

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 150/JP/2022
निर्धारण वर्ष/Assessment Years : 2017-18

Jhunjhunu Karya Vikrya Sahakari Samiti Limited 1 JJN KVSS Limited, Station Road Jhunjhunu	बनाम Vs.	Principal Commissioner of Income Tax-2, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAJ 0647 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Sidharth Ranka (Adv.)
राजस्व की ओर से / Revenue by : Sh. Sanjay Dhariwal (CIT)

सुनवाई की तारीख / Date of Hearing : 19/10/2022
उदघोषणा की तारीख / Date of Pronouncement: 15/12/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Pr. Commissioner of Income Tax, Jaipur-2 [Here in after referred as Ld. PCIT] for the assessment year 2017-18 dated 29.03.2022 as per provision of section 263 of the Act, which in turn arises from the order passed by the ITO, Ward-01, Jhunjhunu passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 11.12.2019.

2. Aggrieved from the order of the Id. PCIT the assessee has marched this appeal on the following grounds;

“1. That on the facts and in the circumstances of the case, the Id. Principal Commissioner of Income-tax-II, Jaipur grossly erred in passing an order u/s 263 of the Income-tax and in holding that the assessment made by the Id. Assessing Officer vide order dated 11.12.2019 for the assessment year 2017-18 is found to be erroneous in so far as it is prejudicial to the interest of the revenue.

2. That on the facts and in the circumstances of the case, the Id. Principal Commissioner of Income-tax-I, Jaipur grossly erred in holding that "the id. AO passed the assessment order in a routine and perfunctory manner without examining the issue of deduction u/s 80P(2)(d) of the Act" is wholly unjustified, bad in law and deserve to be quashed.

2.1 That the learned Assessing Officer passed the assessment order after appreciating all supporting documents and evidences which was just and proper therefore the assessment order passed by the learned assessing officer is neither erroneous nor is prejudicial to the interest of the revenue.

2.2 That the learned Pr.CIT has gone on assumptions, presumptions, conjecture and surmises which is bad in law.

2.3 That on the facts and in the circumstances of the case, the Id. Principal Commissioner of Income-tax-II, Jaipur grossly erred in denying the claim of the assessee appellant amounting of Rs. 13,00,000/- under section 80(P)(2)(d) of the Act.

3. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”

3. Succinctly, the fact as culled out from the records is that the return of income declaring Rs. Nil/- income was E-filed on 29/11/2017. The case of the assessee was selected for limited scrutiny through CASS. Consequently notice u/s 143(2) was issued on 09/08/2018 and served upon the assessee. Further notice u/s 142(1) along with questionnaire was also issued and duly served upon the assessee. In compliance to the statutory

notices, the assessee filed written submission electronically. The assessment was completed as per provision of section 143(3) on declared income on 11.12.2019 where in the returned income was accepted.

4. On culmination of assessment proceeding the Principal Commissioner of Income tax, Jaipur -2 [here in after referred as "PCIT"] on examination of the assessment records observed that the assessee has claimed deduction of interest income of Rs. 13,00,000/- u/s. 80(P)(2)(d). This interest was received from Jhunjjhunu Kendriya Sahakari Bank Limited and the same was allowed by the Id. AO. The Id. PCIT noted that the Id. AO has not verified the issue of allowability of deduction u/s. 80(P)(2)(d) while passing the order u/s. 143(3) of the act and the order is erroneous in so far as it is prejudicial to the interest of revenue. On account of this observation the Id. PCIT has issued a show cause notice u/s. 263 dated 19.02.2022 asking the assessee to explain as to why the assessment order passed by the Assistant Commissioner of Income tax, Sikar may not be revised and may not be treated as erroneous and prejudicial to the interest of revenue regarding the non-application of the law on the grant of deduction u/s. 80(P)(2)(d).

5. In response assessee filed a detailed reply in the proceeding u/s. 263 of the Act which is discussed in the order of the Id. PCIT and the same is not repeated to avoid duplication. After examination of the submission of the assessee the Id. PCIT set aside the order of the Id. AO. The relevant finding of the Id. PCIT is reiterated here in below:

“10. I have gone through the assessment order and case records and submission filed by the assessee, in the facts and circumstances of the case I find that the powers of revision are inherent and PCIT/CIT can use these powers if it notices that any order passed by the AO is not in following conformity with the law. In reaching such conclusion, I am aided by the following rulings:-

The Hon'ble Supreme Court in the case of Malabar Industrial Limited V/S CIT2431TR has held that "An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.

