IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1001/Mum./2023
(Assessment Year : 2018–19)

IRIS Co–operative Housing Society Ltd.
Plot no.102, Backbay Reclamation
Cuffe Parade, Mumbai 400 005
PAN – AAABI0021R

……. Appellant

v/s

Principal Commissioner of Income Tax
Mumbai–17, Mumbai

…….. Respondent

Assessee by : Shri Ishraq M. Contractor
Revenue by : Shri Manish Sareen

Date of Hearing – 21/06/2023	Date of Order – 28/06/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 20/03/2023, passed under section 263 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax-17, Mumbai ("*learned PCIT*"), for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds:-

> *"1. The Ld. PCIT-17 failed to appreciate that the appellants case was selected for scrutiny specifically to examine availability of deduction under chapter VIA and thereby the issue of allowability of BOP deduction was examined by the AO during the scrutiny proceedings. Thus, Ld. POT-17 erred in law as well as on the facts of the case by invoking section 263 of the Act by stating that assessment order passed by AO under section 14313) r.w.s. 143(3A) & 143(38) of the Act was made without proper application of the provisions of the Act. The order passed by PCIT-17 u/s. 263 of the Act is without jurisdiction.*

2. The Ld. PCIT-17 erred in law as well as on facts of the case in setting aside the assessment order dated 6 January 2021 passed by assessing officer under section 143(3) r.w.s. 143(3A) & 143(38) of the Act by denying deduction of INR 27,20,624/- under section 80P(2)(d) of the Act.

3. The Ld. PCIT-17 erred in stating in her 263 order that deduction under section 80P is available only against the income earned under the head profits and gains of business and not against income under the head Income from other sources. The PCIT ought to have appreciated that the appellant has claimed deduction under section 80P(2)(d) and that there is no requirement under section 80P(2)(d) for interest income to be in the nature of business income.

4. The Ld. PCIT-17 ought to have appreciated that section 80P(4) denies benefit of section 80P to co-operative banks and that the Insertion of section 80P(4) can in no way jeopardize the claim of deduction of a co-operative society under section 80P(2)(d) of the Act.

5. The Ld. PCIT-17 ought to have appreciated that just because co-operative banks are not eligible to deduction u/s. 80P of the Act does not mean that co-operative housing societies are also to be denied the benefit of the section in respect of their investment in a Co-operative Banks. It ought to have been appreciated that all societies registered under the Co-operative Societies Act, including Co-operative banks are co-operative societies u/s. 2(19) of the Act. As such even if such banks are denied the deduction by virtue of section 80P(4), investments made in such banks by a co-operative housing society would be eligible for 80P deduction.

6. The Ld. PCIT-17 in her 263 order has neither rebutted nor countered several decisions of the courts wherein it has been held that section 80P(2)(d) is independent of section 80P(4) and that there is no bar on a co-operative society to claim deduction under section 80P(2)(d) of the act on interest income derived from another co-operative society. Investment in co-operative banks is to be treated at par with investment in co-operative societies for the purpose of deduction under section 80P(2)(d) of the act.

7. The Ld. PCIT-17 erred in law as well as on the facts of the case in relying on the decision of the Hon'ble Supreme Court In case of Citizen Co-operative Society Ltd. vs. Assistant Commissioner of Income-tax, Circle - 9(1), Hyderabad 84 Taxmann.com 114 (2017) even though the given decision is not applicable to the facts of our case.

8". The Ld. PCIT-17 ought to have appreciated that the benefit of deduction claimed under section 80P(2)(d) has nothing to do with principal of mutuality and thereby the decision in case of M/s. Bangalore Club Vs. CIT quoted in 263 order is irrelevant and not applicable to the facts of appellant's case.

<u>Relief Sought</u>:

Your Appellant prays that the order of the learned PCIT-17 under section 263 of the Act, setting aside the assessment order dated 6 January 2021 passed by assessing officer under section 14313) r.ws. 14313A) & 143(3B) of the Act, be held to be invalid and be annulled.

