

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)**  
**AND**  
**SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 216/MUM/2023**  
**Assessment Year: 2012-13**

Sai Prerana Co-op Society Ltd.,  
317, Puran Aasha Bldg. Gr. Fl.  
Narashi Natha Street, Katha  
Bazar Musjid Bunder (W),  
Mumbai-400 009.

**PAN No. AADTS 5638 M**  
**Appellant**

ITO-7(3)(2),  
Room No. 126, 1<sup>st</sup> floor,  
Kautilya Bhavan, C-41 to C-  
43 Block, Bandra Kurla  
Complex, Bandra (East)  
Mumbai-400051.

**Vs.**

**Respondent**

**Assessee by** : Ms. Ruby Srivastava &  
Mr. Bharat Kumar, CA  
**Revenue by** : Mr. Milind S. Chavan, DR

Date of Hearing : 27/04/2023  
Date of pronouncement : 28/04/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 29.02.2022 passed by the Ld. Commissioner of Income-tax – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:



1. *On the facts and circumstances of the case in Law, Ld. CIT (A) erred in confirming reopening of the case on the same facts and circumstances which is change in opinion.*
2. *On the facts and circumstances of the case in Law, Ld. CIT (A) erred in confirming of the reopening which was open after four years without established failure on the part of the assessee which is bad in Law.*
3. *On the facts and circumstances of the case in Law, Ld. CIT (A) erred in disallowing 80P deduction on account of interest received from other than cooperative bank.*
4. *The Appellant keep its right reserve to add/modify/delete the any grounds of appeal.*

2. Briefly stated, facts of the case are that the assessee is a credit society. For the year under consideration, the assessee filed return of income u/s 139(1) of the Income-tax Act, 1961 (in short 'the Act') on 08.09.2012 declaring total income at Rs. Nil. The assessment u/s 143(3) of the Act was completed on 26.03.2015 and total income was assessed at Rs.3,22,880/-. Subsequently, the notice u/s 148 of the Act was issued and case was reopened u/s 147 of the Act on the ground that the assessee had claimed deduction u/s 80P of the Act. The reasons to believe that income escaped assessment ,recorded by the Assessing Officer as reproduced on page 1 of the assessment order, is extracted as under:

*"The assessee, Sai Prerna Co-op. Credit Society Ltd., is assessed to tax in this charge. Assessee e filed its return of income for AY 2012-13 on 08.09.2012 showing income of Rs Nil/-.The case was duly concluded vide order dated 19.3.2015 at Rs NIL/-. Assessee is a co operative credit society.*



2. Subsequently, in this case, it is found that assessee has claimed deduction under section 80P(2) of the Act of Rs 60,44,873/- and the same was also allowed in the order.

3. As per the records from Profit & Loss Alc, it was noticed that assessee received interest on FD of Rs 135,26,896/-, The FD's as seen from the Balance sheet were mainly with co operative banks and not with co operative society. This clearly showed that assessee has earned income from co operative banks and not from society.. Section 80P(2)(d) does not extend the benefit of deduction for interest received from investments made with co operative banks, hence the deduction was required to be disallowed.

4. Assessee claimed deduction us 80P(2) which is clearly in contravention to provisions of the Act. The income from FD was required to be offered under the head "Income from other sources" as per the . provisions of the Act as, co operative bank is a urban commercial bank and does not fall under the purview of co operative society referred to section 80P(2)(d) of the Act. The claim of assessee for deduction clearly shows that there is failure on part of assessee in making true and full disclosure of its particulars of income for AY 2012-13.

5 Section 147 of the Act states that if AO has reason to believe that " any income chargeable to tax has escaped assessment for any assessment year, he may subject to provisions of section 148 to 153, assessee or reassess such income and also any other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section".

2.1 The re-assessment was completed u/s 147 of the Act r.w.s. 144 of the Act withdrawing the deduction u/s 80P(2) of the Act and thereby assessing the interest income under the head of income from other sources.

