

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

SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.521/PUN/2023
Assessment Year : 2018-19

Janahit Nagari Sahakari Pathpedhi Limited
451, Center Street, Camp,
Pune – 411001

PAN: AAAAJ0175A

... Appellant

Vs.

The PCIT-4, Pune

... Respondent

Assessee by : Shri Kishor B Phadke

Respondent by : Shri Ramnath P Murkende

Date of Hearing : 13-06-2023

Date of Pronouncement : 14-06-2023

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Id. Principal Commissioner of Income Tax, Pune-4, dated 23-03-2023 for the Assessment Year 2018-19 as per the grounds of appeal appearing hereinafter.

The grounds of appeal are as follows:

1. *Learned Pr. CIT - 4, Pune erred in law and on facts in treating the Assessment Order u/s 143 (3) being erroneous & thereby prejudicial to the revenue u/s 263 without appreciating the fact that, the learned AO had verified deduction claimed u/s 80P of Rs.5,00,86,324 during the course of scrutiny proceedings and as such, there was mind application by the learned AO.*
2. *Learned Pr. CIT - 4, Pune erred in law and on facts in treating the Assessment Order u/s 143(3) being erroneous & thereby prejudicial to the revenue u/s 263 merely for conducting more enquiries by overriding the assessing powers of the AO.*
3. *Learned Pr.CIT-4, Pune erred in law and on facts in treating the Assessment Order u/s 143(3) being erroneous & thereby prejudicial to the revenue u/s 263 by merely alleging lack of enquiry and verification*

by the learned AO, without verifying any details per se. Learned PCIT-4, Pune ought to have reached "satisfaction" that alleged non-verification by AO leads to making an erroneous order which is prejudicial to the interest of revenue.

2. At the outset, the learned counsel for the assessee submitted that this matter is covered by the earlier decision on the same identical issue of the Pune Tribunal in ITA No.231/PUN/2022 for assessment year 2017-18, order dated 29.11.2022, wherein also it was the order passed u/s 263 read with issue of deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') or 80P(2)(d) of the Act.

3. The learned DR conceded that the facts are absolutely identical and similar.

4. We observe that the Pune Tribunal in ITA No.231/PUN/2022 (supra) on examination of the facts held as follows:

"3....

The appellant is a cooperative society formed under the Maharashtra Co-operative Societies Act, 1960. It is engaged in the business of accepting deposits from members and providing credit facilities to its members. The original Return of Income for the assessment year 2017-18 was filed on 18.10.2017 disclosing total income of Rs.3,11,740/-. Subsequently, the assessee revised the return of income declaring Rs.Nil income after claiming deduction of Rs.6,32,86,382/- under the provisions of section 80P of the Income Tax Act, 1961 ('the Act'). Against the said return of income, the assessment was completed by the Assessing Officer accepting the returned income vide order dated 19.11.2019 passed u/s 143(3) of the Act.

4. Subsequently, on examination of the assessment order, the Id. PCIT formed an opinion that failure the Assessing Officer to examine the taxability of interest earned on the investments made with the cooperative banks, as the same constitutes business income, rendered the assessment order erroneous. Accordingly, the Id. PCIT issued a show cause notice dated 08.03.2022 u/s 263 calling upon the appellant society to explain as to why the assessment order dated 19.11.2019 should not be treated as erroneous and prejudicial to the interests of the revenue. In response to the show cause notice, the appellant filed a detailed submission stating that the interest income earned by the cooperative bank on the investments made with the other cooperative bank is eligible for deduction under the provisions of section 80P(2)(a)(i) as well as under the provisions of section 80P(2)(d) placing reliance on the following decisions :

- (i) *Gurumauli Nagari Sahkari Pat Sanstha vs. PCIT order dated 13.01.2022 (Pune – Trib.)*.
- (ii) *Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO 230 Taxman 309 (Kar – HC)*.
- (iii) *Sureshdada Jain Nagari Sahakari Patsanstha Maryadit (ITA No.713/PUN/2016)*.
- (iv) *Nasik Road Nagri Sahakari Patsanstha (ITA No.1700/PUN/2017 order dated 27.12.2021)*.
- (v) *ITO vs. Shri Laxmi Narayan Nagari Sahakari Pathsanstha (ITA No.2827/PUN/2016 order dated 19.09.2018)*.
- (vi) *Sant Motiram Maharaj Patsanstha Ltd. vs. ITO, 120 taxmann.com 10*.

