

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

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1356/MUM/2023
(Assessment Year: 2018-19)**

**Shree Jyotirling Sahakari
Patsanstha Limited,**

Gala No. 1020 APMC Fruit Market,
Sector -19, Turbhe, Vashi,
Navi Mumbai - 400705
[PAN: AAGAS6572G]

..... **Appellant**

**Principal Commissioner of Income
Tax, Mumbai,**

Room No. 401, 4th Floor, Tower No. 6,
Vashi Railway Station, Vashi,
Navi Mumbai - 400703

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Sushant Alme
For the Respondent/Department : Shri Dr. Kishor Dhule

Date : 20.06.2023
Conclusion of hearing : 23.06.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 27/03/2023, passed by the Ld. Principal Commissioner of Income Tax, Mumbai-7 [hereinafter referred to as 'the PCIT'] under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] pertaining to the Assessment Year 2018-19, whereby the PCIT had set aside the Assessment Order dated 01/02/2021, passed under Section 143(3) read with Section 143(3A) & 143(3B) of the Act holding the same to be erroneous in

so far as prejudicial to the interest of the Revenue.

2. The Appellant has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law the Ld. Principal Commissioner of Income Tax-27, Mumbai was not justified to set aside the assessment order passed by the Income tax Officer, National e-Assessment Centre, Delhi dated 01-02-2021 and directing the Assessing Officer to pass fresh assessment order based on the findings in the order passed u/s 263 of the Income Tax Act, 1961.*
- 2. On the facts and in the circumstances of the case and in law the Ld. Assessing Officer after conducting proper enquiry and after due verification of records, examined the issue of chargeability on interest on investment and taken a view that the said interest income is eligible for deduction u/s 80P(2)(a)(i) of the Act, however, the Ld. Principal Commissioner of Income Tax-27, Mumbai has taken different view while passing the order u/s 263 of the Act and therefore, order passed by the PCIT is without jurisdiction and same is bad in law.*
- 3. The Ld. PCIT-27, Mumbai has failed to properly verify the assessment record and written submission made by the appellant Society during the course of assessment proceedings where the deduction is allowed u/s 80P(2)(a)(i) and not u/s 80P(2)(d) of the IT Act, 1961 as noted in his order.*
- 4. The PCIT while passing the orders has wrongly observed that the appellant Society has invested idle funds in order to earn the interest income though the assessee Society has made investments as per the statutory requirements governing the Society.*
- 5. The PCIT while passing the orders has wrongly relied on the Hon'ble Supreme Court decision in the case of Totgar Co-op. Sales Society Ltd. and latest Hon'ble Karnataka High Court decision in the case of PCIT, Hubli v/s. Totgar Co-op. Sales Society 392 ITR 74 (ITA No-100069/2016) as the assessee Society has not made investment of idle funds.*
- 6. The Ld. PCIT-27, Mumbai has erred in giving direction to the Assessing Officer to pass fresh assessment order after examining legal position discussed by him in his order.*
- 7. The appellant craves leave to add, amend, alter, modify,*

substitute, vary, and rescind all or any of the above ground(s) of appeal before or at the time hearing.”

3. The relevant facts in brief are that the Appellant is a co-operative credit society registered under Maharashtra Co-operative Societies Act, 1960.
4. The Appellant filed return of income on 20/09/2018 for the Assessment Year 2018-19 declaring 'Nil' income after claiming deduction under Section 80P(2)((a)(i) of the Act. Subsequently, the case of the Appellant was selected under e-Assessment Scheme – 2019 for complete scrutiny assessment for the reason 'Deduction from Total Income under Chapter VI-A. Vide order dated 01/02/2021, passed under Section 143(3) of the Act read with Section 143(3A) & (3B) of the Act the returned filed by the Appellant was accepted without making any additions/disallowances.
5. On perusal of the records the PCIT noted that during the assessment proceedings the Appellant had filed letter, dated 22/02/2020, wherein it was stated that the Appellant has earned interest income of INR 63,53,216/- from co-operative banks which qualifies for deduction under Section 80P(2)(a)(i) of the Act and also under Section 80P(2)(d) of the Act. The PCIT was of the view that the deduction under Section 80P(2)(a)(i) of the Act is available only in respect of the income which is attributable to the business operation of the Appellant i.e. providing credit facilities to its members. Since the interest income received by the Appellant from the co-operative banks did not arise from the business of providing credit facilities to its members, the Appellant was not entitled to deduction under Section 80P(2)(a)(i) of the Act. Further, the PCIT

was of the view that under Section 80P(2)(d) of the Act deduction is allowable in respect of income by way of interest or dividend derived by the co-operative society from its investments with any other co-operative society. Whereas the Appellant had earned interest income from co-operative banks. Therefore, the Appellant was not entitled to deduction under Section 80(P)(2)(d) of the Act. Accordingly notice under Section 263(1) of the Act was issued to the Appellant on 28/02/2023. The Appellant did not respond to the aforesaid notice and the reminders issued on 14/03/2023 and 20.03.2023. Therefore, the PCIT passed order under Section 263 of the Act on 27/03/2023 setting aside the Assessment Order, dated 01/02/2021, as being erroneous in so far as prejudicial to the interest of Revenue holding as under:

"In view of above facts and circumstances of the case and judicial decisions relied upon, the order passed by the A.O. did suffer from Irregularity and needs to be remanded back for re-adjudication after proper examination of evidence submitted by the assessee.