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and challenged the validity of the reassessment u/s 147 of the Act as



well as addition on merit. The Ld. CIT(A) disposed off the grounds challenging the validity of the reassessment order observing as under:

*“7.1 Ground Nos. 1 & 2 challenge the initiation of proceedings u/s147. Notice us 148 was dated 18.02.2019. This obviously means that though four years had elapsed but six years had not elapsed from the end of the relevant A. Yr. and the concerned PCIT/CIT had the power to authorize re-opening of assessment. The necessary official formalities were duly completed before issue of the notice us 148. There were no shortcomings before the re-assessment proceedings were initiated. Ground Nos. 1 & 2 are, therefore disposed as "DISMISSED"*

3.1 On merit, the Ld. CIT(A) allowed deduction u/s 80P(2)(d) of the Act in respect of interest earned by the assessee on deposits from the co-operative bank, however did not allow the deduction of interest earned by the assessee from deposits kept with nationalized banks.

4. Before us, the assessee has challenged the validity of the reassessment proceedings on the ground that same amounts to change of opinion. The reopening was also challenged on the ground that same is bad in law being without establishing any failure on the part of the assessee for reopening of the assessment beyond the four years from the end of the relevant assessment years.

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that



the identical issue of validity of the reassessment proceedings in the case of the assessee for assessment year 2013-14 has been allowed in favour of the assessee observing as under:

*“6. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. Regarding the Ground No. 1 and 2 of the appeal related to the reassessment proceeding, we find that in the case assessment has been reopened beyond the period of four years from the end of the relevant assessment year. As per the provisions of the Act, an assessment cannot be reopened beyond the period of four years from end of the relevant assessment year unless there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of assessment. In the case, in the regular assessment year completed u/s 143(3) of the Act, the assessee was allowed deduction u/s 80P of the Act in respect of interest income earned from the nationalized as well as co-operative bank. The Assessing Officer has reopened the assessment based on the same material which was available before the Assessing Officer during original assessment proceedings, which is evident from the reasons recorded by the Assessing Officer (i.e. reproduced by the Assessing Officer on page 1 of the assessment order). For ready reference same is reproduced as under:*

*“The assessee, Sai Prerna Co-op. Credit Society Ltd., is assessed to tax in this charge. Assessee e filed its return of income for AY 2013-14 on 08.09.2012 showing income of Rs. Nil. The case was duly concluded vide order us 143(3) dated*

*07.03.2016 at Rs NIL/-. Assessee is a co operative credit society.*

*2. Subsequently, in this case, it is found that assessee has claimed deduction under section 80P(2) of the Act of R\$ 97,49,7071- and the same was also allowed in the order.*

*3. As per the records from Profit & Loss Alc, it was noticed that assessee received interest on FD of Rs 163,45,298/-. The FD's as seen from the Balance sheet were mainty with co operative banks and not with co operative society. This clearly*



*showed that assessee has earned income from co operative banks and not from society. Section 80P(2)(d) does not extend the benefit of deduction for interest received from investments made with co operative banks, hence the deduction was required to be disallowed.*

*4. Assessee claimed deduction u/s 800(2) which is clearly in contravention to provisions of the Act. The income from FD was required to be offered under the head "income from other sources" as per the provisions of the Act as, co operative bank is a urban commercial bank and does not fall under the purview of co operative society referred to section 80P(2)(d) of the Act. The claim of assessee for deduction clearly shows that there is failure on part of assessee in making true and full disclosure of its particulars of income for AY 2012-13.*

*5. Section 147 of the Act states that If AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to provisions of section 148 to 153, assessee or reassess such income and also any other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section."*

*6.1 On perusal of the above reasons recorded, it is evident that there is no tangible new information or material from either 'internal' or 'external' source to form reasons to believe that income escaped assessment. The Assessing Officer has merely re-appreciated the information which was available before him in original assessment proceedings and therefore, the reasons recorded are based on merely 'change of opinion'. In para 4 of the reasons recorded though the Assessing Officer mentioned that there was a failure on the part of the assessee in making true and fully disclosure, however, he has not pointed out which information was not disclosed fully and truly by the assessee. The interest income earned by the assessee from fixed deposits was duly explained before the Assessing Officer in original assessment proceedings and therefore, contention of the Assessing Officer in reason recorded of failure on the part of the assessee in making full and true disclosure, is devoid of merit and in the nature of an incorrect allegation only. Relying on the decision of the Hon'ble Jurisdictional High Court in the case of Sunjewels India (P.) Ltd. reported in [2022] 141 taxmann.com 72*



*(Bombay) reassessments based on appreciating same facts, which were available during original assessment proceedings, is bad in law on the reason of 'change of opinion'. In writ petition no. 3048 of 2022 in the case of Mumbai Postal Employees Co-operative Credit Society Ltd Vs ITO, the Hon'ble Bombay High Court held that satisfaction recorded by the AO in the reasons recorded was not based upon any material other than obtained on amount of 'perusal of the record', and hence it was based on change of opinion. The relevant finding of the Hon'ble High Court is reproduced as under:*

*"8. We have heard learned Counsel for the parties.*

*9. It is no longer res integra that the action of the A.O. in initiating reassessment proceedings have to be tested on the touch stone of the reasons recorded. On a perusal of the reasons recorded as have been reproduced partially in the preceding paragraphs, it is clear that the A.O. felt that the claim of deduction under Section 80P(2)(d) of the Act which had been allowed in favour of the Petitioner was not in conformity with the provisions of the said section, which consequently had resulted in an under assessment of income of Rs.92,08,876/- and a consequent short levy of tax of Rs.28,45,542/-. This satisfaction recorded by the A.O. in the reasons was not based upon any material other than obtained on account of 'perusal of the record'.*

*10. It can be noticed that in the present case the assessment was under Section 143(3) of the Act, during which the Petitioner had been served with the notice under Section 142(1) of the Act dated 27th September, 2016 asking the Petitioner to explain with documentary evidence the claim of deduction under Chapter VI-A of the Act, reply thereto was submitted by the Petitioner on 10th October, 2016 with an explanation that the Petitioner get fulfilled the conditions of eligibility under Section 80P of the Act, whereafter the order of assessment came to be passed on 23rd November, 2016. It is therefore clear that the issue stood considered as only a part of the deduction under Section 80P of the Act while disallowing the same in regard to income from holiday home charges.*

*11. The A.O. therefore did not have any tangible material with him based upon which he could form his reason to believe that income had escaped assessment. The entire basis for*



*reopening is nothing but a change of opinion on the part of the A.O. that the benefit of deduction under Section 80P of the Act of Rs.92,08,876/- ought not to have been allowed at all. As between the date of the assessment order under Section 143(3) of the Act and the date when the reasons were recorded, there has been neither any change in law nor any new material has been shown to have come to the knowledge of the A.O.. This therefore is nothing but a clear case of change of opinion as was rightly urged by Mr. Mistry and, therefore, impermissible for reopening the assessment. Apart from this, the assessment is sought to be reopened beyond the period of four years from the end of the relevant assessment year 2014-15 and, therefore, it was incumbent upon the A.O. to establish that the Petitioner had failed to disclose fully and truly all material facts necessary for assessment during the relevant assessment proceedings. No such averment is made in the*

*12. In the case of Hindustan Lever Ltd. V/s. R. B. Wadkar, Assistant Commissioner of Income-Tax and others 1, it was held:*

*“.....The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment.*

*In the aforementioned case the Court set aside the notice under Section 148 of the Act impugned therein, on the ground that the jurisdictional requirement of the proviso to Section 147 of the Act had not been complied with as the A.O. had nowhere stated in the reasons recorded that there was failure*



*on the part of the assessee to disclose fully and truly all material facts. Similar facts situation exists even in the present case where the reasons recorded do not at all alleged any such failure on the part of the assessee which was a condition prerequisite for invoking jurisdiction for reopening in addition to the condition of 'reasons to believe' as this was a case of reopening beyond the period of four years.*