5. It is further submitted that the Assessing Officer had allowed the claim of exemption after due application of mind on the issue in appeal and, therefore, the Explanation 2 to section 263 cannot be invoked. However, the Id. PCIT on due consideration of explanation filed by the appellant held that the failure of the Assessing Officer to examine the issue rendered the assessment erroneous and prejudicial to the interests of the revenue. Accordingly, Id. PCIT set aside the assessment order with a direction to examine the assessee's claim of deduction u/s 80P(2)(a)(i) as well as interest of Rs.19,88,77,712/- u/s 80P(2)(d) after affording reasonable opportunity of being heard to the appellant.

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

7. The Id. AR submits that the issue of eligibility of income earned on the investment made with the cooperative bank was examined by the Co-ordinate Bench of this Tribunal in the case of *M/s. Jan Kalyan Nagri Sahakari Pat. Limited Sanstha* in ITA No.825/PUN/2019 for A.Y. 2014-15 order dated 26.08.2022. The Id. AR submits that the issue is covered in favour of the appellant. In support of this proposition, Id. AR relied on the following judicial precedents :-

- (i) *Nashik Road Nagari Sahkari Patsanstha Limited vs. ITO (ITA No.1700/PUN/2017 dated 27.12.2021)*.
- (ii) *Rena Sahakari Sakhar Karkhana Ltd. vs. Pr.CIT (ITA No.1249/PUN/2018 dated 07.01.2022)*.
- (iii) *Shri Chandraprabhu Urban Co-operative Credit Society Ltd. vs. ITO (ITA No.61 & 62/PAN/2018 dated 10.05.2022)*.

8. Thus, it was contended that when the issue was stands covered and decided in favour of the assessee, then it cannot be said that the assessment order is erroneous as well as prejudicial to the interests of the revenue.

9. On the other hand, Id. CIT-DR placing reliance on the order of the Id. PCIT submits that failure of the Assessing Officer to examine the taxable income earned on the investments from cooperative bank rendered assessment order erroneous and prejudicial to the interests of the revenue. Therefore, he submits that the Id. PCIT was justified in exercising the power of revision u/s 263 of the Act.

10. 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 Id. 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". In the present case, we find that admittedly the interest income was earned from the cooperative banks, the cooperative bank is also a specie of cooperative society, therefore, the interest income earned by the cooperative society from the cooperative banks qualifies for deduction u/s 80(P)(2)(d) of the Act. Such interest also qualifies for exemption u/s 80P(2)(a)(i) as held by the Co-ordinate Bench of Pune Tribunal in the case of Nashik Road Nagari Sahkari Patsanstha Limited (supra) wherein the Tribunal held as under:-

"9. We heard the rival submissions and perused the material on record. Admittedly, the appellant is a Cooperative society formed under the provisions of Maharashtra Cooperative Societies Act, 1960 with the objective of accepting deposits and lending money to its members. The money which is not immediately required for the purpose of lending to the members is deposited with Bank of Baroda in the form of Fixed Deposit. The question is whether the interest so earned qualifies for exemption u/s. 80P(2)(a)(i) of the Act. The AO as well as the CIT(A) were of the opinion that the interest earned from third parties or nonmembers does not qualify for exemption u/s.80P. It is an admitted position that the interest so earned should be taxed as 'income from other sources' 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 Cooperative 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 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. 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) has 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, we hold that the interest income earned on the investment of surplus money with banks is also eligible for exemption u/s.80P(2)(a)(i) of the Act. Thus, the grounds of appeal No. 1 & 2 stands allowed."

11. Thus, we find that the issue which is subject matter of revision is covered in favour of the assessee by judicial precedents. Therefore, it cannot be said that the assessment order is erroneous or prejudicial to the interests of the revenue. Therefore, we are of the considered opinion that the order of revision passed by the Id. PCIT u/s 263 of the Act cannot be sustained in the eyes of law. Hence, the grounds of appeal raised by the assessee stand allowed."

5. Respectfully following the decision cited hereinabove, we find that the issue which is subject matter of revision is covered in favour of the assessee by judicial precedents. Therefore, we are of the considered opinion that the order of revision passed by the Id. PCIT u/s 263 of the Act cannot be sustained in the eyes of law. Hence, the grounds of appeal raised by the assessee stands allowed.

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

Order pronounced in the open Court on this 14th day of June, 2023.

Sd/-
(G.D. PADMAHALI)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 14th June, 2023
GCVSR

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. D.R. ITAT 'A' Bench
4. Guard File

//True Copy//

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

1	Draft dictated on	13-06-2023	Sr.PS/PS
2	Draft placed before author	13-06-2023	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
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