

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.126/SRT/2023 (AY 2017-18)

(Hearing in Virtual Court)

The Government E Co-Operative Society Ltd./, First Floor, Government Sevasadan, Bhag-2, B/h PWD Office, Bharuch-392001 PAN No. AAALT 0832 D	Vs	Principal Commissioner of Income Tax, Vadodara-1, Room No.214, 2 nd Floor, Aaykar Bhawan, Race Course Circle, Vadodara-390007
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Sakar Sharma, C.A
राजस्व की ओर से /Revenue by	Shri Ashok B. Koli, CIT-DR
अपील पंजीकरण/Appeal instituted on	20.02.2023
सुनवाई की तारीख/Date of hearing	23.05.2023
उद्घोषणा की तारीख/Date of pronouncement	23.05.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of ld. Principal Commissioner of Income-tax-Valsad [for short to as “Ld. PCIT”] passed under section 263 of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) dated 30.03.2022 for assessment year (AY) 2018-19 in revising the assessment order passed by the Assessing Officer under section 143(3) r.w.s 144C(3) of the Act dated 25.10.2021. The assessee has raised the following grounds of appeal:-

“1.The Ld PCIT erred on facts and in law in invoking provisions of section 263 of the Act without any justification.

2. The ld PCIT erred on facts and in law in holding the assessment order passed u/s 143(3) to be erroneous and prejudicial to the interests of the revenue.

3. The ld PCIT erred on facts and in law in holding that deduction u/s 80P(2)(a)(i) and u/s 80P(2)(d) granted in assessment order passed u/s 143(3) requires verification and inquiry even though necessary verification and inquiries had already been made by the Assessing Officer while completing assessment.

4. The Ld PCIT erred on facts and in law in setting aside the order of the Assessing Officer without justifiable reasons.”

2. Brief facts of the case are that assessee is a co-operative society engaged in providing the credit facilities to the members. The assessee filed its return of income for assessment year 2017-18 declaring total income of Rs.54,37,690/-. In the computation of income, the assessee claimed deductions on various under Chapter-VI-A including of Section 80P. The case of assessee was selected for scrutiny and assessment was completed under section 143(3) on 20.12.2019 in accepting return. The assessment order was revised by Ld. PCIT exercising his jurisdictional power under section 263 of the Act by taking view that assessee has claimed deduction under section 80P of the Act on interest income received from Bharuch District Central Co-Operative Bank, which was allowed by Assessing Officer without

verification of facts and the provision of law, which should have been made during the course of assessment proceedings. The ld PCIT also referred decisions of Hon'ble jurisdictional High Court in the case of State Bank of India vs. CIT (2016) 72 taxmann.com 64 (Guj), wherein it was held that interest income on deposit placed with commercial bank is not exempt under section 80P(2)(a)(i) of the Act and in Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. Vs. ACIT in SCA No.20585 of 2019 and the judgment of Hon'ble Karnataka High Court in the case of Principal Commissioner of Income-tax vs. Tatagars Co-Operative Sale Society (2017) 83 taxmann.com 140 (Kar) The Ld. PCIT directed the Assessing Officer to pass assessment order afresh after giving the opportunity to the assessee and taking into consideration his observation and which may have been already considered together with the issue discussed by him. Aggrieved by the order of Ld. PCIT the assessee has filed present appeal before the Tribunal.

3. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income-tax Departmental Representative

(Ld. CIT-DR) for the Revenue and perused the order of lower authorities carefully. At the outset of hearing, Ld. AR for the assessee submits that the grounds of appeal raised by assessee is squarely covered in favour of assessee by various decisions of this Bench of the Tribunal, wherein it has been categorically held that Co-Operative bank are primarily a co-operative society and interest earned by cooperative society from other co-operative society is eligible for deduction under section 80P(2)(d) of the Act. The Ld. AR for the assessee submits that this Bench of Tribunal in the case of Bardoli Vibhag Gram Vikas Co-operative Credit Society Ltd. [2021] 127 taxmann.com 334 (Surat-Trib.) considered all such contentions. Thus, the case is squarely covered by the decision of Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd. (supra). The Ld. AR for the assessee filed a copy of the said decisions.

4. On the other hand, Ld. CIT-DR for the Revenue supported the order of Ld. PCIT and submits that Ld. PCIT in his order passed under section 263 has categorically held that the assessing officer allowed deduction under section 80P without verification of facts and the provisions of law, which

should have been made during the assessment. The ld CIT-DR for the revenue submits that he relied on all the decisions referred and relied by ld PCIT in his order.

5. In short rejoinder the ld AR for the assessee submits that once the assessing officer on examination of issue accept the contention of the assessee, it is not necessary for him to discussed the issue in details as the assessee would not be aggrieved with.
6. We have considered the rival submissions of both the parties and perused the order of lower authorities carefully and case law cited by Ld. AR for the assessee. We find that the combination of this bench in Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd. (supra), after considering all such aspect and the issue identified by ld PCIT and the submissions of ld CIT-DR for the revenue passed the following order;

“11. We have considered the rival submission of both the parties. We have also deliberated on the written submission filed by learned AR of the assessee and various case laws relied by him during his submission. We have also gone through the various documentary evidences filed in the form of paper book (PB) by learned AR of the assessee. We have noted that during the assessment the Assessing Officer *vide* notice under section 143(2)/142(1) of the Act dated 31-8-2015 and 13-4-2016. The assessee filed its reply through its CA (AR) and

furnished required details and after examining the issue allowed the deductions under section 80P(2)(d) as discussed in para 4 of the assessment order. The Assessing Officer passed assessment order on 18-10-2016.

12. The Id. PCIT before passing under section 263 of the Act, identified the issue regarding the claim of deduction under section 80P(2)(d) in its show cause notice dated 6-3-2019. The assessee in its reply dated 7-3-2019 clearly explained that the issue was examined by Assessing Officer and that the assessment order is not erroneous. The assessee also explained that similar disallowances/issues was subject matter in the appeal filed by the revenue before Tribunal in A.Y. 2009-10, 2010-11 and 2012-13 and the assessee was allowed similar deductions.

13. The Hon'ble Jurisdictional High Court in *Aryan Arcade Ltd. v. Pr. CIT* [2019] 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. (emphasis added by us). Further, Hon'ble Madras High Court in *CIT v. Mepco Industries Ltd.* [\[2007\] 163 Taxman 648/294 ITR 121 \(Madras\)](#) held that when two views are possible on an issue and it is not the case of the Commissioner that the view taken by Assessing Officer is not permissible in law, Commissioner cannot invoke his jurisdiction under section 263 of the Act. (emphasis added by us)

14. As we have noted above the assessing officer has made enquiries on the allowability of deduction under section 80(P)(2)(d) and passed the assessment order, thus, the Assessing Officer has taken a reasonable and possible view which cannot be held as erroneous.

15. The Hon'ble Karnataka High Court in *Totagars Cooperative Sales Society (supra)* held that for the purpose of section 80P(2)(d) a Co-operative Bank should be considered by a Co-operative Society and interest earned by Co-operative Society from Cooperative Bank would necessarily be deductible under section 80P(1) of the Act. Further, the Hon'ble Jurisdictional High Court in *Surat Vankar Sahakari Sangh Ltd. (supra)* held that assessee co-operative society is eligible for

deduction under section 80P(2)(d) in respect of gross interest received from co-operative bank without adjusting interest paid to said bank.

16. The Co-ordinate Bench of Rajkot Tribunal in *Surendarnagar District Co-operative Milk Producer Union Ltd. v. Dy. CIT* [[2019](#)] [111 taxmann.com 69/179 ITD 690 \(Rajkot Tribunal\)](#) also held the assessee co-operative society could not claim benefit under section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized/private banks, however, the said benefit was available in respect of interest earned and on deposits made with co-operative bank. Thus, in view of the aforesaid legal discussion we are of the considered view that order passed by Assessing Officer is not erroneous, though it may be prejudicial to the interest of the Revenue. Therefore, the twin conditions that orders is erroneous and so far as prejudicial to the interest of revenue, as prescribed under section 263 is not fulfilled in the present case.

17. Moreover, we have seen that in assessee's own case for A.Y. 2009-10, 2010-11 and 2012-13, the similar disallowance under section 80P(2)(d) was made by the assessing officer while passing assessment order under section 143(3), however, on appeal before Ld. CIT(A) , the disallowances were deleted and the order of the Ld. CIT(A) in all years were confirmed.

18. The Id. DR for the revenue relied on the case law in *Totagars Co-operative Sales Society (second case)/(supra)*, wherein the Hon'ble Karnataka High Court held that interest earned by a Co-operative Society from surplus deposits kept with Co-operative bank, is not eligible for deduction under section 80P(2)(d). Considering the legal position that when there are conflicting decisions of non-jurisdictional High Courts, on similar issue, the decision of Jurisdictional High Court is having binding precedent. Thus, keeping in view of the decision Hon'ble Jurisdictional High Court in *Surat Vankar Sahakari Sangh Ltd. (supra)* wherein the assessee-co-operative society is held eligible for deduction under section 80P(2)(d) in respect of gross interest received from co-operative bank without adjusting interest paid to said bank, we conclude that the order passed by assessing officer is not erroneous. Hence, the grounds of appeal raised by assessee are allowed.

19. In the result, appeal of the assessee is allowed.”

7. Considering the consistent decision of this bench, on similar issues. which we have followed in a number of case, and following the principal of consistency, we do not find any merit in the order of Id PCIT, that order passed by the assessing officer is erroneous. In our view the assessing officer while allowing relief of the assessee has not committing any error. In the result, the grounds of appeal raised by the assessee is allowed.

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

Order pronounced in the open court on 23/05/2023.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 23/05/2023

Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Sr. Private Secretary /Private
Secretary /Assistant Registrar,
ITAT, Surat