Therefore, it is held that the order passed in the instant case dated 01/02/2021 u/s. 143(3) read with Section 143(3A) and 143(3B) of the Income-tax Act, 1961 is erroneous in so far as it is prejudicial to the interests of the revenue within the meaning of Section 263 of the Act and, as the Assessing Officer failed to conduct proper inquiries, investigation and examination, the assessment order is set aside to the Assessing Officer with the direction to pass a fresh assessment order considering the issues raised in the notice u/s 263 and the findings given in the order, after conducting proper verification and examination in accordance with law and after affording sufficient opportunities of being heard to the assessee." (Emphasis Supplied)

6. Being aggrieved, the Appellant has preferred the present appeal challenging the above order, dated 27/03/2023 passed by the PCIT under Section 263 of the Act.

7. We have heard both the sides, perusal the material on record and considered the position in law.
8. In the case of Malabar Industrial Co. Ltd. v. CIT: 243 ITR 83, the Hon'ble Supreme Court held that powers of revision under Section 263 of the Act can be exercised provided the following two conditions are satisfied. First, the assessment order must be erroneous and second, the assessment order must be prejudicial to the interests of the Revenue.
9. The issue at the core of the present appeal is the allowability of deduction under Section 80P of the Act in respect of interest earned from co-operative banks by the Appellant. We find merit in the contention advanced by the Learned Departmental Representative that the aforesaid interest income could not have been allowed as deduction under Section 80P(2)(a)(i) of the Act since it was not arising from business operations and was in the nature of income from other sources. At the same time, we also find merit in the contention of the Learned Authorised Representative for Appellant that the aforesaid interest income was allowable as deduction under Section 80P(2)(d) of the Act. The Appellant has raised the alternative claim of deduction under Section 80P(2)(d) of the Act during the assessment proceedings also. In this regard, the Learned Authorised Representative for Appellant had relied upon the decision of the Mumbai Bench of the Tribunal in the case of Sahyadri Nagari Sahakari Patpedhi Limited Vs. Pr. CIT-1, Thane [ITA No. 726/Mum/2022, dated 31/01/2023] wherein it has been held that a cooperative society is entitled to claim deduction for interest received from a cooperative society/bank under Section 80P(2)(d) of the Act. In view of the aforesaid, we conclude that the

Assessment Order dated 01/02/2021 was erroneous but not prejudicial to interest of the Revenue. Accordingly, as per the judgment of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. (supra), the PCIT was not justified in exercising powers of revision under Section 263 of the Act since both the conditions (specified in paragraph 8 above) were not satisfied.

10. As regards the contention of the Learned Departmental Representative that the Assessing Officer has failed to make proper inquiry/verification, and therefore, the assessment order would be deemed to erroneous in so far as prejudicial to the interest of Revenue is concerned, based upon the material on record we are of the considered view that even if the necessary inquiries were made or necessary verifications were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted as the Appellant was entitled to claim deduction in respect of interest income received from cooperative society/bank under Section 80P(2)(d) of the Act. Thus, the exercise of power under Section 263 of the Act by invoking provisions of Explanation 2 to Section 263 of the Act, was not warranted in the facts and circumstances of the present case. Our aforesaid view draws support from the decision of the Mumbai Bench of the Tribunal in the case of Sir Dorabji Tata Trust Vs DCIT : 2021] 188 ITD 38 (Mumbai - Trib.)[28-12-2020] wherein it has been held as under:

"22. Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, Commissioner may indeed have the powers to invoke his powers under section 263 but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage for such inquiries and verifications. There can be

*three mutually exclusive situations with regard to exercise of powers under section 263, read with Explanation 2(a) thereto, with respect to lack of proper inquiries and verifications. The first situation could be this. Even if necessary inquiries and verifications are not made, the Commissioner can, based on the material before him, in certain cases straight away come to a conclusion that an addition to income, or disallowance from expenditure or some other adverse inference, is warranted. In such a situation, there will be no point in sending the matter back to the Assessing Officer for fresh inquiries or verification because an adverse inference against the assessee can be legitimately drawn, based on material on record, by the Commissioner. In exercise of his powers under section 263, the Commissioner may as well direct the Assessing Officer that related addition to income or disallowance from expenditure be made, or remedial measures are taken. **The second category** of cases could be when the Commissioner finds that necessary inquiries are not made or verifications not done, but, based on material on record and in his considered view, even if the necessary inquiries were made or necessary verifications were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted. Clearly, in such cases, no prejudice is caused to the legitimate interests of the revenue. No interference will be, as such, justified in such a situation. That leaves us with the third possibility, and that is when the Commissioner is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this exercise by the Assessing Officer, a conclusive finding is not possible one way or the other. That is perhaps the situation in which, in our humble understanding, the Commissioner, in the exercise of his powers under section 263, can set aside an order, for lack of proper inquiry or verification, and ask the Assessing Officer to conduct such inquiries or verifications afresh.*”
(Emphasis Supplied)

11. In view of the above, we allow Ground No.1 raised by the Appellant and hold that in the facts and circumstances of the present case the PCIT lacked the jurisdiction to exercise powers under Section 263 of the Act. Accordingly, the order, dated 27/03/2023, passed by the PCIT under Section 263 of the Act is set aside and the Assessment Order, dated 01/02/2021, is reinstated.

12. Ground No. 2 to 7 raised by the Appellant are disposed of as being infructuous.
13. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 23.06.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 23.06.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai