

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.825/PUN/2019
निर्धारण वर्ष / Assessment Year: 2014-15

M/s. Jan Kalyan Nagri Sahakari Pat. Limited Sanstha, Sawarkar Chowk, Vidya Nagar, Parbhani-431401. PAN : AAAAJ2292G	Vs.	ITO, Ward- Parbhani, Parbhani.
Appellant		Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri Hitendra B. Ninawe
Date of hearing : 25.08.2022
Date of pronouncement : 26.08.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Pr. Commissioner of Income Tax-1, Aurangabad ('the PCIT') dated 28.03.2019 passed u/s 263 of the Income Tax Act, 1961 ('the Act') for the assessment year 2014-15.

2. The appellant raised the following grounds of appeal :-

- "1. Learned CIT erred in law and on facts in invoking jurisdiction u/s 263 and setting aside the Assessment Order, directing the AO to pass fresh order after verification when the ld AO had applied his mind after sufficient inquiries and examined the issue in the original assessment proceedings in respect of interest income and granted deduction u/s 80P.*
- 2. The ld CIT erred in law and on facts in not appreciating that the decision of Supreme Court in case of Totgars Cooperative Sales*

Society Ltd is inapplicable to the appellant in respect of interest income and therefore deduction u/s 80P could not be denied.

3. *The appellant craves leave to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

3. Briefly, the facts of the case are as under :

The appellant is a cooperative society engaged in the business of providing credit facilities to its members. The return of income for the assessment year 2014-15 was filed on 29.11.2014 declaring total income of Rs.87,550/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward & TPS, Parbhani ('the Assessing Officer') vide order dated 28.11.2016 passed u/s 143(3) of the Act at a total income of Rs.2,24,300/-.

While matter stood thus, the ld. PCIT on examination of the assessment record found that the appellant society earned interest income of Rs.73,15,431/- on investments made with cooperative banks and claimed exemption u/s 80P(2) of the Act. The ld. PCIT was of the opinion that the cooperative bank does not fall under the purview of a "cooperative society" and, therefore, the interest income earned from such cooperative bank does not qualify for deduction u/s 80P(2)(d) of the Act.

4. The ld. PCIT further found that the appellant society made a provision for expenses of Rs.62,55,465/- out of which a sum of Rs.48,57,465/- was *suo moto* disallowed by the appellant itself and balance amount of Rs.13,98,000/- was not added back while computing the taxable income under the Income Tax Act. The ld. PCIT was of the view that non-examination/enquiry on the above issues renders the assessment order erroneous and prejudicial to the interests of the Revenue and, accordingly, he set-aside the assessment order for *de novo* assessment in accordance with law after granting an opportunity of being heard to the appellant society.

5. Being aggrieved by the above order of revision, the appellant is in appeal before us in the present appeal.

6. It is submitted that the ld. PCIT had grossly fell in error by treating the assessment order as erroneous and prejudicial to the interests of the Revenue, inasmuch as, during the course of assessment proceedings, the Assessing Officer examined the issue and took a possible view that such income earned from the cooperative banks is also eligible for deduction u/s 80P(2)(d) of the Act.

Similarly, it is submitted that as regards to the provision for expenses, even assuming for a moment that such provision cannot

be allowed as deduction, the disallowance so made would inflate the profits of the cooperative society which are eligible for the deduction u/s 80P(2) of the Act. Without prejudice to the above, it is submitted that the interest earned by the cooperative society from another cooperative banks qualifies for deduction u/s 80P(2)(a)(i) of the Act. In support of this proposition, she relied on the following judicial precedents :-

- (i) Nashik Road Nagari Sahkari Patsanstha Limited vs. ITO (ITA No.1700/PUN/2017 dated 27.12.2021).
- (ii) Rena Sahakari Sakhar Karkhana Ltd. vs. Pr.CIT (ITA No.1249/PUN/2018 dated 07.01.2022).
- (iii) Shri Chandraprabhu Urban Co-operative Credit Society Ltd. vs. ITO (ITA No.61 & 62/PAN/2018 dated 10.05.2022).

7. Thus, it was contended that the ld. PCIT was not justified in exercising the power of revision u/s 263 of the Act.

8. On the other hand, ld. CIT-DR placing reliance on the order of the ld. PCIT prayed for upholding the order of revision.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of assumption of jurisdiction u/s 263 by the ld. PCIT. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to

invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) and in the case of CIT vs. Max India Ltd., 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible views, the assessment order cannot be termed as an "erroneous". In the present case, we find that admittedly the interest income was earned from the cooperative banks, the cooperative bank is also a specie of cooperative society, therefore, the interest income earned by the cooperative society from the cooperative banks qualifies for deduction u/s 80(P)(2)(d) of the Act. Such interest also qualifies for exemption u/s 80P(2)(a)(i) as held by the Co-ordinate Bench of Pune Tribunal in the case of Nashik Road Nagari Sahkari Patsanstha Limited (supra) wherein the Tribunal held as under :-

"9. We heard the rival submissions and perused the material on record. Admittedly, the appellant is a Cooperative society formed under the provisions of Maharashtra Cooperative Societies Act, 1960 with the objective of accepting deposits and lending money to its members. The money which is not immediately required for the purpose of lending to the members is deposited with Bank of Baroda in the form of Fixed Deposit. The question is whether the interest so earned qualifies for exemption u/s. 80P(2)(a)(i) of the Act. The AO as well as the CIT(A) were of the opinion that the interest earned from third parties or non-

members does not qualify for exemption u/s.80P. It is an admitted position that the interest so earned should be taxed as 'income from other sources' There is a cleavage of judicial opinion among several High Courts on the issue of eligibility of this kind of income for exemption u/s. 80P(2)(a)(i) of the Act. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Cooperative Federation of Housing Building Societies Ltd. 11 taxmann.com 448, the Hon'ble Gujarat High Court in the case of State Bank of India Vs. CIT 389 ITR 578 (Guj.), the Hon'ble Delhi High Court in the case of Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT 50 taxmann.com 278, the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Punjab State Cooperative Agricultural Development Bank Ltd. 389 ITR 68 and the Hon'ble Kolkata High Court in the case of CIT Vs. Southern Eastern Employees Cooperative Credit Society Ltd. 390 ITR 524 took a view that the income arising on the surplus invested in short term deposits and securities cannot be attributed to the activities of the society and, therefore, not eligible for exemption u/s.80P(2)(a)(i) of the Act. However, the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 taxmann 309 (Kar.) and the Hon'ble Telangana and Hon'ble Andhra Pradesh High Court in the case of Vaveru Co-operative Rural Bank Ltd. v CIT [(2017) 396 ITR took a view that such interest income is attributable to the activities of the society and, therefore, eligible for exemption u/s.80P(2)(a)(i) of the Act. The Coordinate Bench of Pune Benches in the case of M/s. Ratnatray Gramin Bigar Sheti Sah. Pat Sanstha Maryadit Vs. ITO (ITA Nos.559/560/PUN/2018, dated 11-12-2018) has taken view in favour of the assessee following the judgment of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra). Respectfully following the decision of the Coordinate Bench, we hold that the interest income earned on the investment of surplus money with banks is also eligible for exemption u/s.80P(2)(a)(i) of the Act. Thus, the grounds of appeal No. 1 & 2 stands allowed."

10. Similarly, as regards to the disallowance of provision for expenses, without going into the merits of the disallowance sought to be made by the ld. PCIT, it would suffice to say that disallowance, if any, shall increase the business profits of the appellant cooperative society. The business profits so inflated shall qualify for exemption u/s 80(2)(a)(i) of the Act. Therefore, even

assuming for a moment that the provisions for exemption warrant addition, it does not result into an enhancement of assessed income warranting a revision. Thus, we find that the issues which are subject matter of revision, are either covered in favour of the assessee by judicial precedents nor results into any enhancement of assessed income warranting a revision. Therefore, we are of the considered opinion that the order of revision passed by the ld. PCIT u/s 263 of the Act cannot be sustained in the eyes of law. Hence, the grounds of appeal raised by the assessee stand allowed.

11. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 26th day of August, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26th August, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Aurangabad.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.