*13. For the reasons mentioned hereinabove, we have no hesitation in holding that in the facts and circumstances of the present case, the reopening of the assessment is unsustainable. Be that as it may, the present petition is allowed. The notice under Section 148 of the Act as also the order of assessment dated 30th March, 2022 passed under Section 147 r/w Section 144B of the Act are set aside."*

*6.2 Similar finding has been given by the Hon'ble Bombay High Court while deciding the writpetition no. 1809 of 2022 in the case of Tahnee Heights CHS Ltd Vs ITO. The relevant finding of the Hon'ble High Court is reproduced as under:*

*"8. In the present case although the A.O. has recorded in the reasons that there was failure on the part of the assessee to disclose fully and truly material facts, it failed to identify as to what was that material fact which was not disclosed by the assessee which if so disclosed could have prevented the escapement of income. The alleged failure to disclose appears to be nothing but a statement to somehow overcome the hurdle of reopening the assessment beyond four years.*

*Apart from the above, the A.O. could have proceeded to reopen the assessment only if he had reason to believe that 'income had escaped assessment'.*

*9. In CIT V/s. Kelvinator of India Ltd. 2 the Supreme Court held:*

*" The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power*



by the Assessing Officer. Hence, after 1-4-1989, Assessing Officer has power to reopen, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief.”

10. In *Jindal Photo Films Ltd. Vs. Deputy Commissioner of Income Tax 3*, the Court, in the light of the facts before it and in the background of section 147 of the Act, observed :

“.....all that the Income-tax Officer has said is that he was not right in allowing deduction under Section 80I because he had allowed the deductions wrongly and, therefore, he was of the opinion that the income had escaped assessment. Though he has used the phrase "reason to believe" in his order, admittedly, between the date of the orders of assessment sought to be reopened and the date of forming of opinion by the Income-tax Officer nothing new has happened. There is no change of law. No new material has come on record. No information has been received. It is merely a fresh application of mind by the same Assessing Officer to the same set of facts. While passing the original orders of assessment the order dated February 28, 1994, passed by the Commissioner of Income-tax (Appeals) was before the Assessing Officer. That order stands till today. What the Assessing Office has said about the order of the Commissioner of Income-tax (Appeals) while recording reasons under Section 147 he could have said even in the original orders of assessment. Thus, it is a case of mere change of opinion which does not provide jurisdiction to the Assessing Officer to initiate proceedings under Section 147 of the Act.

It is also equally well settled that if a notice under Section 148 has been issued without the jurisdictional foundation under Section 147 being available to the Assessing Officer, the notice and the subsequent proceedings will be without jurisdiction, liable to be struck down in exercise of writ jurisdiction of this court. If "reason to believe" be available, the writ court will not exercise its power of judicial review to go into the sufficiency or adequacy of the material available. However, the present one is not a case of testing the sufficiency of material available. It is a case of absence of material and hence the absence of



*jurisdiction in the Assessing Officer to initiate the proceedings under Section 147/ 148 of the Act.”*

*11. Even in the present case there appears to be no tangible material with the A.O. as can be seen from the reasons recorded and that the reference was made only to the records of the assessment. It thus appears that between the date of the order of assessment and the date of the issuance of notice, nothing new had happened. There was no new information received by the Assessing Officer nor was any reference made to any new material on record. The A.O. was simply attempting to accord a fresh consideration on the issue of deduction under Section 80P of the Act claimed and allowed in favour of the Petitioner.*

*12. We cannot forget that the order of assessment passed in the case of the assessee was under Section 143(3) of the Act. The Petitioner had specifically claimed the deduction under Section 80P of the Act which was not only reflected in the return of income but also gone into specifically as can be seen from the notice issued under Section 142(1) of the Act where by the details of various deductions and exemptions along with documentary evidence had been sought for by the A.O., which finally led to the passing of the order of assessment where by while certain disallowances were made in respect to certain items, the claim of deduction under Section 80P was allowed. It is settled law that if a query is raised during the assessment proceedings and the assessee submits a reply thereto, leading to the passing of the order of assessment, a reopening in the absence of any new tangible material would be nothing but a change of opinion, which would not furnish to the A.O. a basis for his ‘reasons to believe’ that income chargeable to tax had escaped assessment.*