The appellant craves leave to amend or alter any of the above grounds or add new grounds, if and when necessary.

3. The only dispute raised by the assessee, in the present appeal, is against the invocation of revisionary proceedings under section 263 of the Act by the learned PCIT.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a co-operative housing society, registered under the Maharashtra Co-operative Societies Act, 1960. For the year under consideration, the assessee filed its return of income on 24/08/2018 declaring a total income of Rs.1910. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to explain and justify the deduction claimed under section 80P of the Act with supporting evidence. In response thereto, the assessee filed a detailed reply along with supporting documentary evidence in respect of its claim of deduction under section 80P of the Act on account of interest income of Rs.27,20,624 earned from the co-operative banks. The Assessing Officer ("*AO*") vide order dated 06/01/2021 passed under section 143(3) read with sections 143(3A) and 143(3B) of the Act, after considering the replies filed by the assessee, accepted the income returned by the assessee and granted the deduction claimed under section 80P of the Act.

5. Subsequently, vide notice dated 06/03/2023 issued under section 263 of the Act, the learned PCIT initiated revisionary proceedings on the basis that interest income earned by the assessee out of surplus funds is not eligible for deduction in terms of provisions of section 80P(2)(d) of the Act. It was further alleged that the interest income is mainly earned from investments made in co-operative bank, which is not a co-operative society as referred to in section 80P(4) of the Act. Thus, it was alleged that the AO has not verified the details of interest income earned by the assessee during the year under consideration and has also not applied his mind on the issue as was expected under the facts

and circumstances of the case. Accordingly, the learned PCIT alleged that the assessment order passed under section 143(3) read with sections 143(3A) and 143(3B) of the Act is erroneous and prejudicial to the interest of the Revenue within the meaning of Explanation 2 to section 263(1) of the Act.

6. In response thereto, the assessee submitted that section 263 cannot be invoked in the present case, as the AO has made proper enquiry and verification of the claim of the assessee under section 80P of the Act. The assessee further submitted that the only issue for which the case was selected for scrutiny was to examine the claim of deduction under Chapter VI-A of the Act. The assessee also submitted that it provided complete details in respect of its claim of deduction under section 80P(2)(d) of the Act during the assessment proceedings and only after consideration of the details so filed by the assessee, the scrutiny assessment concluded at the returned income.

7. The learned PCIT vide impugned order did not agree with the submissions of the assessee and held that while accepting the explanation filed by the assessee, the AO has completely acted in a manner prejudicial to the interest of the Revenue inasmuch as the investments have been made by the assessee with banks that do not form part of excluded categories as per section 80P(4) of the Act. The learned PCIT further held that the income earned by the assessee does not fall in section 80P(2)(d) of the Act, as the deduction cannot be extended to the interest income earned from the investment in any co-operative bank. It was also held that all the conditions of the principle of mutuality are not satisfied in case of interest earned from co-operative banks by the assessee. Thus, the learned PCIT held that the AO had to complete the assessment in light of the provisions of section 80P(2)(d) and section 80P(4) of the Act, which the AO has failed to do. Vide impugned order, the learned PCIT held the assessment order to be erroneous and prejudicial to the interest of Revenue and accordingly, set aside the same, with a direction to the AO to frame the assessment *de novo* after proper application of the provisions of the Act regarding the applicability of section 80P(2)(d) in the case of the assessee. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. The assessee is a co-operative housing society registered under the Maharashtra Co-operative Societies Act 1960, whose only source of revenue is from contributions from members and interest on deposits held with co-operative banks and non-cooperative banks. The interest income earned from co-operative banks of Rs.27,20,624 was claimed as a deduction under section 80P(2)(d) of the Act, and the interest earned from non-cooperative banks was offered to tax under the head "*other sources*". We find that vide notice dated 22/09/2019 issued under section 143(2) of the Act, forming part of the paper book from pages 7-8, the return filed by the assessee was selected for limited scrutiny in respect of deduction claimed under Chapter VI-A of the Act. Vide notice dated 11/12/2020 issued under section 142(1) of the Act, the assessee was asked to furnish a note on eligibility criteria of deduction claimed under sections of Chapter VI-A along with documentary evidence. The assessee was also asked to furnish a note on the deduction claimed under section 80P of the Act. We find that the said notices were duly responded to by the assessee vide submission dated 17/12/2020, forming part of the paper book from pages 12-17. During the assessment proceedings, the assessee submitted that the only deduction claimed under Chapter VI-A is the interest earned from co-operative banks as per the provisions of section 80P(2)(d) of the Act. The assessee also submitted that the interest claimed as deduction under section 80P(2)(d) has been received from the co-operative banks, namely, Maharashtra State Co-operative Bank, Saraswat Co-operative Bank, and Shamrao Vithal Co-operative Bank, which are registered as co-operative societies. In this regard, the assessee furnished the confirmation of registration as co-operative societies received from the respective co-operative banks, forming part of the paper book from pages 41-46. The AO vide assessment order dated 06/01/2021 after considering the detailed reply filed by the assessee along with supporting documentary evidence accepted the claim of deduction under section 80P(2)(d) of the Act. However, the learned PCIT vide impugned order passed under section 263 of the Act set aside the aforesaid assessment order on the basis that the interest has been earned from the co-operative banks

