

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.866/M/2022  
Assessment Year: 2017-18**

M/s. Adarsh Nagari Sahakari Patsanshta Maryadit, Near State Bank of India, Opp Mayur Bakery, Tilak Road, Alibag, Raigad- 402201 <b>PAN: AAABA0202G</b>	Vs.	Pr. CIT-, Thane, Ashar IT Park, 'A' Wing, 6 <sup>th</sup> Floor, Ambika Nagar, Wagle Indl. Estate, Thane (West), Thane- 400 604
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri R.S. Khandelwal, A.R.  
Revenue by : Shri Jagadish Jangid, D.R.

Date of Hearing : 06 . 09 . 2022

Date of Pronouncement : 20 . 09 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

Appellant M/s. Adarsh Nagari Sahakari Patsanshta Maryadit (hereinafter referred to assessee) by filing the present appeal sought to set aside the impugned order dated 17.03.2022 passed by Principal Commissioner of Income Tax -1, Thane (hereinafter referred to as the PCIT) invoking revisionary jurisdiction contained under section 263 of the Income Tax Act, 1961 (for short 'the Act') qua A.Y. 2017-18 on the grounds inter alia that:

**“• The PCIT erred in passing the order dated 17/03/2022 u/s 263 of the Income Tax Act, 1961 and setting aside the assessment order dated 29/11/2019 with a direction to reframe the same.**

**• The PCIT failed to appreciate the fact that she had no jurisdiction to pass the said order u/s 263 of the Act because:**

***1. The assessment order was neither erroneous nor prejudicial to the interest of the revenue.***

***2. The Ld.AO passed the assessment order after thorough enquiry and due application of mind.***

***3. No Particular fault with the view of the Ld. AO has been found by the PCIT. The PCIT has proceeded on the misconception that the Ld. AO has not applied his mind to the facts and the law.***

***4. The facts and figure on the basis of which the PCIT has revised the order is totally baseless, false and misinterpretation of the provisions of law.***

***5. The Appellant reserves the right to add, alter or amend any ground or grounds of appeal on or before the hearing”***

2. Briefly stated facts necessary for adjudication of the controversy at hand are: the assessee cooperative society e-filed return of income declaring total income at Rs.2,79,290/- which was subjected to scrutiny and return of income has been accepted under section 143(3) of the Act. On the basis of objection raised by Internal Audit Party (AIP) of the Income Tax Department vide audit memo dated 03.08.2021 to the effect that “assessee society has shown interest income of Rs.78902108/- out of the normal banking business providing credit facility to the members and assessee society has also received interest from the investment made with various cooperative bank to the tune of Rs.3,05,46,113/- and also saving bank interest of Rs.12370 total amounting to Rs.3,05,58,483/- which was claimed as deduction under section 80P(2)(D) of the Act

which cannot be treated as income attributed to the activities of the assessee society. Thus amount of Rs.3,05,58,483/- interest received from investment with various cooperative banks is not allowable to the assessee". The Ld. PCIT after discussing the issue extensively running into 17 pages reached the conclusion that since the interest of Rs.305,58,483/- received by the assessee from its investment made with cooperative banks and not from other cooperative societies claim of deduction under section 80P(2)(D) of the Act cannot be allowed by treating the same as income attributable to the activities of the assessee society and as such assessment framed under section 143(3) of the Act by the AO vide order dated 29.11.2019 is prejudicial and erroneous to the interest of the Revenue hence set aside with direction to examine the applicability of provisions of section 80P(2)(D) of the Act and section 269SS of the Act and to frame the fresh assessment.

3. Feeling aggrieved with the impugned order passed by the Ld. PCIT under section 263 of the Act the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly assessee is a society registered under cooperative society Act and has received interest from investment made with various cooperative banks amounting to

Rs.3,05,58,483/- claimed as deduction under section 80P(2)(D) of the Act which has been allowed by the AO. It is also not in dispute that the Ld. PCIT has assumed the jurisdiction under section 263 of the Act on the basis of report made by internal audit party. It is also not in dispute that there is not even a whisper in the impugned order passed by Ld. PCIT if the AO has not made due enquiry/verification to allow the deduction claimed by the assessee under section 80P(2)(D) of the Act.

6. In the backdrop of the aforesaid facts and circumstances of the case Ld. A.R. for the assessee contended that AO has passed the correct order after due enquiry and verifications and as such assessment order cannot be termed as erroneous so far as prejudicial to the interest of the Revenue.

7. On the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. PCIT.

8. Bare perusal of the order passed by Ld. PCIT goes to show that it is nowhere case of the Ld. PCIT that the deduction has not been allowed by the AO without conducting any due enquiry/verifications rather assumed that jurisdiction under section 263 of the Act merely on the basis of audit report dated 03.08.2021 wherein this issue was flagged.

9. It is also to bring on record that when internal audit party has flagged this issue, Assessing Officer (AO) has filed a reply that "it is stated that the AO of this charge have verified the objections and have returned that the objections raised by the internal audit party are not acceptable as the interest received by the assessee from

cooperative banks **much partakes character** of the credit cooperative society is allowable deduction under section 80P(2)(D) of the Act which has been allowed in various cases by the department.” It is also undisputed fact on record that in the earlier years interest received by the assessee from investment made with cooperative banks have been allowed as deduction by the Revenue department under section 80P(2)(D) of the Act.

10. When we examine the entire issue in the light of the various decisions rendered by co-ordinate Bench of the Tribunal in case of Nagothane Vyapari Sahakari Patsanstha Maryadit vs. PCIT in ITA No.1011/M/2021 order dated 29.03.2022 wherein the issue has been thrashed in the light of the various decisions rendered by Hon’ble High Courts, there cannot be any second opinion that the AO after due enquiry/verification has taken the plausible view. In these circumstances, the Ld. PCIT has no jurisdiction to revise the assessment order under section 263 of the Act. Moreover, it is a case of non application of mind at the part of Ld. PCIT who has merely invoked the provisions contained under section 263 of the Act on the basis of objections raised by the internal audit party.

11. In view of what has been discussed above, we are of the considered view that the AO has passed the assessment order by taking a plausible view after due enquiry/verifications and as such the assessment order passed by the AO cannot be termed as erroneous or prejudicial to the interest of the Revenue.

12. Resultantly, impugned order passed by the Ld. PCIT is not sustainable in the eyes of law, hence ordered to be quashed. Accordingly, the appeal filed by the assessee is hereby allowed.

**Order pronounced in the open court on 20.09.2022.**

**Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 20.09.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.