11. From the above facts and circumstances of the case and having regard to the material available on record, the Assessing Officer failed to consider/apply his mind to the information available on record with regard to the deduction allowed to the cooperative society u/s 80P(2)(d) of the Act. This in turn has resulted in passing of an erroneous order by the Assessing Officer in the case due to non-application of mind to relevant material, reflecting non appreciation of facts and an incorrect application of mind to law which is prejudicial to the interest of the revenue. Thus, the order passed u/s 143(3) on 11.12.2019 is erroneous and prejudicial to the interest of the revenue.

12. Accordingly, by virtue of powers conferred on the undersigned under the provisions of section 263 of the Income Tax Act 1961, I hold that the order under Section 143 (3) of the IT Act dated 11.12.2019 for AY 2017-18 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without examining the issue of deduction u/s 80P(2)(d) of the Act. The order has thus resulted in wrong deduction of income to the assessee. The order of the Assessing Officer is therefore liable to revision under the clause (a) & (b) of Explanation (2) to section 263 of the Income Tax Act. Hence, the assessment order is set aside as discussed above on the issue of deduction allowed u/s 80P(2)(d) of the Act.”

6. Feeling aggrieved from the order of the Id. PCIT the assessee has marched this appeal on the grounds as raised here in above. The Id. AR appearing on behalf of the assessee has placed their written submission to support the grounds raised, which is extracted in below;

As per directions of the Hon'ble Bench, written submissions on behalf of the assessee appellant are as under:

- 1 The Assessee Appellant – Society is a Co-operative Society registered under the Rajasthan Cooperative Societies Act, 1965 and is engaged in the business of marketing of the agricultural produce grown by its members and purchase of agricultural implements, seeds or other articles intended for agricultural for the purpose of supplying to its members. During the year under consideration, it earned interest on FDR kept with M/s. Jhunjhunu Kendriya Sahkari Bank Ltd.
- 2 The Id. Assessing Officer has raised queries during the course of assessment proceedings including with regards to interest earned by the assessee appellant and deduction u/s. 80P of the Act claimed by the assessee appellant and the same was duly responded by the assessee appellant.
- 3 Being satisfied the Id. Assessing Officer passed assessment order u/s. 143(3) of the Act dated 11.12.2019 and accepted the returned income.
- 4 Thereafter the Id. PCIT, Jaipur-2 issued notice u/s. 263 of the Act dated 19.02.2022 whereby it was proposed that benefit of deduction u/s. 80P(2)(d) has wrongly been granted by the Assessing Officer on the interest earned by the assessee appellant from M/s. Jhunjhunu Kendriya Sahkari Bank Ltd.
- 5 Detailed reply dated 28.02.2022 thereto was filed by the assessee appellant objecting to issuance of notice u/s. 263 of the Act.
- 6 Ignoring the submissions of the assessee appellant, the Id. PCIT passed an order dated 29.03.2022.
- 7 For ready reference, extracts of relevant provisions of Section 80P is reproduced hereunder:

80P Deduction in respect of income of Co-operative Societies

(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 sum 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)

(ii)

(iii) *the marketing of agricultural produce grown by its members, or]*

(iv) *the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members*

(v)

(vi)

(vii)

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

(d) *in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;*

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation. For the purposes of this sub-section,- (a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949); (b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]

8. Finance Ministers Budget Speech while introducing sub-section 80P(4) of the Act is as follows:

Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will

continue to be exempt from tax under section 80P of the Income Tax Act. However, I propose to exclude all other cooperative banks from the scope of that section."

9 CBDT Circular dated 28.12.2006 containing explanatory notes on provisions contained in the Finance Act, 2006, reads as follows:

22.2. The cooperative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore, section 80P has been amended and a new subsection (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions 'co-operative bank', 'primary agricultural credit society' and 'primary co-operative agricultural and rural development bank' have also been defined to lend clarity to them.