*13. Be that as it may, we are of the opinion that the impugned notice is unsustainable on account of these jurisdictional errors committed by the A.O.. Consequently, the petition is allowed. The impugned notice dated 30th March, 2021 under Section 148 of the Act and the impugned order dated 10th March, 2022 are held to be unsustainable and are accordingly quashed.”*

*6.3 In the case of Surat District Co-op Milk Producers Union Ltd Vs ITO in (2013) 29 taxmann.com 81 (Gujrat), Hon’ble high*



Court of Gujrat held that when the assessee had given full details of dividend income, interest income, essential requirement to reopen assessment after four years was not satisfied. The relevant finding of the Hon'ble High Court is reproduced as under:

“12. Having thus heard learned counsel for the parties and having perused the materials on record, we notice that in the return filed by the petitioner, in addition to claiming deduction of gross income of interest and dividend of Rs.1,81,27,606 under Section 80P(2)(d) of the Act, the petitioner further provided various details. For example, in the Annexure-VII to the return, such deduction under Section 80P(2)(d) was bifurcated into dividend income of Rs.53,71,450 and interest income of Rs.1,27,56,156. Further, the petitioner had also supplied the full details of the statement showing dividend and interest income received from cooperative societies along with dividend counters in the original. Additionally, along with Tax Audit Report under Section 44AB of the Act the petitioner had given details of the dividend income, interest income as well as interest expenses for the said year, which included interest expenditure on fixed deposit, interest expenditure on the Society Savings, Employee Savings, etc.

13. Thus, it can be seen that full details with respect to petitioner's claim for deduction under Section 80P(2)(d) of the Act was very much before the Assessing Officer in the original return accompanied by the audited accounts of the petitioner society. There was, thus, no failure on the part of the petitioner to disclose fully and truly all the material facts necessary for assessment. The essential requirement to enable the Assessing Officer to reopen the assessment and the period of four years is, thus, not satisfied. Therefore, without going into the further question of the very maintainability of the belief of the Assessing Officer that the assessee's income has escaped assessment within the meaning of section 147 of the Act, we find sufficient justification in the petitioner's questioning the reopening the process only on the ground that there was no failure on the part of the petitioner to disclose truly and fully all the material facts.



6.4 *The contention of the ld DR that explanation below the section 147 of the Act prescribing 'producing books of amount does not amount to full and true disclosure of material facts', is not relevant in the case as the AO has not pointed out any material fact, which was not disclosed during regular assessment proceedings.*

6.5 *In view of the above discussion, the reassessment proceedings cannot be sustained, firstly, due to the reason that reassessment proceeding are based on mere 'change of opinion', secondly, no disclosure of full and true material facts by the assessee before the assessing officer, has not been substantiated by the Assessing officer, thirdly, there being no internal or external material to trigger the reopening of assessment or for recording the reasons to believe that income escaped assessment, the action is a kind of review of assessment already completed, for which the AO is not permitted. Hence, the reassessment proceeding u/s 147 of the Act is quashed as void ab initio. The ground No. 1 and 2 of the appeal of the assessee are accordingly allowed."*

5.1 The facts and circumstances of the year under consideration being identical to AY 2013-14, respectfully following the finding of the ITAT (supra) for AY 2013-14 on the issue in dispute in the case of the assessee itself, the reassessment order passed by the AO is held as invalid and void ab-initio. The order of the Ld. CIT(A) on the issue of validity of the reassessment is accordingly set aside and the Ground No. 1 and 2 of the appeal of the assessee are allowed.

5.2 Since we have already held the reassessment order passed u/s 147 of the Act as invalid and bad in law therefore, adjudication of the ground No. 3 in respect of deduction on account of interest received from other than co-operative bank i.e. nationalized bank is merely rendered academic and same is dismissed as infructuous.



6. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open Court on 28/04/2023.**

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

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 28/04/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**