आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

(Conducted Through Virtual Court)

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.89/RJT/2019
Assessment Year : 2014-15

Shri Bhaktinagar Co-operative Housing Society Ltd. Meghani Rang Bhavan Rajkot. PAN : AAAAS 2363 M	Vs.	Pr.CIT-III Aaykar Bhavan Rajkot.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/**(Respondent)

Assessee by :	Shri Gautam Achary, ld.AR
Revenue by :	Shri Shramdeep Sinha, ld.CIT-DR

सुनवाई की तारीख/**Date of Hearing : 10/08/2023**
घोषणा की तारीख /**Date of Pronouncement: 08/11/2023**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the ld.Pr.Commissioner of Income Tax-III, Rajkot [hereinafter referred to as "Ld.Pr.CIT by exercising his power under section 263 of the Income Tax Act, 1961 ("the Act" for short) dated 18.2.2019 pertaining to the Asst.Year2014-15.

2. The grounds raised in the appeal read as under:

1) *On the facts and in the circumstances of the case, the order passed by the learned Pr.C.I.T. u/s. 263 of the l.T. Act is ab initio void being bad in law.*

2) *On the facts and in the circumstances of the case, the learned Pr.C.I.T. erred in setting aside the assessment order dated 26th December, 2016 and directing the Assessing Officer to pass a fresh assessment order.*

3) *On the facts and in the circumstances of the case the learned Pr.C.I.T. erred in not considering the facts that the societies registered before enactment of Income Tax Act 1961, having special relief as per SRO 998 and SRO 1800 with exemption from Income Tax.*

4) *On the facts and in the circumstances of the case, the learned Pr.C.I.T. erred in directing Assessing Officer to assess the income under section SOP.*

5) *On the facts and in the circumstances of the case, the learned Pr.C.I.T. erred in not considering the facts that the Government had made the Part B States (Taxation Concessions) Order, 1950 vide SRO 998 dated 2nd December, 1960, which is still continue in force and not withdrawn by Government.*

3. As transpires from the order of the ld.Pr.CIT, he assumed jurisdiction for revision of the assessment order passed in the present case under section 143(3) of the Act, noting error therein that the AO had allowed the assessee's claim of deduction under section 80P(2)(c)/(d) of the Act of interest income and rental income without making proper verification. He noted that the rental income was not computed as per the law and deduction on account of the same as also interest income was not allowable to the assessee in terms of section 80P(2)(c) d) of the Act. Accordingly, notice under section 263 of the Act was issued to the assessee, which is reproduced at page no.2 to 4 of the order as under:

"Upon perusal of records of AY 2014-15, it is seen that a return of income was filed declaring total income of Rs. NIL (loss of Rs. 29,31,568). An order u/s. 143(3) of the IT Act was passed by the AO on 26/12/2016 accepting total income at Rs. NIL (as per ITR).

2. During the year under consideration, it is seen that on various dates you have received rent income of Rs. 24,25,613/- from house property and claimed basic deduction @ 30% against the same am thereafter deducted local taxes paid during the year.

2.1 Sections 22 to 24 provide the manner and method of computing the income chargeable to tax under the head 'Income from house property'. Section 22 lays down that the 'annual value' of house property shall be chargeable to income tax under the head 'Income from house property'. The provisions relating to computation of income under the head 'house property' first require computation of annual value of the .property under section 23 of the Income Tax Act. Thereafter, the various items of expenditure, which can

be allowed as a deduction from the annual value, which have been specified in section 24 of the Income Tax Act. The items of expenditure allowable as deduction under section 24 for the relevant assessment year are as under:
"24. Deductions from income from house property lncome chargeable under the head Income from house property' shall, subject to the provisions of sub-section (2), be computed after making the following deductions, namely:

a). A sum equal to thirty percent of the annual value;
b). Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

2.2 The legislature has used the word 'namely' therein and this shows that the head of expenditure where for deduction can be claimed are exhaustive. If a particular type of expenditure is not specifically provided to be deductible, deduction, therefore, cannot be claimed from out of the annual value. Neither section 23 nor section 24 provides for the deduction of the expenses incurred towards the expenditure/repairing expenditure. Therefore, only the expenditure specified in section 24 can be allowed as deduction from the annual value while computing income from house property. This issue has been specifically considered by the Hon'ble Delhi High Court in the case of H. G. Gupta & Sons in which the Hon'ble High Court held that Legislature had used the word 'namely' in section 24 of the IT Act, 1961 and this showed that the heads of expenditure whereof deduction could be claimed in the computation of income from house property were exhaustive. Therefore, the expenditure made by the assesses are of capital expenditure/repairing expenditure and not allowable against the taxable income under the head income from house property.