which are covered under the provisions of section 80P(4) of the Act and therefore the assessee is not entitled to claim deduction under section 80P(2)(d) of the Act. As noted above, the learned PCIT held that the AO has not verified the details of interest income earned by the assessee during the year under consideration, and thus the assessment order is erroneous and prejudicial to the interest of the Revenue.

9. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a co-operative society. Further, section 80P(2)(d) of the Act, reads as under:

> "*80P. Deduction in respect of income of co-operative societies.*
> *(1) .....*
> *(2) The sums referred to in sub-section (1) shall be the following, namely:–*
> *(a) .....*
> *(b) .....*
> *(c) .....*
> *(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;"*

10. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the co-operative society from the investments, and (ii) such investments should be with any other co-operative society. Further, the term '*co-operative society*' is defined under section 2(19) of the Act as under:

> "*(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;"*

11. In the present case, there is no dispute that the assessee is a co-operative housing society. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the assessee,

the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the State Co-operative Bank. Accordingly, the assessee kept the deposits in co-operative banks registered under the Maharashtra Co-operative Societies Act and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The learned PCIT found fault in the claim of deduction under section 80P(2)(d) of the Act on the basis that the co-operative bank is covered under the provisions of section 80P(4) of the Act. We find that the Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. vs CIT, Calicut, [2021] 431 ITR 1 (SC) while analysing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only co-operative banks, which are co-operative societies and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, in light of the aforesaid decision, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the taxpayer, who is a co-operative bank, claims a deduction under section 80P of the Act, which is not the facts of the present case. Therefore, we find no merits in the aforesaid reasoning adopted by the learned PCIT vide impugned order passed under section 263 of the Act. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all co-operative banks are co-operative societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the co-operative banks is allowable as a deduction under section 80P(2)(d) of the Act.

12. Therefore, in view of the above, we are of the considered view that the AO has rightly allowed the claim of deduction under section 80P(2)(d) of the Act in respect of the interest earned from the co-operative banks and thus the

assessment order cannot be held to be erroneous. The Hon'ble Supreme Court in Malabar Industrial Co. Ltd. v/s CIT, [2000] 243 ITR 83 (SC) held that in order to invoke section 263, the assessment order must be erroneous and also prejudicial to revenue, and if one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to Revenue or if it is not erroneous but is prejudicial to Revenue, recourse cannot be had to section 263 of the Act. Since both the conditions for invoking the provisions of section 263 of the Act are not satisfied in the present case, therefore the impugned order passed by the learned PCIT under section 263 of the Act is quashed. Accordingly, the grounds raised by the assessee are allowed.

13. In the result, the appeal by the assessee is allowed.
Order pronounced in the open Court on 28/06/2023

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 28/06/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai