

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA BENCH "B", KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.206/Kol/2022  
Assessment Year: 2017-18**

Arambagh Co-operative Agriculture And Rural Development Bank Ltd.  Arambagh, Hooghly- 712601.  <b>PAN: AAALA 0022 E</b>  (Appellant)	Vs.	Income Tax Officer, Ward-24(1), Hooghly.         (Respondent)
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**Present for:**

Appellant by : Shri Palas Chattopadhyay, FCA  
Respondent by : Shri Amal Kamat, CIT/DR

Date of Hearing : 19.07.2022  
Date of Pronouncement : 23.09.2022

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal is directed against the order passed u/s 263 of the Income-tax Act, 1961 ('the Act'), by the Ld. PCIT, Kolkata-5 for A.Y. 2017-18 vide order no. ITBA/REV/F/REV5/2021-22/1040277969(1), dated 02.03.2022.

2. Grounds taken by the assessee in the present appeal are reproduced as under:

*"i. That, the alleged mistakes/deficiencies in the assessment order u/s.143(3) pointed out by the Ld. Pr. CIT in his 263 order neither make the assessment order erroneous nor go to create prejudice against the interest of the revenue and hence the prerequisite of twin conditions for the exercise of jurisdiction by the Ld. Pr. CIT being absent, the impugned order u/s.263 of the Act suffers from jurisdictional requirement.*

ii. That, the Ld. Pr.CIT has wrongly assumed jurisdiction u/s.263 of the Act for setting aside the original assessment order with regard to the issue in the bank interest income earned by the assessee qualifies for deduction u/s 80P and allowed interest paid to the members for the purpose of earning Interest from HCCB has already been considered and inquired into by the A.O.

iii. That the learned AO have considered the decision pronounced by the Ld High Court of Judicature at Calcutta in the case of Commissioner Of Income Tax Kolkata - X v. South Eastern Railway Employees Co-op Credit Society Ltd, while passing the original assessment order, the learned PCIT wrongly assumed jurisdiction u/s 263 of the Act.

iv. For that the Ld. PCIT was not justified in holding that the Interest income earned by the assessee a Co operative Society on its Statutory Fund amounting to Rs. 16,10,258/- does not qualify for deduction u/s 80P and cost associated of Rs. 35,83,528/ to earn Interest of Rs. 37,78,688/-.

v. That the ld. Pr. CIT has wrongly assumed jurisdiction u/s 263 of the Act for setting aside the original assessment order with regard to the application of decision of Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. vs ITO (2010) [322 ITR 283].

vi. That as the order of ld. Pr. CIT on the above issues suffers from jurisdiction, illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

vii. That the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3. Brief facts of the case are that assessee is a Co-operative Society registered and constituted under the West Bengal Co-operative Societies Act, 1940 and is a Primary Co-operative Agriculture & Rural Development Bank. Nature of business of the assessee is to provide long term finance to agriculture farmers who are members of the assessee society. Assessee receives deposits from members as margin money deposits against loan sanctioned to its members and also receives the deposits from its members to create a savings habit in rural area. NABARD has also provided finance to the assessee through the “The

W.B. State Co-operative Agriculture Rural Development Bank Ltd.” (WBSCARD Bank) and “Hooghly Central Co-operative Bank Ltd.” (HDCCB). In compliance with the orders issued by Registrar of Co-operative Societies, Govt. of West Bengal, it is required that 70% of the total deposits are to be kept in NSC/Fixed Deposit/Certificate of the Bank. Assessee provides interest to its members on the said deposits. Details of interest received along with the source of deposits and the cost relating thereto is tabulated as below:

Sl. No.	Details of Investment			Source of Investment	Cost Associated	Net Income
	Name of Bank	Investment	Interest			
1	HDCCB	2,02,89,671/-	16,10,258/-	Statutory Fund	Nil	16,10,258/-
2	HDCCB	5,31,97,496/-	37,78,688/-	Deposit from Members	38,48,511/-	(69,823/-)
Total HDCCB			53,88,946/-	Rs. 20,77,45,874/-		
3	WBSCARDB	9,41,67,030/-	89,55,638/-	Interest paid of Rs. 1,50,29,134/-	68,12,404/-	21,43,234/-

4. In the course of assessment completed u/s 143(3) of the Act vide order dated 27.12.2019, ld. AO noted from the perusal of balance sheet and profit & loss account that assessee has earned net income from fixed deposit with HDCCB of Rs. 1,95,160/-. While completing the assessment, ld. AO observed that deduction u/s 80P is allowed only when there is direct connection with or nexus to the income earned from the business carried on by the society. He noted that income on deposits made with banks is not attributable to income of co-operative society and thus by treating it as income from other sources, disallowed the claim u/s 80P and added it to the total income whereby the income was assessed at Rs. 1,95,160/-.

4.1 Subsequent to the assessment, from the perusal of assessment order and records, Id. PCIT noted the discrepancies from which he pointed out that assessee has earned interest in short term deposit with HDCCB and WBSCARD Bank amounting to Rs. 53,43,665/- which is not allowable u/s 80P(2)(a)(i) of the Act as it has to be taxed as income from other sources u/s 56 of the Act. The discrepancies noted by the Pr. CIT are reproduced as under:

*“On examination of the assessment record, it is found that the assessee have earned interest in short-term deposits with Hooghly District Central Cooperative Bank Ltd and the West Bengal State Cooperative Agriculture & Rural Development Bank Ltd amounting to Rs. 53,43,665/- during the AY under consideration. As per section 80P(2)(a)(i) of Income tax Act, 1961 and as per judicial decision of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd Vs ITO(2010) [322 ITR 283], the interest earned by Co-operative bank/ society from investments in short term deposit and securities has to be taxed u/s. 56 of the Income Tax Act, 1961. On scrutiny of the assessment records it is revealed that the assessee has received interest on fixed deposits, details of which are tabulated as under:*

<i>Interest earned during the year</i>	<i>Rs. 52,44,225/-</i>
<i>Add: interest receivable during the year</i>	<i>Rs. 6,22,510/-</i>
<i>Total interest</i>	<i>Rs. 58,66,735/-</i>
<i>Less: interest receivable for last year</i>	<i>Rs. 5,23,070/-</i>
<i>Net interest received during the year</i>	<i>Rs.53,43,665/- [as shown by the assessee in P/L A/c]</i>

*The above income was required to be disallowed u/s 80P(2)(a)(i) of the Income-tax Act, 1961 read with the case law stated above by treating the interest income as income from other source u/s 56 of the Income Tax Act, 1961. Considering the above, the assessment order is erroneous so far as it is prejudicial to the interest of revenue. Accordingly, the assessment order is required to be revised.”*

4.2 In the course of revisionary proceeding before the Id. PCIT, assessee made detailed submission explaining its case as narrated in the above facts. Assessee also submitted before the Id. PCIT that all the funds of the assessee have been invested to meet the provisions of West Bengal Co-operative Societies Act, 1940 and thus the interest received

on investment of said funds is certainly from business activities of the assessee, classifiable under the head profits and gains of business or profession in terms of section 14 of the Act. Assessee placed reliance on certain decisions which are listed below:

*“i. Supreme Court in the case of PCIT vs Shree Gayatri Associates [2019] 106 taxmann.com 31 (SC).*

*ii. Supreme Court in the case of PCIT vs Sumatichand Totamal Gouti [2019] 111 taxmann.com 287 (SC).*

*iii. Supreme Court in the case of PCIT vs V. Dhana Reddy & Co. [2018] 100 taxmann.com 358 (SC).*

*iv. Karnataka High Court in the case of CIT vs International Society for Krishna Consciousness [2020] 117 taxmann.com 799 (SC).*

*v. Anil Shah vs. ACIT [2007] 162 taxman 39 (Mum)(Trib.)*

*vi. CIT vs. Ashish Rajpal [2009] 320 ITR 674 (Delhi) (HC), CIT vs. Vikash Ploymers [2010] 194 Taxman 57 (Delhi) (HC).”*

4.2. Based on the submissions made in the revisionary proceedings u/s 263, ld. PCIT arrived at his consideration for holding the assessment order as erroneous in so far as it is prejudicial to the interest of revenue by observing that assessment order was passed without making necessary enquiries or verification which should have been made with respect to the discrepancies noted by him. The same is reproduced as under:

*“In view of the above discussion and findings it is evident that the Assessing Officer should have added the interest earned by the assessee on the deposits with Hooghly District Central Co-operative Bank Ltd. In the present case the assessment order was passed without making necessary enquiries or verification which should have been made, with respect to the findings as per para 2 supra, by the Assessing Officer at the time of assessment and accordingly the order is erroneous in so far as it is prejudicial to the interest of the revenue in terms of Explanation 2 to section 263(1) of the Income Tax Act, 1961.”*

5. Thus, based on the above consideration arrived at by the ld. PCIT, he held that impugned assessment order dated 27.12.2019 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue and thus set aside the same directing the ld. AO to frame the assessment afresh after considering his observations and decisions of Hon'ble Courts, as per law.

6. Aggrieved, assessee is in appeal before the Tribunal.

7. Before us, Shri Palas Chattopadhyay, FCA represented the assessee and Shri Amol Kamat, CIT, DR represented the department.

8. Present appeal before us is only in respect of allowability of deduction towards interest income received from Co-operative banks claimed u/s 80P(2)(a)(i) of the Act.

9. Ld. Counsel reiterated the submissions made before the authorities below which are not repeated for the sake of brevity. In addition to this, ld. Counsel before us submitted that it is a case where ld. AO had made detailed enquiry on the issue under consideration wherein he had accepted the claim of the assessee and did not interfere with the deduction claimed in respect of interest received from WBSCARD Bank Ltd. and interest on statutory fund with HDCCB and allowed the deduction u/s 80P of the Act. In the same assessment, assessee had represented before the ld. AO for its claim of deduction in respect of interest received from HDCCB which the ld. AO did not find favour with and disallowed the deduction and thereby made an addition of Rs. 1,95,160/-, though assessee did not file appeal against the said disallowance. Thus, it is not a case of lack of enquiry on the part of the ld. AO on the issue under consideration as raised by ld. PCIT in the revisionary proceeding.

9.1. Ld. PCIT while issuing the show cause notice for invoking the revisionary proceedings u/s 263 of the Act, is of the view that this deduction pertained to interest received from WBSCARD and HDCCB Bank Ltd which are a Co-operative bank and according to the provisions of section 80P(2)(a)(i) of the Act, dividend or interest received by a Co-operative society from its investment in any other Co-operative society is taxable u/s 56 of the Act. By applying the provisions of section 80P(2)(a)(i) of the Act and the decision of Hon'ble Supreme Court in the case of *Totgars, Co-operative Sale Society Ltd [2010] 322 ITR 283 (SC)*, ld. PCIT is of the view that assessee is not eligible for deduction u/s. 80P(2)(a)(i) of the Act in respect of interest income received from these two Co-operative Banks.

9.2. We observe that in the course of proceedings u/s 263 of the Act before the ld. PCIT, assessee had furnished the relevant details and explained the issue raised through the show cause notice by the Ld. PCIT, supporting its contentions by various decisions. It is well settled law that for invoking the provisions of section 263 of the Act, both the conditions that the order must be erroneous and prejudicial to the interest of revenue needs to be satisfied. This ratio stands laid down by various Hon'ble Courts.

10. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in the case of *Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83 (SC)* wherein their Lordships have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer *must be erroneous and so far as prejudicial to the interest of the Revenue*. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed *on incorrect assumption of fact*; or (ii) *incorrect*

*application of law*; or (iii) Assessing Officer's order is in *violation of the principle of natural justice*; or (iv) if the order is passed by the Assessing Officer *without application of mind*; (v) if the AO *has not investigated the issue* before him; [*because AO has to discharge dual role of an investigator as well as that of an adjudicator*] then in aforesaid any of the events, the order passed by the AO can be termed as erroneous order. Looking at the second limb as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue, one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (*supra*) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the AO. Their Lordships held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

11. With the above background understanding and before adverting on the issue in hand, let us refer to the law applicable in the instant case u/s section 80P(2)(a)(i) of the Act which is reproduced *verbatim* –

*"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*

*(2) The sums referred to in sub-section (1) shall be the following, namely:—*

*(a) in the case of a co-operative society engaged in—*

*(i) carrying on the business of banking or providing credit facilities to its members, or*

*(ii) ...*

(iii) ...

(iv) ...

(v) ...

(vi) ...

(vii) ...

*the whole of the amount of profits and gains of business attributable to any one or more of such activities”*

11.1 From the perusal of the above provision, we note that business of the assessee is to provide credit facilities to its members which constitutes ‘eligible activity’ under the said provision of 80P(2)(a)(i) of the Act. Interest received from the members for providing credit facilities to them is available for deduction under this provision. What is sought to be taxed by the ld. PCIT by way of revisionary proceedings is the interest received from the co-operative banks in respect of deposits made by it out of the funds received from its members. In this respect, since ld. PCIT has formed his consideration for revision on the basis of decision of Hon’ble Supreme Court in the case of *Totgars, Co-operative Sale Society Ltd. v. ITO (supra)*, we find it appropriate to delve on the same to understand its applicability in the present set of facts and circumstances.

11.2 In the case of *Totgars, Co-operative Sale Society Ltd. v. ITO (supra)*:

- (i) Facts referred are that the assessee was a co-operative credit society. Its business was to provide credit facilities to its members and to market their agricultural produce. During the relevant assessment years, it had surplus funds which it invested in short-term deposits with the banks and in the Government securities and earned interest thereon.
- (ii) As referred in para 10 of the said judgment, Hon’ble Supreme Court was concerned with the tax treatment of interest income arising on the surplus invested in short-term deposits and securities which arose from the marketing of the produce of its

members whose sale proceeds at times were retained by it and was not required immediately for its business purposes. Thus, the question before the Hon'ble Court was - whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? It was held that 'such interest' would come in the category of 'income from other sources' taxable u/s 56 of the Act. Relevant extracts from para 10 are reproduced as under –

*"10. At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is - whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under section 56 of the Act, as rightly held by the Assessing Officer.*

.....

.....

*When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under section 80P(2)(a) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side.*

*Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or in section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under section 56 of the Act."*

[emphasis supplied by us by underline]

- (iii) From the above, it is noted that Hon'ble Supreme Court held that surplus retained out of the marketing activity of agriculture produce of its members not required for immediate business purposes when invested in to certain securities and resulting into interest income is taxable as 'income from other sources' u/s 56 of the Act and therefore not available for deduction u/s 80P(2)(a)(i) of the Act as 'business income'.
- (iv) In the present case before us, business of assessee is to provide long term finance to agriculture farmers who are its members. Assessee receives deposits from its members as 'margin money' in respect of loan facilities sanctioned to them. Assessee also receives deposits from its members in their savings accounts. NABARD also provides finance to the assessee for its business. In compliance with the orders issued by Registrar of Co-operative Societies, Govt. of West Bengal, it is required that 70% of the total deposits are to be kept in NSC/Fixed Deposit/Certificate of the Bank. Assessee provides interest to its members on their deposits. It is these funds which are invested by the assessee into deposits with Co-operative banks viz. WBSCARDB and HDCCB which generated interest income and is the bone of contention for the revisionary proceedings u/s 263 to bring it into tax net by treating it as 'income from other sources' and not allowable u/s 80P(2)(a)(i) of the Act, not being 'business income'.
- (v) We note that factual matrix in the case of *Totgars, Co-operative Sale Society Ltd. v. ITO (supra)* and that in the present case before are totally different since there is no surplus generated by the assessee which has been invested with the Co-operative Banks, not required for its immediate business purposes. Assessee is earning interest income from its members on the loans sanctioned

by it and also incurring interest expense on the deposits made by its members on account of margin money / savings accounts, loan financing being its business activity. Accordingly, we find that net interest income earned by the assessee from the two co-operative banks viz. WBSCARDB and HDCCB is chargeable to tax as 'business income' and is therefore eligible for deduction u/s 80P(2)(a)(i) of the Act.

12. Further, it is pertinent to note that Id. AO adjudicated the issue of claim made by the assessee u/s 80P by passing a detailed order and more importantly making an addition in this respect of Rs. 1,95,605/- towards net income received by the assessee from HDCCB. Therefore, present case cannot be termed as a case of lack of enquiry by the Id. AO as alleged by the Id. PCIT. Coordinate bench of ITAT Mumbai has dealt with Explanation 2 as inserted by the Finance Act, 2015 in the case of *Narayan Tatu Rane v. ITO [2016] 70 taxmann.com 227 (Mum)* to hold that the said Explanation cannot be said to have overridden the law as interpreted by the Hon'ble Delhi High Court, according to which the Id. PCIT has to conduct an enquiry and verification to establish and show that the assessment order is unsustainable in law. The Tribunal has further held that the intention of the legislature could not have been to enable the Id. PCIT to find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings. The opinion of the Id. PCIT referred to in section 263 of the Act has to be understood as legal and judicious opinion and not arbitrary opinion.

13. Considering the facts on record, submissions made, applicable law and distinguishing aspects of the judicial precedent relied upon by

the ld. PCIT, we are of the view that ld. AO after undertaking requisite enquiries, had taken one of the plausible views on the claim of the assessee u/s 80P of the Act and has made the disallowance of Rs. 1,95,160/- in this respect while completing the assessment for which assessee did not go into appeal. Accordingly, the impugned revision order passed by ld. PCIT u/s 263 of the Act holding the assessment order as erroneous in so far as it is prejudicial to the interest of revenue is not sustainable and is therefore, quashed. Thus, the grounds of appeal by the assessee are allowed.

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

**Order pronounced in the open court on 22.09.2022.**

**Sd/-  
(SANJAY GARG)  
JUDICIAL MEMBER**

**Sd/-  
(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

Kolkata, Dated: 22.09.2022.  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Arambagh Co-operative Agriculture And Rural Development Bank Ltd.
2. The Respondent: ITO, Ward-24(1), Hooghly.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata