

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

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

आयकर अपील सं. / ITA No.636/PUN/2024  
निर्धारण वर्ष /Assessment Year : 2018-19

Anant Nagari Sahakari Patsanstha Maryadit, Ist Floor, Panbajar Building, Chattrapati Shivaji Maharaj Market Yard, Bibwewadi, Pune – 411 037 Maharashtra PAN : AAAAAA4259L	Vs.	Pr.CIT-4, Pune
Appellant		Respondent

Assessee by : Smt. Deepa Khare  
Revenue by : Shri Keyur Patel  
Date of hearing : 09.07.2024  
Date of pronouncement : 10.07.2024

**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-4, dated 21.02.2023 passed u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the assessment year 2018-19.

2. At the outset, we find that there is a delay of about 342 days in filing the present appeal before the Tribunal. The appellant had filed an affidavit praying for condonation of delay. We have gone through the averments made in the condonation petition and find it relevant to refer to the following decisions and their ratios :

- (i) The Hon'ble Supreme Court in the case of Collector of Land Acquisition vs. Mst. Katiji, 167 ITR 471 (SC) had laid as follows :-

1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
3. *“Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”*

- (ii) The Hon'ble Jurisdictional High Court in the case of Vijay Vishin Meghani vs. DCIT, 389 ITR 250 (Bom.) held that in the matter of condonation of delay an overall view in the larger interest of justice has to be taken. None should be deprived of an adjudication on merits unless the Court of law or the Tribunal/Appellate Authority finds that the litigant has deliberately and intentionally delayed filing of the appeal, that he is careless, negligent and his conduct is lacking in bonafides.

- (iii) The Hon'ble Telangana High Court in the case of Thunuguntla Jagan Mohan Rao vs. DCIT, 427 ITR 204 (Telangana) after referring to the decision of the Hon'ble Supreme Court in the case of N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC 123 (SC) held as follows :

*“26. The Supreme Court in N. Balakrishnan v. M. Krishnamurthy [1998] 7 SCC 123 has held that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice; and that rules of limitation are not meant to destroy the right of parties, but they are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.*

*It held that there is no presumption that delay in approaching the Court is always deliberate, and the words "sufficient cause" under section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.*

*It held that in every case of delay there can be some lapse on the part of the litigant concerned, but that alone is not enough to turn down his plea and to shut the door against him; and if the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. It also observed that if the delay is deliberate, then the Court should not accept the explanation. It held that while condoning the delay, the Court should compensate the opposite party with costs."*

3. Applying the principles enunciated in the decisions referred to hereinabove to the facts of the present case, in our considered opinion, it is a fit case to condone the delay of 342 days in filing the appeal as it is clear that the appellant society has a strong case on merits as the issue of claim of exemption of interest income earned by a Cooperative Society on the deposits made out of surplus funds with other cooperative societies/banks is no longer *res integra* in view of several decisions of Coordinate Benches of this Tribunal as discussed in the subsequent paras.

4. 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 27.09.2018 declaring total income at Nil after claiming deduction u/s.80P of the Income Tax Act, 1961 ('the Act') at Rs.1,00,34,087/-. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 25.02.2021 passed u/s.143(3) accepting the returned income.

5. Subsequently, the Id. Pr.CIT on verification of the assessment record found that the assessee made various investments with various

cooperative banks/Scheduled Banks/Other Cooperative Societies on which interest income of Rs.44,29,188/- was earned. The Id. Pr.CIT was of the opinion that such interest income does not qualify for deduction u/s.80P(2)(d)/80P(2)(a)(i). According to the Id. Pr.CIT, the AO had failed to verify the eligibility of such income for deduction u/s.80P. Therefore, the assessment order passed by the AO dt.25.02.2021 is erroneous as well as prejudicial to the interests of the Revenue. Accordingly, he set-aside the assessment order to the AO with a direction to examine the issue of eligibility of such income for deduction u/s.80P(2)(d)/80P(2)(a)(i) and re-frame the assessment order.

6. Being aggrieved by the order of the Id. Pr.CIT, the appellant society is in appeal before the Tribunal 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. In the present case, we find that admittedly the interest income was earned from the cooperative banks/Cooperative banks/Scheduled banks. 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. 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.

9. As regards, the issue as to the allowability of exemption under the provisions of section 80P(2)(a)(i) in respect of interest income earned by a cooperative society from the schedule banks, there is a cleavage of judicial opinion amongst 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 Hon'ble Andhra Pradesh High Court in the case of *Vaveru Co-operative Rural Bank Ltd. v 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 Benches 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)*. Following the decision of the Coordinate Bench of the Tribunal, we of the considered opinion that the interest income earned on fixed deposits with cooperative bank/scheduled bank partakes character of the business income, which is eligible for deduction u/s 80P(2)(a)(i) of the Act.

10. 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. 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.

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

Order pronounced on this 10<sup>th</sup> day of July, 2024.

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> 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, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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