10 The Co-operative Bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, however, the interest income derived by a co-operative society from its investments held with a co-operative bank, would continue to be entitled for claim of deduction under Sec.80P(2)(d) of the Act since a Co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being enforced in any state for the registration of co-operative societies.

10. The assessee society fulfills all the conditions stated u/s. 80P of the Act, i.e.:

- ✓ The assessee is a cooperative society duly registered with the Registrar Cooperative Societies under the Rajasthan Cooperative Societies Act. It is undisputed position.
- ✓ Gross total income of the assessee society includes the income referred to in section 80P(2)(a)(iii), 80P(2)(a)(iv) & 80P(2)(d) of the Act.
- ✓ The assessee society is engaged in carrying on the business as per its objects and such income is allowable as a deduction u/s. 80P(2)(a)(iii) & 80P(2)(a)(iv) of the Act.
- ✓ The assessee society has earned interest from Jhunjhunu Kendriya Sahkari Bank Ltd. *which is a Registered Cooperative Society* and such interest is allowable as a deduction u/s. 80P(2)(d) of the Act.

11. Similar nature of income was earned by the assessee society in the past years and assessment orders were passed u/s. 143(3) of the Act for the a.y. 2012-2013 & for the a.y. 2013-2014 and no adverse view taken by the Id. Assessing Officer or even by the Ld. CIT u/s. 263 or u/s. 148 of the Act.
12. That it is trite that the *exercise of power u/s. 263 of the Act is ousted in case of a debatable issue*. An assessment order can be termed as erroneous and prejudicial to the interest of the Revenue, if the Assessing Officer has taken a view which is not legally tenable. Per contra, *if two views are available on a particular issue and the AO adopts one of such views, the case goes outside the purview of revisional power exercisable by the Pr.CIT u/s.263 of the Act*. Proceedings u/s. 263 cannot be sustained where *the Id. CIT holds a view which was different from that of the Assessing Officer. Section 263 of the Act does not visualize a case of substitution of the judgment of the Revisional Commissioner for that of AO unless the decision of the AO is found to be erroneous*. Minal Nayan Shah v. PCIT 2019 (10) TMI 730 ITAT Ahmedabad.
- 12.1 The language used by the legislature in section 263 is to the effect that the CIT may interfere in revision, if he considers that the order passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the revenue. It is quite clear that two conditions must coexist in order to give jurisdiction to the CIT to interfere in revision. The order of the Assessing Officer in question must not only be erroneous but also it must be prejudicial to the interest of the revenue. In other words, merely because the assessment order is erroneous, the CIT cannot interfere. Again, merely because the order of the Assessing Officer is prejudicial to the interest of the revenue, then that is not enough to confer jurisdiction on the CIT to interfere in revision. The CIT cannot assume jurisdiction u/s 263, if the two conditions prescribed under the provisions of Act, viz. (i) the order is erroneous; and (ii) the same is also prejudicial to the interest of the revenue is not satisfied. Each and every erroneous order cannot be the subject matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation, a lesser tax than what was just, has been imposed.
- 12.2 The phrase "*prejudicial to the interest of the revenue*" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue has a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when an Assessing Officer adopted one of the courses permissible in law and it has resulted in loss of

revenue or where two views are possible and the Assessing Officer has taken one view with which the CIT did not agree with, it cannot be treated as an erroneous order prejudicial to the interest of the revenue because the view taken by the Assessing Officer is unsustainable in law.

- 12.3 In the instant case, Explanation 2(a) to section 263 is not applicable as the assessment order is not passed by without making inquiries or verification granting any relief without verification. Nor the said provision has been relied upon in the impugned Show Cause Notice and thus deserves to be ignored. On the contrary, the Id. AO has raised queries and the assessee has replied to the same.
- 12.4 In the instant case, Explanation 2(b) to section 263 is not applicable as the assessment order is not passed by granting any relief without verification. Nor the said provision has been relied upon in the impugned Show Cause Notice and thus deserves to be ignored.
- 12.5 In the instant case, Explanation 2(c) to section 263 is not applicable as the assessment order is not contrary to any order, direction or instruction issued by the Board under section 119. Nor the said provision has been relied upon in the impugned Show Cause Notice and thus deserves to be ignored.
- 12.6 In the instant case, Explanation 2(d) to section 263 is not applicable as the show cause notice has not referred to any judgment of the Hon'ble jurisdictional High Court or of the Hon'ble Supreme Court. Nor the said provision has been relied upon in the impugned Show Cause Notice and thus deserves to be ignored.
- 13 We wish to refer and rely upon following authorities which have under identical factual backdrop have held that initiation of proceedings u/s. 263 of the Act is bad in law and have even otherwise held that benefit of deduction u/s. 80P(2)(d) ought to be given to the assessee societies wherein interest is earned from cooperative banks:

SNo.	Tribunal	Particulars	Paper Book	Remarks
Exercise of section 263 read with section 80P(2)(d) & 80P(4) of the Act				
1.	Jaipur Bench	Rajasthan Cooperative Dairy Federation Ltd. v. PCIT {ITA: 23/JP/2021 dated 09.11.2021)	Index-II, PB 01-13, Relevant PB 9	

2	Jaipur Bench	Palsana Gram Sewa Sahkari Samiti Ltd. v. PCIT {2021 (12) TMI 635 dated 02.11.2021}	Index-II, PB 14-54, Relevant PB 43	
3	Jaipur Bench	Ajmer Zila Dugdh Utpadak Sahkari Sangh Ltd. v. PCIT {2021 (3) TMI 256 dated 01.03.2021}	Index-I, PB 26-40, Relevant PB 27	
4	Jaipur Bench	Ajmer Zila Dugdh Utpadak Sahkari Sangh Ltd. v. PCIT {2019 (11) TMI 690 dated 28.08.2019}	Index-I, PB 74-83, Relevant PB 74-83	
5	Ahmedabad Bench	Laxmi Bachat Sharafi Sahkari Mandali Ltd. v. ITO {2022 (9) TMI 153 dated 31.08.2022}	Index-II, PB 62-75, Relevant PB 70	Amendment made by Finance Act, 2006 referred
6	Rajkot Bench	Galaxy Credit Cooperative Society Ltd. v. PCIT {2022 (7) TMI 494 dated 08.07.2022}	Index-II, PB 76-79, Relevant PB 77	
7	Pune Bench	Dr. Jagadale Mama Hospital Employees Coop Credit Society Ltd. v. PCIT {2022 (9) TMI 30 dated 29.08.2022}	Index-II, PB 95-100, Relevant PB 99	Amendment made by Finance Act, 2006 referred
8	Pune Bench	Shri Sharad Gramin Bigar Sheti Sahakari Pathasanstha Ltd. v. PCIT {2022 (8) TMI 1020 dated 22.08.2022}	Index-I, PB 84-88, Relevant PB 86-88	Amendment made by Finance Act, 2006 referred
9	Surat Bench	Shri Madhi Surali Vibhag Nagrikshakari Dhiran Mandali Ltd. v. ACIT {2021 (10) TMI 861 dated	Index-I, PB 116-120, Relevant PB 116-120	

		15.09.2021}		
10	Vishakhapatnam Bench	Krishna District Milk Producer Mutually Aided Co-operative Union Limited v. ACIT {2021 (3) TMI 1108 dated 24.03.2021}	Index-I, PB 121-131, Relevant PB 125	

13.1 We wish to refer and rely upon following authorities which have under identical factual backdrop have held that benefit of deduction u/s. 80P(2)(d) ought to be given to the assessee societies wherein interest is earned from cooperative banks:

SNo.	Tribunal	Particulars	Paper Book	Remarks
Section 80P(2)(d) & 80P(4) of the Act read with section 143(3) of the Act				
1.	Jaipur Bench	Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. v. DCIT {2020 (3) TMI 631 dated 04.03.2020}	Index-I, PB 41-58, Relevant PB 44-45	
2	Jaipur Bench	Shahpura Gram Seva Sahkari Samiti Ltd. v. ITO {2020 (10) TMI 715 dated 15.10.2020}	Index-I, PB 59-64, Relevant PB 60-64	
3	Jaipur Bench	Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. v. ACIT {2019 (9) TMI 1338 dated 30.09.2019}	Index-I, PB 65-73, Relevant PB 72	
4	Madras Bench	NLC Indcoserve v. ITO {2022 (6) TMI 936 dated 08.06.2022}	Index-I, PB 89-97, Relevant PB 97	Amendment made by Finance Act, 2006 referred
5	Raipur Bench	Gramin Seva Sahakari Samiti Maryadit v. ITO {2022 (8) TMI 597 dated	Index-I, PB 98-110,	Amendment made by Finance Act,

		04.08.2022}	Relevant PB 100-104	2006 also referred
6	Mumbai Bench	Mumbai Kolsa Kamgar Sahakari Society v. ITO {2022 (8) TMI 568 dated 28.07.2022}	Index-I, PB 111-115, Relevant PB 111-115	
7	Bangalore Bench	Kanakshree House Building Co-operative Society {2022 (1) TMI 1187 dated 17.11.2021}	Index-I, PB 132-142, Relevant PB 132-133	
8	Delhi Bench	ITO v. The Jwala Cooperative Urban Thrift and Credit Society Ltd. {2022 (6) TMI 74 dated 31.05.2022}	Index-II, PB 55-57, Relevant PB 57	
9	Surat Bench	ACIT v. Sachin Udyog Nagar Sahkari Mandli Ltd. {2022 (10) TMI 257 dated 06.10.2022}	Index-II, PB 58-61, Relevant PB 61	
10	Mumbai Bench	Avanti Niketan Cooperative Housing Society Ltd. v. CIT(A) {2022 (10) TMI 401 dated 06.10.2022}	Index-II, PB 80-87, Relevant PB 80	Amendment made by Finance Act, 2006 also referred
11	Mumbai Bench	Tulsiani Chambers Premises Cooperative Society Ltd. v. ITO {2022 (5) TMI 548 dated 18.04.2022}	Index-II, PB 88-94, Relevant PB 90-93	Amendment made by Finance Act, 2006 also referred
12	Panaji Bench	Belgaum Coal & Coke Consumer Cooperative Association Ltd. v. ITO {2022 (4) TMI 395 dated 06.04.2022}	Index-II, PB 101-106, Relevant PB 104	Amendment made by Finance Act, 2006 also referred

13.2 We wish to refer and rely upon following authorities which have under identical factual backdrop have held that benefit of deduction u/s. 80P(2)(d) ought to be given to the assessee societies wherein interest is earned from cooperative banks:

SNo.	Court	Particulars	Paper Book	Remarks
Section 80P(2)(d) & 80P(4) of the Act read with section 143(3) of the Act				
1	Rajasthan High Court	CIT v. Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd {2016 (9) TMI 1385 dated 01.09.2016}	Index-II, PB 107-115	
2	Rajasthan High Court	PCIT v. Kekri Sahakari Bhumi Vikas Bank Ltd {2016 (12) TMI 1649 dated 08.12.2016}	Index-II, PB 116-125	
3	Rajasthan High Court	PCIT v. Kekri Sahakari Bhumi Vikas Bank Ltd {2018 (11) TMI 571 dated 08.08.2017}	Index-II, PB 126-134	
4	Kerala High Court	PCIT v. Peroorkada Service Co-operative Bank Ltd {2021 (2) TMI 1084 dated 01.11.2021}	Index-II, PB 135-146	<i>12.2 Section 80P deals with Co-operative Societies' computation of income. As already noted, it has four sections and several sub-sections and clauses. The Parliament has considered the various situations in which the exigible income and the deductible income of the assessee is considered while computing the income</i>

			<p><i>of the assessee. For getting deduction, in our considered view, the assessee must also establish that the interest income earned by the assessee is from a Co-operative Society. As a matter of fact, in the case on hand, there is no dispute that it is not from a Co-operative Society registered under Kerala Co-operative Societies Act. The interest income earned from District Co-operative Bank/State Co-operative Bank, in the facts and circumstances of the case, do come within Section 80P(2)(d). Therefore, the income constitutes income from other sources and the only eligible deduction is covered by Section 80P(2)(d) viz. Interest or dividend derived by the assessee from its investments with any other Co-operative Society. The source of interest income is from Bank and Treasury, interest income received from Treasury be included</i></p>
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				<p><i>in the computation of total income of the assessee. In other words, interest earned from Treasury is inadmissible for deduction and interest income from Co-operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction. The contra consideration of Commissioner of Income Tax (Appeals) and the Tribunal is incorrect and liable to be modified as stated above. Hence, it is held that the interest income earned by the assessee does not come within the ambit of Section 80P(2)(a)(i) and permissible deduction of interest income is limited to Co-operative Societies/Banks registered under Kerala Co-operative Societies Act under clause (d) of the Act and effect order on the above lines is made by the Assessing Officer. The questions are accordingly answered.</i></p>
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5	Bombay High Court	PCIT v. Annasaheb Patil Mathadi Kamgar Sahkari Patpedhi Maryadit Ltd {2020 (1) TMI 1041 dated 09.01.2020}	Index-II, PB 147-149	ITAT order setting aside the exercise of section 263 read with section 80P(2)(d) & 80P(4) of the Act upheld.
6	Gujarat High Court	The Surat Vankar Sahakari Sangh Ltd. v. PCIT {2016 (7) TMI 1217 dated 12.07.2016}	Index-II, PB 150-156	<i>8. Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the investment because this Section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the cooperative society exceeds the interest received from the bank on investments. The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any</i>

				<p><i>adjustment as sought to be made out by learned counsel for the Revenue.</i></p> <p><i>The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by learned counsel for the Revenue. In our opinion, the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Incometax Act, 1961. in respect of interest of RS. 4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting the interest paid to the hank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee."</i></p>
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- 14 The Id. D/R during the course of hearing has also relied upon various authorities and the same are distinguishable and are not applicable and in this regard, we wish to submit as under:

SNo.	Title	Remarks
01	The Totgars Cooperative Sale Society Ltd. (Supreme Court)	<ul style="list-style-type: none"> • During the relevant assessment years in question, it had surplus funds which the assessee(s) <u>invested in short-term deposits with the Banks and in Government securities</u>. On such investments, interests accrued to the assessee(s). Assessee(s) provides credit facilities to its members and also markets the agricultural produce of its members. Whether such interest income would qualify for deduction as business income under Section 80P(2)(a)(i) of the Income Tax Act, 1961 – held that - 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. • Interest was earned from Banks and Government Securities not from Cooperative Banks • Deduction u/s. Section 80P(2)(d) was neither an issue nor was it deliberated nor was it considered. • The issue was as to whether the interest on surplus funds is eligible for deduction u/s. 80P(2)(a)(i) of the Act or is it assessable to tax under the head other sources. It was not the question as to whether the assessee a cooperative society engaged in the business of providing credit facilities to its members is entitled for deduction u/s. 80P(2)(d) of the Act on the interest income from cooperative Banks or cooperative societies.
02	The Totgars Cooperative Sale Society Ltd. (Karnataka High Court)	<ul style="list-style-type: none"> • Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. v. Siemens India Ltd. (1985) 156 ITR 11 (Bom) has held: where there is a conflict between the decisions of non-jurisdictional High Courts, then a view which is in favour of the assessee is to be preferred as against that taken against him. • Hon'ble Apex Court in the case of The Mavilayi

		<p>Service Co-operative Bank Ltd. & Ors Versus Commissioner of Income Tax Calicut & Anr {Civil Appeal Nos. 7343-7350 of 2019 decided on 12th January 2021} held that Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the Assessee.</p> <ul style="list-style-type: none"> • Hon'ble Karnataka High Court rendered in the case of PCIT Vs. Totagars Co-operative Sale Society (2017) 392 ITR 74 has clearly held that the issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res integra. The Co-operative Bank which is a species of the genus would necessarily be covered by the word "Co-operative Society". • Various judgment passed by the Tribunals which have been relied upon by the assessee appellant have considered the same and have distinguished / held it to be non-jurisdictional High Court, hence, inapplicable. • The Co-operative Bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co-operative societies, therefore, <u>the interest income derived by a co-operative society from its investments held with a co-operative bank</u>, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.
03	State Bank of India (Gujarat High Court)	<ul style="list-style-type: none"> • Was dealing with situation wherein the appellant cooperative society had invested in FDR with State Bank of India and not with a cooperative bank, hence, not applicable. • On the contrary, the observations at para 14 <u>are</u>

