

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER  
AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	186/PUN/2023	Ajinkaya Madhyamik Shikahak Sevak Sah. Patsanstha Marayadit, 769, Jagtap Colony, Malhar Peth, Satara- 415001. PAN : AAAAA3002D	PCIT-3, Pune.	2018-19
2	213/PUN/2023	Matoshri Nagari Sahakari Pat. Sanstha Maryadit, Flat No.2, 797 Sadashiv Peth, Pate Classic, Barrister Gadgil Street, Pune- 411030. PAN : AAAAM9379D	PCIT-4, Pune.	2017-18
3	226/PUN./2023	Jankalyan Nagari Sahakari Patsanstha Ltd., 67, Guruwar Peth, At Post Tal Karad Dist. Satara- 415110 PAN : AAAAJ1374R	PCIT-3, Pune.	2018-19
4	248/PUN/2023	Kalbhairavnath Gramin Bigarsheti Sahakari Pat Sanstha Maryadit, At PO Yewat Taluka Dound, Dist. Pune- 412214 PAN : AAAAK0302J	PCIT-4, Pune.	2017-18
5	257/PUN/2023	Abhinav Chetana Nagari Sahakari Pathasanstha, Datta Mandir, Loni Kalbhor, Pune- 412201. PAN : AABTA3082B	PCIT-4, Pune.	2018-19

6	258/PUN/2023	Dhanwantari Nagari Sahakari Patsansath, 93, Dhawantari Bhavan, Shaniwar Peth, Satara-415002 PAN : AAAAD2344M	PCIT-3, Pune	2018-19
7	299/PUN/2023	Mahadevnagar Nagari Sahakari Patsanstha Maryadit Mahadevnagar, Mahadevnagar Manjari Road, Tal – Haveli Dist – Pune – 412307 PAN : AAAAM9078M	PCIT-4, Pune.	2018-19
8	322/PUN/2023	Janseva GB Co-Op Pat Sanstha Ltd., Bazar Peth, Main Road, Belapur Town, Tal. Shrirampur, Dist. Ahmednagar- 413715 PAN : AAAAJ2647P	PCIT-1, Pune.	2018-19
9	323/PUN/2023	Dr Dada Gujar Nagri Sahakari Patsanstha Ltd., 01/02 Amar Palace, Pune Solapur Highway Hadapsar Pune – 411028 PAN : AAAAD0295P	PCIT-4, Pune	2018-19
10	324/PUN/2023	The Karad Merchant Sahkari Credit Sanstha Limited, 7/8 Somwar Peth, Karad Dist. Satara- 415110 PAN : AAAAT0955A	PCIT-3, Pune.	2018-19
11	326/PUN/2023	Jankalyan Multi State Cooperative Credit Society Ltd., 940 Jagjivandas Complex, Near Garud Bangla Road, Solapur – 413003 PAN : AABAJ3074H	PCIT-4, Pune.	2018-19

12	334/PUN/2023	Shri Arunoday Multi State Co-Operative Credit Society Ltd., Arunoday, 22 Veershaiv Nagar, Vijapur Road, Jule Solapur- 413001 PAN : AAKAS8478H	PCIT-4, Pune.	2018-19.
13	340/PUN/2023	Hindustan Antibiotics Employees Co- Operative Credit Society Ltd., 1 HA Colony, Pimpri, Pune – 411018 PAN : AAAAH0357E	PCIT-3, Pune.	2018-19
14	346/PUN/2023	Kalibhairavnath Gramin Bigarsheti Sahakari Pat Sanstha Maryadit, At PO Yewat Taluka Dound, Dist. Pune- 412214 PAN : AAAAK0302J	PCIT-4, Pune.	2018-19
15	353/PUN/2023	Ambegaon Taluka Prathamik Shikshak Sahakari Patsanstha Maryadit, At Post Manchar Tal. Ambegaon, Pune Nashik Road, Manchar, Pune- 410503 PAN : AAAAA2166N	PCIT-3, Pune.	2018-19
16	358/PUN/2023	B.G. Shirke Employees Cooperative Credit Society Limited, 72-76 Industrial Estate, Mundhawa Road, Pune – 411036 PAN : AAAAB4805H	PCIT-4, Pune.	2018-19
17	388/PUN/2023	ISSK Employees Credit Co-Operative Society Ltd., Mahatma Phule Nagar, Bijwadi, Tal. Indapur, Dist.Pune- 413106. PAN : AAAAI0101K	PCIT-4, Pune.	2018-19

18	426/PUN/2023	Daund Talluka Prathamik Shikshak Sahakari Phatsanstha Maryadit, Daund Talika Shikshak Bhavan, Near Daund, Nagar Road, Daund, Pune – 412220 PAN AAAAD3461F	PCIT-4, Pune.	2018-19
19	450/PUN/2023	Jijamata Mahila Nagari Bigarsheti Sahakari Patsanstha Maryadit, Shiv Premi Chowk, Main Road, Mangal Wedha, Dist. Solapur – 413305 PAN : AAAAJ3379E	PCIT-4, Pune.	2018-19
20	460/PUN/2023	Kirkee Cantonment Board Employees Credit Cooperative Society Ltd., 17, Field Marshal Kariappa Road, Khadaki, Pune- 411003 PAN : AAAAK4998C	PCIT-2, Pune.	2018-19
21	475/PUN/2023	Shree Choudeshwari Togatveer Kshatriya Nagari Sahakari Patpedhi Maryadit, 94/41 Jodbhavi Peth, Kanna Chowk, Solapur – 413002 PAN : AAAJS1987L	PCIT-4, Pune.	2018-19
22	477/PUN/2023	Ichalkaranji Vyapari Sahakari Patsanstha Ltd., C/o. Sanjay Vhanbatte & Co. Chartered Accountants, CTS No.245, C/1, 1 <sup>st</sup> Floor, Mahalaxmi Bank Bldg., Near Kelavkar Hospital, Tarabai Park, Kolhapur- 416003 PAN : AAAAI0209E	ITO, Ward-1, Ichalkaranji.	2018-19

23	491/PUN/2023	Jay Bajarang Gram Bigarsheti Sah Patsanstha Maryadit, Milkat No. OTUR, OTUR Tal. Junnar, Pune- 412409 PAN : AAAAJ4886A	PCIT-3, Pune.	2018-19
24	496/PUN/2023	Shree Kedareshwar Nagari Sahakari Patsanstha Maryadit, Shop No.4, House No.1376, Near Somaji Bus Stop, Kondhawa BK, Pune- 411048 PAN : AACAS7903B	PCIT-4, Pune.	2018-19
25	502/PUN/2023	Kamal Mahila Nagari S.P.M., Ground Floor, Shreekrishna Niwas, Tilak Road, Panvel, Raigad – 410206 PAN : AAATK8008L	PCIT-1, Thane	2018-19
26	503/PUN/2023	Kamal Nagari Sahakari Patsanstha Ltd., Kamal Bhawan, Shivaji Road, Alibag, Raigad- 402201 PAN : AAAJK0269P	PCIT-1, Thane.	2018-19
27	504/PUN/2023	Keshavsmruti Nagari Sahakari Patpedhi Ltd., 102/103, Aaditya Vihar CHS, Mahatma Phule Road, Panvel- 410206 PAN : AAAAK7390L	PCIT-1, Thane.	2017-18
28	771/PUN/2022	Shree Ghadgenath Gramin Bigar Sheti Sahakari Patsanstha Maryadit, A/P Kole, Karad- 415110 PAN : AAFAS9168R	PCIT-3, Pune.	2017-18

29	889/PUN/2022	Kadepathar Gramin Bigar Sheti Sahakari Path Sanstha Maryadit, At Post Jejuri Tal Purandar, Dist. Pune-412303 PAN : AAAAK4043Q	PCIT-4, Pune.	2017-18
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Assessee by : Shri Prateek Jha (Sl. No.1)  
Shri Manoj R. Jain (Sl. No.2)  
Shri Bhuvnesh Kankani (Sl. No.3)  
Smt. Deepa Khare (Sl. No.4, 9, 10 & 14)  
Shri B. B. Mane (Sl. No.5)  
Mrs. Shuhada A. Koppa (Sl. No.6)  
Shri Pramod S. Shingte (Sl. No.7, 13, 15, 18,  
21, 22 & 23)  
Shri Prasad S. Bhandari (Sl. No.8)  
None (Sl. No.11, 16 & 17)  
Shri Girish Ladda (Sl. No.12 & 19)  
Shri Nikhil S. Pathak & Shri Ajinkya M.  
Vaishampayan (Sl. No.20, 25, 26 & 27 )  
Shri Abhay Avchat (Sl. No.24)  
Shri M. K. Kulkarni & Mrs. J.R. Chandekar  
(Sl. No.28)  
Shri Manoj R. Jain (Sl. No.29)

Revenue by : Shri J. P. Chandraker (Sl. No.1 to 21, 23, 24,  
25, 26, 27, 28 & 29)  
Shri Ramnath P. Murkude (Sl. No.22)

Date of hearing : 22.05.2023  
Date of pronouncement : 23.05.2023

### आदेश / ORDER

#### PER BENCH :

These bunch of twenty nine (29) appeals preferred by the different assesseees for the various assessment years mentioned in the caption emanates from the orders of the Learned Pr.

Commissioner of Income Tax passed u/s 263 of the Income Tax Act, 1961 ('the Act').

2. Since the identical facts and common issues are involved in all the above twenty eight appeals of the different assessees, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal of the assessee in ITA No.186/PUN/2023 for the assessment year 2018-19 are stated herein.

**ITA No.186/PUN/2023, A.Y. 2018-19 :**

4. Briefly, the facts of the case are that the appellant is a Co-operative Society engaged in the business of providing credit facilities to its members. The Return of Income for the assessment year 2018-19 was filed on 25.10.2018 declaring total income of Rs.Nil. In the return of income, the assessee co-operative society had sought the exemption of income earned on deposits made with other co-operative banks or other banks made out of the surplus funds from tax u/s 80P(2)(a)(i)/80P(2)(d) of the Income Tax Act, 1961 ('the Act'). The said claim came to be allowed by the Assessing Officer while completing the assessment u/s 143(3) of the Act.

5. Subsequently, on review of the assessment records, the ld. PCIT was of the opinion that the interest income earned by the assessee co-operative society from the deposit made with other co-operative banks or other banks does not qualify for exemption u/s 80P(2)(a)(i) of the Act. In the opinion of the ld. PCIT, the said interest income was earned from the third party or non-members, which does not qualify for exemption u/s 80P(2)(a)(i) of the Act. Thus, the ld. PCIT formed an opinion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. Therefore, ld. PCIT set-aside the assessment order with a direction to examine the issue *de novo* in the light of the judicial precedents referred to by him in his order u/s 263 of the Act.

6. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of assumption of jurisdiction u/s 263 by the ld. PCIT. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to



invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) and in the case of CIT vs. Max India Ltd., 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible views, the assessment order cannot be termed as an "erroneous".

8. Now, we proceed to examine the existence of fact of debate on the issue of exemption of interest income earned by the assessee co-operative society from other co-operative banks or other banks. There is a cleavage of judicial opinion among several High Courts on the issue of eligibility of this kind of income for exemption u/s. 80P(2)(a)(i) of the Act. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Cooperative Federation of Housing Building Societies Ltd. 11 taxmann.com 448, the Hon'ble Gujarat High Court in the case of State Bank of India Vs. CIT 389 ITR 578 (Guj.), the Hon'ble Delhi High Court in the case of Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT 50 taxmann.com 278, the Hon'ble Punjab & Haryana High Court in the

case of CIT Vs. Punjab State Cooperative Agricultural Development Bank Ltd. 389 ITR 68 and the Hon'ble Kolkata High Court in the case of CIT Vs. Southern Eastern Employees Cooperative Credit Society Ltd. 390 ITR 524 took a view that the income arising on the surplus invested in short term deposits and securities cannot be attributed to the activities of the society and, therefore, not eligible for exemption u/s.80P(2)(a)(i) of the Act. However, the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 taxmann 309 (Kar.) and the Hon'ble Telangana and Hon'ble Andhra Pradesh High Court in the case of Vaveru Co-operative Rural Bank Ltd. v CIT [(2017) 396 ITR 371 took a view that such interest income is attributable to the activities of the society and, therefore, eligible for exemption u/s 80P(2)(a)(i) of the Act. Similar view has been taken by the Hon'ble Calcutta High Court in the case of PCIT vs. Gunja Samabay Krishi Unnayan Samity Ltd., 147 taxmann.com 518 (Calcutta) and the Hon'ble Madras High Court in the case of Chennai Central Co-operative Bank Ltd. vs. ITO, 148 taxmann.com 17 (Madras). The Coordinate Bench of Pune Benches in the case of M/s. Ratnatray Gramin Bigar Sheti Sah. Pat Sanstha Maryadit Vs. ITO (ITA Nos.559/560/PUN/2018, dated 11-12-2018) taken view in

favour of the assessee following the judgment of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra). Respectfully following the decision of the Coordinate Bench of the Tribunal, I am of the considered opinion that the interest income earned on fixed deposits with bank partake of the business income which is eligible for deduction u/s 80P(2)(a)(i) of the Act.

9. The above discussion clearly brings out the fact of existence of debate on the issue of taxability of the interest income earned on the deposits made with other co-operative banks or other banks. Therefore, in the light of the law settled by the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83, the power of revision cannot be exercised by the ld. PCIT in exercising of power vested with him u/s 263 in respect of debatable issue.

10. Even assuming for a moment, there is failure on the part of the Assessing Officer to examine the issue of taxability of interest earned on deposits made with co-operative banks or other banks, in our considered opinion, the power of revision cannot be exercised by ld. PCIT in view of the fact that even on remand to the Assessing Officer, the Assessing Officer is barred from taking a view against

the assessee in view of the consistent view taken by this Tribunal that such interest income qualifies for deduction u/s 80P(2)(a)(i) of the Act. Thus, the act of revision by the ld. PCIT would be futile exercise and mere a useless formality. Therefore, we are of the considered opinion that the ld. PCIT was not justified in exercising the power of revision vested with him u/s 263 of the Act in the facts of the present case. Accordingly, the appeal filed by the assessee stands allowed.

11. In the result, the appeal filed by the assessee in ITA No.186/PUN/2023 for A.Y. 2018-19 stands allowed.

**ITA No.213, 226, 248, 257, 258, 299, 322, 323, 324, 326, 334, 340, 346, 353, 358, 388, 426, 450, 460, 475, 477, 491, 496, 502, 503, 504/PUN/2023 and ITA Nos.771 & 889/PUN/2022, A.Ys. 2017-18 and 2018-19 :**

12. Since the facts and issues involved in remaining 28 appeals of the different assesseees are identical, therefore, our decision in ITA No.186/PUN/2023 for A.Y. 2018-19 shall apply *mutatis mutandis* to the remaining 28 appeals of the different assesseees in ITA No.213, 226, 248, 257, 258, 299, 322, 323, 324, 326, 334, 340, 346, 353, 358, 388, 426, 450, 460, 475, 477, 491, 496, 502, 503, 504/PUN/2023 and ITA Nos.771 & 889/PUN/2022 for A.Ys. 2017-18 and 2018-19 respectively. Accordingly, the remaining 28

appeals of the different assesseees in ITA No.213, 226, 248, 257, 258, 299, 322, 323, 324, 326, 334, 340, 346, 353, 358, 388, 426, 450, 460, 475, 477, 491, 496, 502, 503, 504/PUN/2023 and ITA Nos.771 & 889/PUN/2022 for A.Ys. 2017-18 and 2018-19 stands allowed.

13. To sum up, all the above captioned twenty nine appeals filed by the different assesseees stands allowed.

Order pronounced on this 23<sup>rd</sup> day of May, 2023.

**Sd/-**  
**(S. S. GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 23<sup>rd</sup> May, 2023.

*VBP & Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT- 1/2/3/4, Pune/Thane.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.