IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.1519/Mum/2022
(**Assessment Year :2017-18**)

M/s. DTPS Employees Co-op Credit Limited Shop No.7, Reliance Colony Dahanu Road Dahanu – 401 608	Vs.	Pr. Commissioner of Income Tax-1 Ashar-IT Park, "A" Wing 6th Floor, Ambika Nagar WIE, Thane (W)-400604
PAN/GIR No.AABAR1071N		
(Appellant)	..	**(Respondent**)

Assessee by	Shri Anil Sathe
Revenue by	Shri T Shankar
Date of Hearing	**18/08/2022**
Date of Pronouncement	**18/08/2022**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.1519/Mum/2022 for A.Y.2017-18 preferred by the order against the revision order of the ld. Principal Commissioner of Income Tax-8, Mumbai u/s.263 of the Act dated 23/03/2022 for the A.Y.2016-17.

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 learned Pr. Commissioner of Income Tax erred in passing the order u/s 263 of the Income tax Act 1961 by disregarding appellant's contentions in this regard, and in not appreciating that the provisions of the said section could be invoked only if the order sought to be revised was erroneous and prejudicial to the revenue.

2. The learned Pr. Commissioner of income tax erred in assuming powers and passing order u/s 263 only on the basis of opinion of the audit team.

3 In the alternative the learned Pr. Commissioner erred in invoking powers u/s 263 when on the issue relating to deduction u/s 80P(2)(d) the AO had adopted a possible view, and the same was supported by a number of judicial pronouncements by various fora.

4. The learned Pr. Commissioner erred in relying on the Supreme Court's decision in Totgar's Co-operative Society Ltd. which judgment is delivered in the context of sec. 80P(2)(a)(i) and wherein it was held that interest on surplus funds deposited with banks bears the character of income from other sources and not business income, whereas the appellant has claimed deduction under sec. 80P(2)(d) which does not confine the deduction to business income only.

5. The learned Pr. erred in contending that the income received by the appellant is from co-operative banks and not co-operative societies, without appreciating the fact that the co-operative banks are in the first instance co-operative societies.

6. The learned Pr. Commissioner erred in invoking the provisions of sec. 80P(4). The mandate of the said sub-section is to deny the benefit of sec. 80P to co-operative banks and not to other co operative societies investing their funds in co-operative banks."

3. We have heard the rival submissions and perused the materials available on record. 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 11.10.2017 declaring total income at Rs Nil after claiming deduction u/s 80P of the Act in the sum of Rs. 34,12,321/-. The return of income was selected for scrutiny by CASS to examine the following issues :-

a) Deduction under Chapter VIA
b) Investments/advances/loans

4. The ld. AO sought to examine the aforesaid items in the course of assessment proceedings. The ld. AO issued notice u/s 142(1) of the Act directing assessee to justify the claim of deduction under Chapter VIA of the Act which includes deduction u/s 80P of the Act; interest received by the assessee society together with the related investments etc in the tabular form prescribed by the ld. AO, inter alia, among other issues. The said notice together with the questionnaire issued by the ld. AO are enclosed in pages 18 to 21 of the paper book filed before us. The assessee furnished reply in that regard before the ld. AO. The assessee also enclosed the copies of scrutiny assessment orders framed u/s 143(3) of the Act dated 22.2.2016 and 14.7.2016 for Asst Years 2013-14 and 2014-15 respectively before the ld. AO, wherein the entire claim of deduction u/s 80P(2)(d) of the Act was allowed to the assessee including the interest income earned from co-operative banks. After verification of various details with evidences submitted by the assessee society, the ld. AO completed the assessment u/s 143(3) of the Act on 24.06.2019 accepting the Nil returned income of the assessee society.

5. 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 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 from co-operative banks 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.

6. With regard to the aforesaid objections of Internal Audit Party, the ld. 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 and dividend from cooperative banks would be eligible for deduction u/s 80P(2)(d) of the Act. It was also submitted by the ld. AO that deduction u/s 80P(2)(d) of the Act has been allowed in previous and subsequent years. The ld. 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 ld. 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 ld. 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 ld. 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 ld. PCIT having jurisdiction over the assessee herein.

7. 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.

8. 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.

9. Based on this letter of CCIT Pune dated 3.3.2022, the ld. 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 ld. AO u/s 143(3) of the Act dated 24.06.2019 as erroneous and prejudicial to the interest of the revenue by holding as under:-

a) Interest income and dividend income from cooperative banks amounting to Rs 29,23,531/- 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) To examine the applicability of provisions of section 269SS of the Act.

10. We find from the above narration of facts that the ld. 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 ld. CCIT Pune had granted permission to take remedial action by accepting the audit objection raised by Internal Audit Party of Income Tax Department, the ld. PCIT having jurisdiction over the assessee herein, had without independently applying his mind proceeded to invoke his revisionary jurisdiction u/s 263 of the Act. Hence we have no hesitation in holding that the revision jurisdiction u/s 263 of the Act had been assumed by the ld. 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 and with independent application of his mind. Hence the revision order passed u/s 263 of the Act deserves to be quashed on this count itself.

10.1. From the perusal of the order of ld. PCIT u/s 263 of the Act, we find that the PCIT himself had defended the assessment order framed u/s 143(3) dated 24.06.2019 before the Internal Audit Party of Income Tax Department specifically stating that the order passed by the ld. AO on 24.06.2019 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 ld. 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 ld. PCIT u/s 263 of the Act suffers from this legal infirmity also.

11. 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.***
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> (emphasis supplied by us herein)

11.1. 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.

11.2. 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 ld. 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 ld. PCIT in this regard deserves to be dismissed on merits also.

11.3. 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 ld. PCIT in his entire order. This only goes to prove that the ld. PCIT had misused his revisionary jurisdiction

u/s 263 of the Act to enable the ld. 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 return filed by the assessee was selected on limited scrutiny basis under CASS clearly defining the issues to be looked into by the ld. AO. The ld. AO does not stretch the scope of his examination beyond that, except with the prior approval of ld. PCIT by converting the limited scrutiny into complete scrutiny as mandated in the CBDT instructions. Hence the ld. AO could not have examined the issue of applicability, if any, of provisions of section 269SS of the Act in the instant case due to limited scrutiny. It is the primary duty of the ld. PCIT to bring on record on examination of records of the assessee, as to whether the assessee society had received any deposits or loans in contravention of provisions of section 269SS of the Act. Whether this fact is available on record per se is to be addressed. No effort has been taken by the ld. PCIT to even address this primary fact. If the plea of the ld. PCIT is to be accepted, then it would result in giving long rope to examine all the provisions of the Act. That would only tantamount to making fishing and roving enquiries which is not permissible by invoking revisionary jurisdiction u/s 263 of the Act. Infact, we further find that in none of the audit objections (which is the primary basis of ld. 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 ld. PCIT grossly erred in directing the ld. AO to examine the applicability of provisions of section 269SS of the Act.

12. Hence we hold that the revision order passed by the ld. 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.

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

Order pronounced on 18/08/2022 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 18/08/2022
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