

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	642/PUN/2023	Shri Bangadas Swami Shikshan Vikas Mandal Sevak Sahakari Patasanstha Maryadit, At Post- Ane, Tal. Junnar, Dist.- Pune- 412410. PAN : AAABS3217M	PCIT-3, Pune.	2018-19
2	598/PUN/2023	Shri Vitthal Sahakari Sakhar Karkhana Sevkanchi Sahakari Patsanstha, Venunagar, Village Gursale, Tal. Pandharpur, Dist. Solapur- 413304. PAN : AACAS8470K	PCIT-4, Pune.	2018-19

Assessee by : Shri Pramod S. Shingte (Sl. No.1)  
None (Sl. No.2)  
Revenue by : Shri Ajay Kumar Kesari  
Date of hearing : 10.07.2023  
Date of pronouncement : 11.07.2023

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

These are the appeals filed by the two different assesseees for  
the assessment year 2018-19 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 both the above captioned appeals of the two 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.642/PUN/2023 for the assessment year 2018-19 are stated herein.

**ITA No.642/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 05.10.2018 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 Id. 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 Id. 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 Id. PCIT formed an opinion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. Therefore, Id. 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 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".

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.com 309 (Kar.) and the Hon'ble Telangana and the Hon'ble Andhra Pradesh High Court in the case of Vaveru Co-operative Rural Bank Ltd. vs. 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 Tribunal 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 this Tribunal, we are 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 order of remand by this Tribunal would be futile exercise, nothing but a useless formality. In the circumstances, 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.642/PUN/2023 for A.Y. 2018-19 stands allowed.

**ITA No.598/PUN/2023, A.Y. 2018-19 :**

12. Since the facts and issues involved in both the above captioned appeals of the two different assesseees are identical, therefore, our decision in ITA No.642/PUN/2023 for A.Y. 2018-19 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.598/PUN/2023 for A.Y. 2018-19 respectively. Accordingly, the appeal of the assessee in ITA No.598/PUN/2023 for A.Y. 2018-19 stands allowed.

13. To sum up, both the above captioned appeals of the two different assessee stands allowed.

Order pronounced on this 11<sup>th</sup> day of July, 2023.

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> July, 2023.

*Sujeet*

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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