3. Beside the above the assessee has also claimed deduction of Rs. 50,OOO/- u/s. 80P(2)(c) of the IT Act and deduction of Rs.70,02,837/- u/s. 80P(2)(d) of the IT Act.

3.1 In respect of claim of deduction u/s. 80P(2)(c) of the IT Act, it is seen from the assessment record that the assessee has let out the building/wadi/hording. It is nobody's that the commercial asset was exploited in the course of its banking activity or providing credit facility to its members. Hence, letting out of the house property is other than one specified in section 80P(2)(a)(i) and 80P(2)(c) of the Act. Therefore, the rental income received by the assessee has to be assessed as income from house property and it is not eligible for deduction u/s. BOP as held by the Kerala High Court in Kottayam Co-operative Land Mortgage Bank Ltd. v/s. CIT[1988] 172 ITR 43/40 Taman 259 (Ker).

3.2 In respect of claim of deduction u/s. 80P(2)(d) of the I T Act, it is seen from the assessment record that the assesses has earned interest income of Rs. 10,02,837/-from the fixed deposits held with State Bank of India and Indian Overseas Bank and claimed deduction u/s. SOP(2)(d) of the Act against this interest income of Rs. 10,02,837/-.

In this regard, the provisions with regard to allowing deduction in respect of interest income earned by a co-operative society are contained in section 80P(2)(d) of the Income Tax Act, 1961, which read as under:

"in respect of any income by way of interest or dividends derived by the co-operative society form its investments with any other co-operative society, the whole of such income".

The plain reading of the above provision, it is clear that the section refers to interest and dividends earned from investments in another co-operative society only. Thus, this deduction cannot be extended to the interest income earned from the investment in any co-operative bank. It is pertinent to note here that vide Finance Act, 2006, deduction from income of Co-operative banks as per the provision of section 80P of the IT Act, has been withdrawn by way of insertion of section 80P(4) of the IT Act, 1961 w.e.f. 01/04/2007 which read as under:

"The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural land and rural development bank"

Therefore, regarding claim of deduction u/s. 80P(2)(d) of the Act, it is submitted that Section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in Co-operative Societies. Hence, the interest income received from any bank, not being a co-operative society, by the assesses has to be assessed as Income from Other Sources and it is not eligible for deduction under section 80P(2)(a)(i)/80P(2)(d) of the Act. The issue of taxability of interest earned from surplus funds decided by the Hon'ble Supreme Court in the case of Totgars' Co-operative Sale Society Ltd. v/s. ITO [2010] 322ITR 283/188 Taxman 282, wherein it was held that the assesses being co-operative society is engaged in providing credit facilities to its members of marketing agricultural products of its members, interest earned by it by investing surplus funds in short term deposits would fall under the head "income from other sources" taxable u/s. 56 of the I.T.Act and it cannot be said to be attributable to the activities of the Society and therefore, the interest did not qualify for deduction u/s. 80P(2)(a)(i) of the I.T.Act. Though the aforesaid mistake was existing, the AO had accepted your submission and allowed the deduction claimed u/s. BOP of the Act, without making any verification of investment of surplus funds.

4. The AO has made assessment in the manner as discussed above without making investigation and verification of rental income and investment of surplus funds and interest income against which deduction u/s.8OP claimed. Lack of verification and inquiry in respect of deduction u/s. BOP resulted in assessment on lower side as well as charging of lesser tax. Thus, the assessment by the AO was made without proper inquiry and investigation and therefore, it is not only erroneous but also prejudicial to the interest of the revenue as prescribed in section 263 of the Act.

5. As discussed above, the assessment order u/s. 143(3) Act was passed without making requtired inquiries and verification which should have been made by the AO in respect of deduction u/s. 80P of the Act. The above facts show that the assessment order passed by the Assessing Officer in respect

of AY 2014-15 appears to be erroneous and prejudicial to the interest of the revenue. Therefore, I hereby initiate proceedings u/s. 263 of the IT Act with a view to pass a suitable order. Before passing such order, you are hereby given an opportunity of being heard in the matter."

4. In response to the notice issued to the assessee, the assessee contended that allowance of claim of deduction under section 80P(2) of the Act on interest income and rental income earned by the assessee was in accordance with law, and there was no error in the order of the AO. He contended that its income was exempt from tax since:

- the assessee was registered housing cooperative society, registered on 10.3.1949 with Registrar of Cooperative Societies with United States of Saurashtra, i.e prior to 1.4.1950;
- that as per Part B States (Taxation Concessions) Order, 1950, Notification No. SRO 998 dated 2.12.1950, issued u/s 60A of the Income Tax Act , 1922, the assessee's income was exempt from income tax;
- that the said order/notification not being withdrawn after the repeal of the 1992 Act and its substitution with the Income Tax Act, 1961,it still remained effective and in force by virtue of section 297(2)(k)/(l) of the Act.

5. He relied on the decision of the ITAT in its own case on an identical issue in ITA No.3861/Ahd/1993 for Asst.Year 1989-90, pointing out that it wascategorically held that benefit of exemption vide aforestated notification of incomes of cooperative societies of Part-B States continued to remain effective in the absence of any order rescinding the aforesaid notification. The ld.Pr.CIT however dismissed this contention of the assessee, noting that, on a similar issue Hon'ble Gujarat High Court in the case of Sri Gopal Gram Seva Sahakari Mandali Ltd., vide IT reference No.16 of 2003 had rejected identical contention made before it ,answering the issue in favour of

the Revenue and issuing directions to the ITO to decide the case under section 80P(2) of the Act. His finding in this regard at para-6 of the order is as under:

> *"6. It is seen that on a similar issue, the Hon'ble High Court of Gujarat vide IT Reference No. 16 of 2003 in the case of CIT Vs Shri Gopal Gram Seva SahakariMandii Ltd, answered in favour of the Department and issued directions to the Income-Tax Officer to decide the case under section 80 P of the I.T.Act. 1961.*
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> *The Question of Law before the Hon'ble High Court is as under:*
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> *"2. Whether, the appellate tribunal is right in law in holding that Notification No. SRO/992 dated 22.12.1950 of the old Act, 1922 was not withdrawn and, therefore, it provided a good basis to the Co-operative Society to seek exemption of its income from business.*
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> *The Hon'ble High Court answered the above question in favour of the Department and against the assessee."*

6. Accordingly after rejecting the contention of the assessee, the Ld.PCIT noted that the AO having not examined the issue of claim of deduction to rental and interest income earned by the assessee under section 80P(2) of the Act, which otherwise was not allowable, there was an error in the order of the AO causing prejudice to the Revenue, and accordingly, he set aside the assessment order, remitting thematter to the file of the AO for verifying the assessee's claim of deduction with respect to the aforestated two incomes in terms of provisions of section 80P(2) of the Act. His finding in this regard at para-9 to 10 of his order is as under:

> *"9. It is the bounden duty of the Assessing Officer to collect and appreciate the facts collected and proper application of law is to be made while making the assessment. There is incorrect application of law to the facts available on record. In , the interest of justice and since the twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous and (ii) it is prejudicial to the interests of the Revenue, are satisfied, the assessment order passed u/s 143(3) on 12/08/2016 needs to be set aside..*
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> *10. Considering the totality of the facts and the circumstances as narrated above, the assessment framed by the assessing officer is held to be*

erroneous and prejudicial to the interest of revenue to that extent. Therefore, the assessment order dated 29/12/2016 for the A. Y.2014-15 in the case of the assessee is set aside and remit the matter to the file of Assessing Officer for necessary verification of the claim of deduction under section 80 P of the I.T.Act, 1961. Subsequent to the inquiries & verification of all relevant aspects of the case, the A.O. shall pass a speaking order."

7. Before us, the ld.counsel for the assessee reiterated the contentions made before the ld.Pr.CIT which briefly put were to the effect that the assessee-society was a registered cooperative housing society of Part-B State i.e. State of Saurashtra, registeredprior to 1.4.1950 and in terms of provisions of section 60A of the 1922 Income Tax Act an order had been issued granting concession to Part-B States, which included exemption to incomes earned by the cooperative societies registered therein. Our attention was drawn to the copy of the relevant order placed before at PB page No. 19-29. Thereafter, it was pointed out that section 297of the Income Tax1961 ,whichsubstituted the repealed 1922 Act, was *pari-materia* to section 6 of the General Clauses Act, dealing with effect of repeal and providing for continuation of proceedings initiated under the 1922 Act, in 1961 Act. He pointed out that as per section 297(2)(l) any concession granted in 1922 Act by way of order or notification would continue in 1961 Act until rescinded by a notification, and thereafter he stated that since there is no separate order or notification issued rescinding the earlier order granting exemption to the income of the assessee, the assessee would continue to enjoy the exemption vide the earlier order issued under the 1922 Act.

8. In response to the decision cited by the ld.Pr.CIT of the Hon'ble Gujarat High Court, he pointed out that the Hon'ble Supreme Court in a subsequent decision in the case of Maharao Bhim Singh of Kota Vs. CIT, 2016 111 SCR 193 in Civil Appeal No.2812 of 2015 dated 5.12.2016 has held that the order granting exemption to income of

entities in Part-B States, was still in force and is not to be treated as withdrawn. His submission in this regard made in writing before us, are as under:

> *"Further, the issue has been answered by Hon'ble Apex Court very recently in the case of Maharao Bhim Singh of Kota vs Commissioner of Income tax, Jaipur [2016 11 SCR 193] in Civil Appeal No. 2812 of 2015 decided on December 05, 2016. (Copy of the said order placed before your honour at Annexure - H from Page No 65 to 93)*
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> *Hon'ble Supreme Court, in above case, deciding in civil appeal arised out of ITR No. 64 of 1986 before Hon'ble Rajashthan High Court Full Bench. Where Hon'ble Rajashthan high court denied the benefit of exemption to ex-ruler from the payment of income tax for bona fide annual value of the residential palace of the ex-ruler and opined that the income tax to be paid on the rental income received by the ex-ruler from their palace. While deciding on this issue by Hon'ble Supreme Court in above referred case, they referred the provisions made in the Part B States (Taxation Concessions) Order, 1950, relevant para of the said order as under:*
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> *"4. In exercise of the powers conferred by Section 60A of the Indian Income Tax Act, 1922 (XI of 1922), the Central Government issued an order called "The Part B States (Taxation Concessions) Order, 1950" (hereinafter referred to as "The Order"). It was issued essentially to grant exemptions, reductions in rate of tax and the modifications in relation to specified kinds of income earned by the persons (Ruler and his family members) from various sources as specified therein. The Order was published in the Gazette of India, extraordinary, on 02.12.1950.*
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> *5. Paragraph 15 of the Order deals with various kinds of exemptions. Item (in) of Paragraph 15, which is relevant for this appeal, provides that the bona fide annual value of the residential palace of the Ruler of a State which is situate within the State and is declared by the Central Government as his inalienable ancestral property would be exempt from payment of Income-tax."*
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> *While deciding in above case, Hon'ble Supreme Court referred to the SRO 998 widely known as the, The Part B States (Taxation Concessions) Order, 1950, and referred to the Paragraph No. 15 for the exemptions available to the various class of people, where in that Part B States (Taxation Concessions) Order, 1950 at Sr (iv) of Paragraph No. 15 was amended through SRO 1800 Dated: 14-11-1951 and exemption to co -operative societies granted. In the above referred decision, Hon'ble Supreme Court referred to the above order, itself clarifies that the said order still in force and it is not withdrawn and benefit under that concession order is granted by Hon'ble Supreme Court. Therefore, your honour's assessee would like to submit most humbly that, being issued on the same Notification and Sr (iii) of Paragraph 15 is still in existence, then Sr (iv) would also to be in existence, where Sr (iii) deals with annual value of the palace of ruler while Sr (iv) provides exemption to co-operative societies.*

9. The ld.DR however countered by stating that the decision of the Hon'ble Apex Court did not lay down any such proposition and that it was rendered in completely different set of facts. That therefore the said decision was of no assistance to the assessee.

10. We have heard the rival contentions. The brief issue for adjudication before us is whether the ld.Pr.CIT had correctly exercised his power for revision of assessment order. More specifically, whether the ld.Pr.CIT had rightly held the assessment order as being erroneous causing prejudice to the Revenue on account of allowing deduction to the interest income and rental income of the assessee under section 80P(2) of the Act without making any inquiry.

The ld.counsel for the assessee before us has not challenged the order of the ld.Pr.CIT finding the assessment order to be erroneous in allowing claim of deduction on the aforestated two incomes *under section 80P(2) of the Income Tax Act,1961*.

11. The only challenge to the finding of the error by the ld.Pr.CIT in the order of the AO is that the assessee was entitled to exemption of the aforestated two incomes in terms of order made under the provisions of the 1922 Income Tax Act, i.e Part-B States (Taxation Concessions) Order, 1950 amendment to Notification No.SRO 998 dated 2.12.1950. That therefore there was no error in the assessment order allowing claim of deduction of the said incomes u/s 80P of the Act. His contention being that after repeal of the 1922 Act, the entitlement to the exemption of the assessee in view of the aforestated order passed under 1922 Act, still existed, since the said order was not rescinded subsequently, and therefore, by virtue of provisions of section 297 (2)(k)/(l) of the Income Tax Act, 1961,the benefit of exemption under the order issued under the repealed Act still persisted.

12. We have noted that the ld.Pr.CIT had found this contention to have not found favour with the Hon'ble jurisdictional High Court in another case before it in the case of Sri Gopal Gram Seva Sahakari Mandali Ltd.(supra). The ld.Pr.CIT found that an identical plea taken in that case was rejected by the Hon'ble High Court, and the Hon'ble Court had directed the AO to examine the allowability of assessee's claim to deduction under section 80P of the Act, holding that the assessee did not continue to enjoy the exemption by virtue of order issued under the 1922 Act. Copy of the order was placed before us, and we have noted that identical plea of the assessee of continuing to enjoy the benefit of the order issued under the 1922 Act by virtue of section 297 (k)(l) of the 1961 Act was rejected by the Hon'ble High Court, and the Hon'ble Court had directed the AO to examine the assessee's eligibility to claim deduction under section 80P(2) of the Act, 1961 Act. The ld.counsel for the assessee agreed with the same but at the same time has countered by stating that the Hon'ble Apex Court in the case of Maharao Bhim Singh of Kota Vs. CIT (supra) had reversed this proposition of law laid down by the jurisdictional High Court holding that the exemption allowed under the order issued under 1922 Act persisted and applied even under 1961 Act.

13. We have gone through the order of the Hon'ble Apex Court in the said case, and we find that it is entirely distinguishable on facts, and the Hon'ble Apex Court hasnot laid down any such proposition that the order issued under the 1922 Act granting exemption to incomes earned in Part-B States would continue to subsist even under the 1961 Act. In the case before the Hon'ble Apex Court, the Issue for consideration was the interpretation of section 10(19A) of the Act which provided for exemption of annual value of any one palace in the occupation of a Ruler. The dispute arose in the factual

background that the palace was partly self occupied by the Ruler and partly let out earning rental income. The claim of the Revenue was that the entitlement to exemption u/s 10(19A) of the Act was to be confined only to the portion of the palace in the occupation of the Ruler. The Hon'ble apex court interpreted the provisions of section 10(19A) of the Act to state that it granted exemption to the annual value of any one palace which fulfilled the following conditions, viz.

(i) which in the occupation of the ruler, and
(ii) whose annual value was exempt from income tax before the commencement of the Constitution (Twenty-sixth Amendment) by virtue of the provisions of the Merged States (Taxation concessions) Order, 1949 or the Part B States (Taxation Concessions), Order 1950.

Noting so, the Hon'ble Apex Court found that the assessee fulfilled both the conditions in the case before it, and therefore was entitled toexemption of the entire annual value of the property.

14. It is abundantly clear, therefore, that the Hon'ble Apex Court in the said decision did not lay down any proposition, as canvassed by the ld.counsel for the assessee before us that the exemption granted under the order issued under section 60A of the Income Tax Act, 1922, subsisted since it was not repealed. Therefore, we do not find any merit in the arguments of the ld.counsel for the assessee that the decision relied upon by the ld.Pr.CIT of the jurisdictional High Court was reversed by the Hon'ble Apex Court.

Having so found the arguments advanced by the ld.counsel for the assessee against the order of the ld.Pr.CIT, finding the

assessment order erroneous, to be devoid of any merits, we see no reason to interfere in the order of the Ld.PCIT.

The order of the ld.Pr.CIT is therefore confirmed, and the grounds of the appeal of the assessee are dismissed.

15. We may point out that this was the solitary argument made by the Ld.Counsel for the assessee before us.

16. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Court on 8th November, 2023 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad,dated 8/11/2023