

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.170/Ahd/2023
Assessment Year: 2017-18**

Nadiad Taluka Prathmik Shikshakoni Dhiran & Grahak Sahakari Mandali Limited A-1, Indira Complex, Nr. Laxmi Cinema Road, Nadiad – 387 001 (Gujarat) [PAN – AACAN 9966 F]	Vs.	PCIT-1, Vadodara.
(Appellant)		(Respondent)
Assessee by	Shri Mehul Thakkar, AR	
Revenue by	Shri H. Phani Raju, CIT-DR	
Date of Hearing	18.04.2024	
Date of Pronouncement	14.06.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 29.03.2022 passed by the PCIT, Vadodara-1 for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal :-

- “1. The Ld. PCIT-1, Vadodara has erred in passing the order u/s. 263 of the IT Act, 1961 without affording sufficient opportunity of being heard to the appellant and further erred in not taking in to account the adjournment sought by the appellant on 23.03.2022. Thus, the order of the Ld. PCIT-1, Vadodara passed u/s. 263 of the IT Act, 1961 is in violation of principle of natural justice and therefore a liable to be struck down in the interest of natural justice.*
- 2. The Ld. PCIT-1, Vadodara has erred in law and erred in facts in assuming jurisdiction under Section 263 of the Act as the order of the assessing officer was neither erroneous nor prejudicial to the interest of revenue.*

3. *The Ld. PCIT-1 Vadodara also erred in law in invoking Explanation 2(a) to Section 263 of the Act without giving the reference of the same in show cause notice issued for initiating the proceedings under section 263 of the Act.*
4. *The Ld. PCIT-1, Vadodara also erred in law in giving direction to the assessing Officer to pass a fresh assessment order.*
5. *The Ld. PCIT-1, Vadodara has further erred in law in not considering the law declared by jurisdictional High Court on allowability of deduction under section 80P(2)(a)(i) and 80P(2)(d) of the Act on the similar facts”*

The assessee has also raised the following additional ground:-

“In view of the facts and circumstances of the case, the order passed by the Ld. PCIT-1, Vadodara under Section 263 of Income Tax Act is in violation of the principle of natural justice as he failed to grant an opportunity being heard before passing the impugned order.”

3. The assessee filed its return of income for the Assessment Year 2017-18 on 31.03.2018 declaring total income at Rs. Nil after claiming deduction of Rs.12,92,414/- under Chapter VI-A of the Income Tax Act, 1961. The case was selected for scrutiny through CASS. The assessment under Section 143(3) of the Income Tax Act, 1961 was finalised on 05.12.2019 accepting the returned income of Rs. Nil. The PCIT observed that the assessee is a Co-operative Society engaged in the business of providing credit facilities to its members. While computing the gross total income of Rs.12,92,414/-, the assessee claimed entire income as deduction under Section 80P of the Act. The PCIT further noticed that the assessee received interest income of Rs.1,33,192/- from the Co-operative Bank (KDCC Bank) during the year under consideration which was allowed by the Assessing Officer while finalising the Assessment Order. The PCIT observed that the said interest is not eligible for deduction under Section 80P(2)(a)(i) of the Act. As per the provisions of Section 80P(2)(d) of the Act any income by way of interest or dividend derived from the Co-operative Society from its investment with any other Co-operative Society is allowable as deduction for computing the total income. But, in the instant case, the interest of Rs.1,33,192/- was received by the assessee from Co-operative Bank and accordingly the same is not eligible for deduction either under Section 80P(2)(a)(i) or under Section 80P(2)(d) of the Act. The PCIT issued show cause notice dated 14.03.2022 for

proposed revision of the Assessment Order under Section 263 of the Act. As the assessee has not filed any response, the PCIT held that the Assessment Order passed under Section 143(3) of the Act dated 05.12.2019 for the A.Y. 2017-18 be set aside with a direction to the Assessing Officer to pass fresh assessment order after taking into consideration the issues.

4. Being aggrieved by the Order under Section 263 of the Act passed by the PCIT, the assessee filed appeal before us.

5. The Ld. AR submitted that there is a delay in filing the present appeal that of 291 days for which the delay is not deliberate as set out in affidavit filed by the Chairman of the assessee Society. After going through the affidavit filed by the Chairman of the assessee Society, it appears that the earlier Tax Advisor of the Society advised the society not to file appeal against the order passed under Section 263 of the Act. During the consequential proceedings before the Assessing Officer, the assessee society consulted the present Chartered Accountant (CA) who advised in Feb 2023 that the assessee Society should file the appeal before the Tribunal challenging the order passed under Section 263 of the Act. Thus, the reason explained by the assessee appears to be genuine and hence the delay in filing the present appeal is condoned.

6. The Ld. AR submitted that while passing the order under Section 263 of the Act, the PCIT violated the principles of natural justice as the assessee was not given opportunity of being heard as the assessee vide adjournment dated 23rd March 2022 asked/sought time for preparing response/submissions before the PCIT. The Ld. AR further submitted that the order passed by the PCIT is also time barred as the assessment order was passed on 05.12.2019 but the show cause notice was issued on 14.03.2022 and the order under Section 263 of the Act was passed on 29.03.2024. Thus, the assessee was not at all given opportunity of hearing as well as the order passed under Section 263 is passed beyond the period of one year. The Ld. AR relied upon the decision of Hon'ble Orissa High Court in case of CIT (Exemption) vs. Dhaneswar Rath Institute of Engineering and Medical Sciences, 458 ITR 506. The Ld. AR further submitted that the PCIT has not invoked Explanation(2) of Section 263

of the Act while issuing show cause notice and has not given sufficient opportunity to the assessee. In the fact, the Assessing Officer while deciding the income of the assessee has verified all the aspects including that of deduction claimed under Chapter VI-A of the Act and also bifurcation of the income intimating the source of earning. The assessee before the Assessing Officer vide response letter dated 22.11.2019 has categorically mentioned that in paragraph no.5 related to the bifurcation of other income including that of interest income amounting to Rs.1,33,192/- and other income of Rs.46,016/-. The Ld. AR further submitted that the assessee has specifically made statement at point no.8 in the said response that the assessee made investment in fixed deposit with KDCC Bank which is liquidated during the year. The Ld. AR submitted that various decisions cited by the PCIT including that of Hon'ble Karnataka High Court in the case of PCIT vs. Totgar's Co-operative Sale Society Limited (2017) 83 taxmann.com 114 and that of State Bank of India vs. CIT (2016) 72 taxmann.com 64 and Katlary Kariyana Merchant Sahkari Sarafi Mandali Limited vs ACIT in SCA No.20585 of 2019 (SLA No.20585 of 2019) both being jurisdictional High Court, will be applicable in the context of Commercial Banks which was not exempt under Section 80P(2)(a)(i) of the Act. The Ld. AR further submitted that the order passed by the PCIT is a second opinion and is not a revisionary order as envisaged under Section 263 of the Act when the Assessing Officer himself has verified especially of exemption claimed by the assessee under Section 80P of the Act.

7. The Ld. DR submitted that the Assessing Officer at the assessment stage has overlooked the aspect of KDCC Bank is not a Member Bank which is giving the credit facilities through the assessee Society and has direct bearing under the prescribed provisions of Section 80P of the Act in cases related to exemption/deduction claimed under the said provision. The Ld. DR further submitted that the PCIT has rightly invoked revisionary power as the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has categorically enquired about Chapter VI-A of the Income Tax Act which is related to the deduction claimed

under Section 80P of the Act. The assessee has given the details about interest income and the other income derived by the assessee. From the perusal of records, it appears that the assessee was not given any opportunity of being heard before the PCIT. Being not given the opportunity, the assessee could not explain as to whether the component of interest earned on FD/saving received from KDCC Bank is actually falling under the deduction claimed under Section 80P or not. The assessee has demonstrated that the PCIT has ignored the assessee's response in toto for granting the Society time for preparing the detailed reply. Hence, in the exceptional circumstances, it will be appropriate to remand back this matter to the file of the PCIT for proper adjudication of all the issues including that of additional ground raised before us. After verifying all the aspects and contentions of the assessee, the PCIT will decide the matter as per provisions of the Income Tax Act more specifically that of Section 263 of the Act. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. This direction should not be taken as precedent in any other case as there is a peculiar circumstance in the present case as the notices issued on 14.03.2022 after finalising the assessment on 05.12.2019 under Section 143(3) of the Act.

9. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 14th June, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 14th June, 2024

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*