		<p><u>in favour of the assessee appellant</u>, which are as under:</p> <p>14. Thus, in the light of the principles enunciated by the Supreme Court in <i>Totgars Co-operative Sale Society (supra)</i>, 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.</p> <ul style="list-style-type: none"> • On the contrary, the observations at para 16 <u>are in favour of the assessee appellant</u>, which are as under: <p>16. If the appellant wants to avail of the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under section 80P(2)(d) of the Act.</p>
04	Krishnarajapet Taluk Agri Pro Coop Marketing Society (Bangalore ITAT)	<ul style="list-style-type: none"> • Based on the order passed by the jurisdictional High Court in the <i>Totgars</i>, which is not the case in instant matter as it pertains to non-jurisdictional High Court. • Contrary views of Bangalore Bench itself, wherein relief has been granted to the assessee appellant.
05	Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. (Gujarat High Court)	<ul style="list-style-type: none"> • Pertaining to initiation of proceedings u/s. 148 of the Act on the premise of Change of Opinion. • Proceedings u/s. 148 were initiated within a period of 4 years. • The assessee had failed to disclose 'fully and

		<p>truly' all material facts necessary for assessment.</p> <ul style="list-style-type: none"> • On merits various authorities in favour of the assessee including Gujarat High Court itself not considered nor cited.
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In light of above, the impugned proceedings-initiated u/s. 263 of the Act are illegal, bad-in-law and it thus deserves to be set-aside and quashed.”

Relying on the above paper book the Id. AR of the assessee submitted that the case of the assessee was selected for limited scrutiny. The Id. AO on the very issue as raised by the Id. PCIT has already taken a plausible view and the same is clearly portrayed in the assessment order. The relevant finding of the Id. AO is reiterated here in below:

“2. The assessee is a Co-operative society registered under the Rajasthan Co-operative Societies Act, 1965 and engaged in the marketing of the agriculture produce grown by its member and purchase of agricultural implements, seeds or other articles intended for agriculture for the purpose of supplying them to its members. During the year under consideration the assessee co-operative society has claimed deduction u/s 80P(2)(d) and 80P(2)(a)(iii)(iv).”

Based on the above arguments the Id. AR of the assessee submitted that the Id. AO has already based on the submission of the assessee has taken a view which is plausible view the same is not subjected to proceeding u/s. 263 and he has strongly opposed the action u/s. 263 of the Act. The Id. AR of the assessee also serviced the decision of the jurisdictional high court wherein the court has considered the allowability of the deduction u/s. 80(P)(2)(d) and he also serviced the decision of the coordinate bench of

this tribunal in the case of Shahpura Gram Seva Shakari Samiti Ltd. also considered the issue and thus, based on this precedent the view taken by the Id. AO is plausible view and the same cannot be a subject of proceeding u/s. 263 of the Act.

7. Per contra, the Id DR is heard who has relied on the findings of the PCIT and has submitted the compilation of case law vide his submission dated 05.09.2022 the same is reiterated here in below:-

S. No.	Description of the case	Page No.
1	ITAT 'A' Bench, Bangalore ITA No. 514/Bang/2021 AY 2015-16 M/s Krishnarajapet Taluk Agri Pro Co-op Marketing Society Ltd., Mandya v. Pr. Commissioner of Income-tax, Mysore	1-13
2	[2010] 188 Taxman 282 (SC) Supreme Court of India Totgars, Co-operative Sale Society Ltd. v. ITO, Karnataka	14-26
3	[2017] 83 taxmann.com 140 (Karnataka) High Court of Karnataka Principle Commissioner of Income-tax, Hubballi v. Totgars Co-operative Sale Society	27-54
4	[2016] 72 taxmann.com 64 (Gujarat) High Court of Gujarat State Bank of India v. Commissioner of Income-tax	55-90

Based on the above recent development in the law and decision of the various high court the Id. DR submitted that the order of the Id. AO is subject matter of 263 and has thus, justified the order of the Id. PCIT.

8. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position and decisions relied upon. We find that there limited scrutiny and on this

issue there is finding of the Id. AO. Yet, learned PCIT has subjected the assessment order to revision proceedings on the short ground that the Assessing Officer passed the assessment order "is erroneous in so far as it prejudicial to the interest of revenue as the said order has been passed by the assessing officer in a routine and perfunctory manner without examining the issue of deduction u/s. 80(P)(2)(d) of the Act." Thus, the main question centers on whether action of the assessing officer in allowing the claim of the assessee u/s. 80(P)(2)(d) is found faulted with, whether the assessee ought to have produced the appropriate evidence and whether non-recording of the reasons for accepting explanation will render the order erroneous and prejudicial to the interest of the revenue. In fact, there is a specific finding and reference of the deduction claimed by the assessee founded place in the assessment order. Thus, we are of the considered view that the Id. AO has taken a plausible view which is based on decision relied upon by the Id. AR of the assessee is one of the plausible views and we see that there is no lack of enquiry on the part of Ld. AO and we find that he has applied his mind and allowed the claim of the assessee.

9. Thus, Id.AO has examined that issue as it is evident from the finding recorded in the assessment order. As the case was for this limited purpose the same has been examined and verified by the Id. AO as it emerges from the findings of the AO. The Id. Pr. CIT evidently did not place on record any apparent error on the part of the AO so as to substantiate that order passed by the Id. AO is prejudicial to the interest of revenue. He only mentioned that the AO has not applied his mind to the issue in proper manner. He has not pin pointed any of the enquiry which is required to be made is not made by the Id. AO. and he has to examine the issue on merits. There is no further defect found from the record from the material that has been collected by the Id. AO to verify the point raised in the limited scrutiny. The decision and contentions raised by Id. DR are all related to the fact that the Id. AO either has not examined the issue and the related enquiry on the issue apparently not done or not done to the extent it was required to be examined based on the facts. Since, in this case Id. AO has clearly conducted the enquiry and revenue did not pin point the error on the part of the assessing officer the order passed after due application of mind cannot be subjected to proceeding u/s. 263 of the Act. The ITAT Mumbai bench in the Mrs. Khatiza S. Oomerbhoy addressed this issue elaborately after referring to number of cases on revisionary powers vested in the

Commissioner of Income-tax under section 263 of the Act and summed up the fundamental principles emerging from several cases as under-

(i)	The CIT must record satisfaction that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.
(ii)	Sec. 263 of the Act cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer and it was only when an order is erroneous that the section will be attracted.
(iii)	An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.
(iv)	If the order is passed without application of mind, such order will fall under the category of erroneous order.
(v)	Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the Assessing Officer has adopted one of the courses permissible under law or where two views are possible and the Assessing Officer has taken one view with which the does not agree. If cannot be treated as an erroneous order, unless the view taken by the Assessing Officer is unsustainable under law
(vi)	If while making the assessment, the Assessing Officer examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the Commissioner of Income-tax, while exercising his power under section 263 of the Act is not permitted to substitute his estimate of income in place of the income estimated by the Assessing Officer.
(vii)	The Assessing Officer exercises quasi-judicial power vested in his and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the Commissioner of Income-tax does not fee stratified with the conclusion.
(viii)	The Commissioner of Income-tax, before exercising his jurisdiction

	under section 263 of the Act must have material on record to arrive at a satisfaction and
(ix)	If the Assessing Officer has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the Assessing Officer allows the claim on being satisfied with the explanation of the assessee, the decision of the Assessing Officer cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

10. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and revenue did not demonstrate the error remain on the part of the Id. AO. In fact, when the Id. AO has conducted the required enquiry and not violated any of the conditions mentioned for revision of order as required by Explanation 2 of Section 263 of the Act, the order passed by the Assessing Officer could not be deemed to be erroneous so as to be prejudicial to the interests of the revenue. For this it is relevant to extract the Explanation 2 of section 263 which the Id. DR has heavily relied upon:

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

11. Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "in a routine and perfunctory manner", there is nothing to question the bonfides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. The fact remains that the specific issue mentioned and has been examined and the contention of the assessee accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".

12. In view of the above discussions, as also bearing in mind entirety of the case we vacate the impugned revision order. The assessee gets the relief accordingly.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 15/12/2022.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 15/12/2022

*Ganesh Kumar

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

1. The Appellant- Jhunjhunu Karya Vikraya Sahakari Samiti Limited, Jhunjhunu
2. प्रत्यर्थी / The Respondent- Pr. CIT, Jaipur-2, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 150/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar