

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1507/Mum./2024
(Assessment Year : 2018-19)

**Vasai Urban Co-operative
Credit Society Ltd,**

1st Floor, Shree Ganesh Building,
Opp. S. T. Depot, Tal- Vasai,
Dist- Palghar, 401201.
PAN No. AAAAV1341E

..... Appellant

v/s

PCIT, Thane

B-Wing, Ashar I. T. Park,
6th Floor, Road No. 16Z,
Wagle Industrial Estate,
Thane (West)-400604

..... Respondent

Assessee by : Shri Bhupendra Shah
Revenue by : Shri Surendra Meena, Sr. DR

Date of Hearing – 10/06/2024

Date of Order – 25/07/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 20/03/2024, passed under section 263 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax, Thane-1, ("*learned PCIT*"), for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds:-

"1. In the facts of the case and in Law, the learned CIT erred in invoking Section 263 to the case of the Appellant only by way of change of opinion, without pointing out any error in the order of the AO and also by disregarding detailed submissions made to him from time to time.

2. In the facts of the case and in Law, the Show Cause Notice & or order u/s 263 alleging errors and prejudice, itself is erroneous on many counts as follows.

a. In the facts of the case and in Law, the learned CIT has erred in invoking the provision of sec. 263 merely because he wants to take a view different from the one taken by the Assessing Officer and thereby changing the opinion of the Assessing Officer by his/her opinion.

b. In the facts of the case and in Law, the learned CIT has erred in holding that Assessing Officer failed to verify the claim of the Appellant u/s 80P(2)(d) in respect of interest income of Rs. 1,14,42,920/- from investments made with Cooperative Banks and claimed deduction thereof u/s. 80P(2)(d) of the Act even though all the details were furnished to the Assessing Officer.

c. In the facts of the case and in Law, the learned CIT has erred in disregarding the fact that similar deduction was already allowed in scrutiny assessment in earlier years as well.

d. In the facts of the case and in Law, the learned CIT has erred in disregarding the fact that the deduction granted in initial year cannot be withdrawn in subsequent years on the same fact."

3. The only dispute raised by the assessee, in the present appeal, is against the invocation of revisionary proceedings under section 263 of the Act by the learned PCIT.

4. The brief facts of the case as emanating from the record are: The assessee is a Co-operative Credit Society registered under the Maharashtra Co-operative Societies Act, 1960, and is engaged in accepting deposits from the customers and give loans to its members only. For the year under consideration, the assessee filed its return of income on 18/09/2018 declaring a total income at Rs. Nil, after

claiming deduction of Rs.1,14,42,920 under section 80P(2)(d) of the Act. The return filed by the assessee was selected for complete scrutiny assessment through CASS, inter-alia, on the issue of deduction from total income under Chapter VI-A of the Act. Accordingly, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. The Assessing Officer ("AO") vide order dated 18/04/2021 passed under section 143(3) read with sections 144B of the Act, after considering the details and documents submitted by the assessee, found the deduction claimed under section 80P(2)(d) of the Act and the income reported in the return of income to be in order. Accordingly, the assessee's income was assessed at Rs. Nil.

5. Subsequently, vide notice dated 01/03/2024 issued under section 263 of the Act, the learned PCIT initiated revisionary proceedings on the basis that interest income earned by the assessee out of investments with various Co-operative Banks are not eligible for deduction under section 80P(2)(d) of the Act, as this interest income earned by investments with Co-operative Banks do not constitute operational income or business income of the assessee society and should be taxed under the head "*income from other sources*". It was further alleged that what is allowed to be eligible for deduction under section 80P(2)(a) of the Act is the 'business income' which arises from the assessee's business of banking or providing credit facilities to its members. Thus, the interest income earned on investments with various banks not being Co-operative Society, is not eligible for deduction under section 80P of the Act. Thus, it was alleged that the

omission to do so has resulted in the assessment order passed under section 143(3) read with sections 144B of the Act to be erroneous insofar as prejudicial to the interest of the Revenue.

6. The learned PCIT, vide impugned order, did not agree with the submissions of the assessee and held that a Co-operative Bank is a commercial bank and does not fall under the purview of a Co-operative Society and interest income is not eligible for deduction under section 80P(2)(d) of the Act. By placing reliance upon the decision of the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd vs ITO., [2010] 322 ITR 283 (SC) and Hon'ble Karnataka High Court in Pr.CIT v/s Totagars Co-operative Sales Society, [2017] 395 ITR 611 (Karn.), the learned PCIT held that interest income from investments with bank could not fall within the meaning of the expression "*profits and gains of business*", and thus such interest cannot be attributable to the activities of the society. Therefore, it was held that such interest income is to be treated as income from other sources under section 56 of the Act, and section 80P of the Act would not apply in the facts and circumstances of the case. Thus, the learned PCIT held that the AO perfunctorily accepted the details available with him without any application of mind or detailed enquiry. Vide impugned order, the learned PCIT held the assessment order to be erroneous and prejudicial to the interest of Revenue, and accordingly, set aside the same, with a direction to the AO to disallow the deduction claimed under section 80P(2)(d) of the Act and tax the same under section 56 of the Act under the head "*income from other sources*" and pass the

assessment order afresh after giving a reasonable opportunity of being heard to the assessee. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee is a Co-operative Credit Society registered under the Maharashtra Co-operative Societies Act, 1960, and is engaged in accepting deposits from the customers and gives loans to its members only. In its return of income, the assessee claimed deduction of Rs.1,14,42,920 under section 80P(2)(d) of the Act. We find that vide notice dated 01/02/2021 issued under section 142(1) of the Act, forming part of the paper book from pages 202-204, the assessee was asked to give the working of the claim of deduction under section 80P(2)(d) of the Act with supporting documentary evidence. We find that the said notice was duly responded to by the assessee vide submission dated 24/02/2021, forming part of the paper book from pages 205-736. We further find that vide notice dated 10/03/2021 issued under section 142(1) of the Act, forming part of the paper book from pages 79-81, the assessee was specifically asked to show cause as to why the deduction claimed under section 80P(2)(d) of the Act be not disallowed and added to the total income of the assessee. For reference, the relevant portion of the aforesaid show cause notice is reproduced as follows:-

"In the return of income filed for the year under consideration you have claimed deduction of Rs.1,14,42,920/- u/s 80P(2)(d) of the IT Act 1961. In your on-line reply dated 16.02.2021 filed in response to notice u/s 142(1) dated 01.02.2021 you have submitted that society is engaged in the banking activity and has given

loan to its members and earned interest thereon. In above referred reply, it was also submitted that the society was also earning interest on investments with other cooperative society.

As per provisions of section 80P(4) of the IT Act deduction u/s 80P of the Act is allowable to only 'primary agricultural credit society' or 'primary cooperative bank and Rural development bank'.

As per part V of the Banking Regulation Act, 1949, unless the context otherwise requires, "primary agricultural credit society" means a co-operative society, -

1. The primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops);
and

1. The bye-laws of which do not permit admission of any other co-operative society as member.

Further, "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

In order to verify whether you are falling under the definition 'primary agricultural credit society' or 'primary cooperative bank and Rural development bank' notice u/s 142(1) was issued on 26.02.2021 and you were asked for certain details and documents. But in response to above notice no reply has been filed by you to substantiate your claim of deduction u/s 80P(2)(d) of the IT Act 1961. Therefore, your Claims of deduction u/s 80P(2)(d) of the IT Act is not allowable in view of following facts :

1. You failed to establish that your primary object or principal business is to provide financial accommodation to your members for agricultural purposes or for purposes connected with agricultural activities.

2. Copy of Memorandum/Article of association of association not furnished accordingly, you have failed to establish that bye-laws of society do not permit admission of any other co-operative society as member.

3. You have failed to establish that your area of operation is confined within a Taluka. Further, Vasai is fifth largest populated city of Maharashtra (as per census of 2011) which is situated in Mumbai Metropolitan Region (MMR).

4. You have also failed to establish that your principal object is to provide for long term credit for agricultural and rural development activities.

Accordingly, the society has failed to establish that it falls under the definition 'primary agricultural credit society' or 'primary cooperative bank and Rural development bank' therefore deduction u/s 80P(2)(d) of the Act is not allowable.

In view of above facts and circumstance of the case you are hereby required to show cause as to why the deduction u/s 80P(2)(d) of the IT Act should not be disallowed and added to your income for the year under consideration as you have failed to establish that you qualify for the deduction claimed.”

8. In response thereto, the assessee filed a detailed submission dated 23/03/2021 along with supporting documentary evidence, forming part of the paper book from pages 82-201, in respect of its claim of deduction of Rs.1,14,42,920 under section 80P(2)(d) of the Act on account of interest income earned from the Co-operative Banks. In the aforesaid submission, the assessee submitted that it is a Co-operative Credit Society, and is neither governed by the Banking Regulation Act, 1949 nor controlled by the RBI, and thus is not a Co-operative Bank. Accordingly, the assessee submitted that the provisions of section 80P(4) of the Act are not applicable. Thus, from the record, it is evident that the AO made detailed enquiry on the claim of deduction under section 80P(2)(d) of the Act by the assessee. After considering the detailed reply filed by the assessee along with supporting documentary evidence, the AO vide assessment order dated 18/04/2021 accepted the claim of deduction under section 80P(2)(d) of the Act. However, the learned PCIT vide impugned order passed under section 263 of the Act set aside the aforesaid assessment order on the basis that the a Co-operative Bank is a commercial bank and does not fall under the purview of a Co-operative Society, and interest income is not eligible for deduction under section 80P(2)(d) of the Act. The learned PCIT further held that no efforts were made by the AO to verify the legalities of the provisions of

section 80P of the Act and its applicability in the present case, and thus the assessment order is erroneous and prejudicial to the interest of the Revenue.

9. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a co-operative society. Further, section 80P(2)(d) of the Act, reads as under:

"80P. Deduction in respect of income of co-operative societies.

(1)

(2) The sums referred to in sub-section (1) shall be the following, namely:-

(a)

(b)

(c)

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;"

10. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the co-operative society from the investments, and (ii) such investments should be with any other co-operative society. Further, the term "co-operative society" is defined under section 2(19) of the Act as under:

"(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;"

11. In the present case, there is no dispute that the assessee is a Co-operative Credit Society, which is engaged in accepting deposits from the customers and gives loans to its members only. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Co-operative Bank. Accordingly, the assessee kept the deposits in District Central Co-operative Banks and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. It is pertinent to note that the Hon'ble Supreme Court in *Mavilayi Service Co-operative Bank Ltd. v/s CIT, Calicut*, [2021] 431 ITR 1 (SC) while analysing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Co-operative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the assessee, who is a Co-operative Bank, claims a deduction under section 80P of the Act. We also find that in *PCIT v/s*

Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. [2023] 150 taxmann.com 173 (SC), the Hon'ble Supreme Court held that a taxpayer who is merely giving credit to its members cannot be said to be the Co-operative Banks/Banks under the Banking Regulation Act and the banking activities under the Banking Regulation Act are altogether different. Therefore, the Hon'ble Supreme Court held that the assessee, a co-operative credit society, could not be termed a bank/Co-operative Bank and that being a credit society, it was entitled to exemption under section 80(P)(2) of the Act. Therefore, we find no merits in the aforesaid reasoning adopted by the learned PCIT vide impugned order passed under section 263 of the Act. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true.

12. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d) of the Act. We find that the coordinate bench of the Tribunal in Jansevak Co-operative Society Ltd. vs ITO, in ITA Nos. 3229 & 3230/Mum./2022, vide order dated 23/02/2023 allowed the deduction claimed by the assessee under section 80P(2)(d) of the Act, by observing as under:-

"7. Hon'ble High Court of Karnataka in case of Pr. CIT & Anr. Vs. Totgar's Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon'ble Gujarat High Court in case of State Bank of India vs. CIT (2016) 389 ITR 578 (Guj.) had also held that interest income earned by a co-operative society on its investment held with co-operative bank would be eligible for claim of deduction under section

80P(2)(d) of the Act. We are of the considered view that the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act.

8. So following the decision rendered by Hon'ble Karnataka High Court (supra) and Hon'ble Gujarat High Court (supra) and order passed by the coordinate Bench of the Tribunal discussed in preceding paras, we are of the considered view that assessee society who has earned an amount of Rs.16,76,460 and Rs.87,93,570/- for A.Y. 2013-14 and A.Y. 2018-19 respectively from its investment of surplus fund parked with co-operative banks is entitled for deduction under section 80P(2)(d) of the Act.

9. In view of what has been discussed above, we are of the considered view that the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee society claimed under section 80P(2)(d) of the Act, hence, AO is directed to allow the same."

13. Therefore, in view of the above, we are of the considered view that the AO has rightly allowed the claim of deduction under section 80P(2)(d) of the Act in respect of the interest earned from the Co-operative Banks and thus the assessment order cannot be held to be erroneous. The Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. v/s CIT*, [2000] 243 ITR 83 (SC) held that in order to invoke section 263, the assessment order must be erroneous and also prejudicial to revenue, and if one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to Revenue or if it is not erroneous but is prejudicial to Revenue, recourse cannot be had to section 263 of the Act. Since both the conditions for invoking the provisions of section 263 of the Act are not satisfied in the present case, therefore the impugned order passed by the learned PCIT under section 263 of the Act is quashed. Accordingly, the grounds raised by the assessee are allowed.

14. In the result, the appeal by the assessee is allowed.

Order pronounced in the open court on 25/07/2024

**SD/-
B R BASKARAN
ACCOUNTANT MEMBER**

**SD/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 25/07/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT, Mumbai City concerned;*
- (4) *The DR, ITAT, Mumbai;*
- (5) *Guard file.*

True Copy

By Order

*Vijay Pal Singh
Sr. Private Secretary*

Assistant Registrar
ITAT, Mumbai

		Date	Initial	
1.	Dictated on Dragon Legal	20.06.2024	}	Sr.PS
2.	Draft placed before author	21.06.2024		Sr.PS
3.	Draft proposed & placed before the second member	--		JM/AM
4.	Draft discussed / approved by Second Member	--		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	.7.2024	}	Sr.PS
6.	Date of pronouncement	.07.2024		Sr.PS
7.	File sent to the Bench Clerk	.07.2024		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			