

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.545/PUN/2024

निर्धारण वर्ष /Assessment Year : 2018-19

Shivshakti Sahkari Patsanstha Limited, At Post Shivthar B.O., Shivthar, Satara - 415 011, Maharashtra PAN : AAZAS5669K	Vs.	Pr.CIT-3, Pune
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Ajay Kumar Keshari
Date of hearing : 01.07.2024
Date of pronouncement : 01.07.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Principal Commissioner of Income Tax (PCIT), Pune-3, dated 19.01.2024 for the assessment year 2018-19.

2. Briefly, the facts of the case are that the appellant is a Co-operative Society registered under Maharashtra Cooperative Societies Act. 1960. It is engaged in the business of accepting deposits from its members and providing credit facilities to its members. The appellant society filed the Return of Income for the assessment year 2018-19 on 27.10.2018 declaring total income at Nil after claiming deduction u/s.80P of the Income Tax Act, 1961 ('the Act') at

Rs.34,83,290/-. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 12.07.2021 passed u/s.143(3) accepting the returned income.

3. Subsequently, the Id. Pr.CIT on verification of the assessment record found that the assessee made substantial investments with various cooperative banks. As per the Id. Pr.CIT, interest income earned from deposits made out of the surplus money does not qualify for deduction u/s.80P of the Act, therefore, formed an opinion that the assessment order is erroneous as well as prejudicial to the interests of the Revenue. Accordingly, notice u/s.263 was issued and eventually the Id. PCIT vide impugned order set-aside the assessment order partially to the AO for examining the issues and passing fresh assessment order after making following enquiries :

- i) The AO shall examine the eligibility of deduction available to the assessee u/s.80P(2)(a) of the Act in the light of decision of the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd. Vs. ITO (2010) 322 ITR 283 (SC).
- ii) The AO shall also examine whether the interest income received by the assessee is related to its core business or is a residual income which is required to be taxed under the head "Other Sources".
- iii) The AO shall examine whether the assessee is ineligible for deduction u/s.80P in view of specific provision of section 80P(2)(d) rws section 80P(4) of the Act.

4. Being aggrieved by the order of the Id. Pr.CIT, the appellant society is in appeal before the Tribunal in the present appeal.

5. 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".

6. In the present case, we find that admittedly the interest income was earned from the cooperative banks, the cooperative bank is also a specie of cooperative society, therefore, the interest income earned by the cooperative society from the cooperative banks qualifies for deduction u/s.80(P)(2)(d) of the Act. On perusal of provisions of section 80P(2)(d), it is clear that the income derived by a cooperative society from its investment held with other cooperative societies shall be exempt from the total income of a cooperative society. Therefore, what is relevant for claiming of deduction u/s 80P(2)(d) is that interest income should have been derived from the investment made by the assessee cooperative society with any other cooperative society. This issue was considered by the Hon'ble Karnataka High Court in the case of *CIT vs. Totagars Cooperative Sale Society*, 392 ITR 74 (Karn) wherein the Hon'ble High Court after referring to the decision of the Hon'ble Supreme Court in the case of *Totgar's Co-operative Sale Society Ltd.Vs. ITO (2010) 322 ITR 283(SC)* held that the ratio of decision of the Hon'ble Supreme Court is not to be applicable in respect of interest

income on investment as same falls under the provisions of section 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act.

7. In the light of this discussion, we are of the considered opinion that the interest income earned by cooperative society on deposits made out of surplus funds with cooperative banks qualifies for deduction under the provisions of section 80P(2)(d) of the Act. Thus we find the issue under consideration which is subject matter of revision is in favour of the appellant society by the above binding precedents, the exercise of power of revision by the Id. Pr.CIT is contrary to the settled position of law as discussed above. Thus, the assessment order cannot be said to be erroneous. Therefore, we are of the considered opinion that the order of revision passed by the Id. PCIT u/s.263 of the Act cannot be sustained in the eyes of law and accordingly vacate the same. Hence, the grounds of appeal raised by the assessee stand allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 01st day of July, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 01st July, 2024

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned
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