rs.9,40,985 towards interest and dividends on investments from bank. The PCIT was of the view that the said amount should be taxed as income under the head "other sources" u/s 56 of the I.T.Act, and therefore, deduction u/s 80P(2)(a)(i) and 80P((2)(d) of the I.T.Act is not allowable. In this context, the PCIT relied on the judgment of the Hon'ble Apex Court in the case of *Totagar's Co-operative Sale Society Ltd. v. ITO reported in (2010) 322 ITR 283 (SC)* and the judgment of

the Hon'ble jurisdictional High Court in the case of *Pr.CIT & Anr. v. Totagars Co-operative Sale Society reported in (2017) 395 ITR 611 (Kar.)*.

5. The assessee filed the objections to the show cause notice issued u/s 263 of the I.T.Act. It was submitted that as regards the cash deposits, the entire details were provided to the A.O. It was stated that the A.O. passed order u/s 143(3) of the I.T.Act after making sufficient inquiries and with proper application of mind. Therefore, it was contended that the assessment order cannot be labeled as erroneous, warranting interference u/s 263 of the I.T.Act. As regards the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act, it was contended that the judgment of the Hon'ble jurisdictional High Court relied on by the PCIT is not applicable. Hence, the deduction u/s 80P(2)(a)(i) of the I.T.Act is allowable.

6. The PCIT rejected the contention of the assessee and set aside the assessment order dated 26.12.2019 as erroneous and prejudicial to the interest of the revenue. The PCIT directed the A.O. to examine the source of cash deposits and the claim of deduction u/s 80P of the I.T.Act. The PCIT directed the A.O. to provide the assessee opportunity to furnish necessary evidences to establish its claim. The relevant finding of the PCIT reads as follows:-

“19. As discussed above, the assessee has failed to furnish a satisfactory explanation regarding the source of cash deposited in the bank accounts and the SBNs received. It has failed to explain the source of cash deposits and the SBNs received, not only during assessment proceedings, but even in response to the notice u/s 263. The amount of unexplained cash deposits and the SBNs

received should have been added to the assessee's income, but the Assessing Officer has not made any such addition. When the case was selected for scrutiny specifically for examining the cash deposited, apart from other issues, it was necessary for the Assessing Officer to examine the source of cash deposited and the SBNs received, and carry out necessary inquiries in accordance with law and CBDT guidelines. The Assessing Officer has not conducted necessary inquiries and has not made the additions required as per law. Considering these facts, the assessment order is erroneous and prejudicial to the interest of Revenue in terms of section 263.

20. As further discussed above, interest income should have been taxed u/s 56 and deduction u/s 80P(2)(a)(i) and u/s 80P(2)(d) was not allowable. The Assessing Officer has not examined this issue at all and has not conducted necessary inquiries. He has not made the addition required as per the binding judicial decisions discussed above. Considering these facts, the assessment order is erroneous and prejudicial to the interests of the Revenue in terms of section 263.

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23. In view of the above discussion, the aforesaid assessment order is erroneous and prejudicial to the interests of Revenue in terms of section 263. The assessment order is accordingly, set aside for this purpose and the AO is directed under section 263, to make a fresh assessment in accordance with law, after considering the above. The AO shall examine the cash deposits and the transaction in SBNs during the demonetisation period, and the claim for deduction u/s 80P, and other issues discussed above, and conduct necessary inquiries in accordance with law and CBDT guidelines. He shall give the assessee an opportunity to furnish necessary evidence to establish his claim and explain why the proposed additions be not made to income. The AO shall consider the facts, and the results of any enquiries made, as well as the explanation furnished by the assessee, and make a fresh assessment in accordance with law.”

7. Aggrieved by the order of the PCIT passed u/s 263 of the I.T.Act, the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising of 171 pages enclosing therein the case laws relied on, notices issued u/s 142 of the I.T.Act, the details of the cash deposits, details of the interest received, copies of the registration

certificate, copies of the bank statement of the assessee. As regards the claim of cash deposits is concerned, the learned AR submitted that the entire details of cash deposits were called for by the A.O. and the details of the same were filed before him (pages 89 to 102 of the paper book). The learned AR submitted that specific directions under paragraph 19 of the impugned order of the PCIT mandates the A.O. to make additions of the cash deposits irrespective whether the assessee is able to prove the source of cash deposits. Insofar as the deduction u/s 80P(2)(a)(i) is concerned, the learned AR's limited submission is that majority of the interest income is earned out of investments made with Central Co-operative Banks and is in compliance with the requirement under the Karnataka Co-operative Societies Act and Rules. Therefore, it was submitted that the amounts which are invested in compliance with the Karnataka Co-operative Societies Act and Rules, necessarily, the same is to be assessed as income from business, which entails the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act. In this context, the learned AR relied on the Bangalore Bench order of the Tribunal in the case of *M/s.Vasavamba Co-operative Society Ltd. v. The Pr.CIT in ITA No.453/Bang/2020* (order dated 13.08.2021) and in the case of *Uppinangady Co-operative Agricultural Society Limited v. ITO in ITA No.1207/Bang/2019* (order dated 10.12.2021).

8. The learned Departmental Representative supported the order of the PCIT passed u/s 263 of the I.T.Act.

9. We have heard rival submissions and perused the material on record. The Assessing Officer had allowed the deduction u/s 80P(2)a(i) of the I.T.Act in respect of interest income received on account of investments made by the assessee with certain Co-operative Banks. This action of the A.O. is contrary to the dictum laid down by the Hon'ble jurisdictional High Court in the case of *Pr.CIT & Anr. v. Totagars Co-operative Sale Society reported in (2017) 395 ITR 611 (Kar.)*. Further, as regards the cash deposits is concerned, there is no discussion with reference to the genuineness of the source of cash deposits in the assessment order completed u/s 143(3) of the I.T.Act. Therefore, for the aforesaid reasons, we uphold the order passed by the PCIT u/s 263 of the I.T.Act.

10. The limited submission of the learned AR as regards the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act is that investments are made out of statutory compulsions under the Karnataka Co-operative Societies Act and Rules. Hence, the receipt of interest income has nexus with business of the assessee. In this context, the learned AR had relied on the order of the Bangalore Bench of the Tribunal in the case of *M/s.Vasavamba Co-operative Society Ltd. v. The Pr.CIT (supra)* and *Uppinangady Co-operative Agricultural Society Limited v. ITO (supra)*. We find merit in the alternative submission of the learned AR that if interest income is earned out of investments made with Central Co-operative Banks and is in statutory compliance with the Karnataka Co-operative

Societies Act and Rules, such investments have business nexus and should be considered as income derived from business of providing credit facilities to the members. This alternate contention of the assessee need to be examined by the A.O. while giving effect to the order of the PCIT passed u/s 263 of the I.T.Act.

11. Further, the PCIT in para 19 of the impugned order had made certain observations that the assessee had failed to furnish satisfactory explanation regarding the source of cash deposits in the banks and the SBNs received. This observation of the PCIT will not result in a fair opportunity of hearing to the assessee while giving effect to the order of the PCIT. Hence, we delete the said observation. The A.O. shall examine the creditworthiness of the creditors and the genuineness of the transactions in respect of the cash deposits made during the demonetisation period. Accordingly, we uphold the order of the PCIT passed u/s 263 of the I.T.Act with aforesaid modification. It is ordered accordingly.

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

Order pronounced on this 25th day of August, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 25th August, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The PCIT-Hubli
4. The JCIT, Kalaburagi.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore