

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.803/PUN/2024
निर्धारण वर्ष /Assessment Year : 2018-19

Sangola Taluka Prathamik Shikshak Coop. Credit Society Limited, Sangola Sangola, Tal Sangola, Dist. Solapur – 413 307 Maharashtra PAN : AAHAS6075P	Vs.	Pr.CIT-4, Pune
Appellant		Respondent

Assessee by : None
Revenue by : Shri Ajay Kumar Keshari
Date of hearing : 22.07.2024
Date of pronouncement : 24.07.2024

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 19.03.2024 passed u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the assessment year 2018-19.

2. Briefly, the facts of the case are that the appellant is a Co-operative credit 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 30.09.2018 declaring total income at Nil after claiming deduction u/s.80P of the Income Tax Act, 1961 ('the Act') at

Rs.1,84,324/-. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 15.04.2021 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 various investments with various cooperative banks/Scheduled Banks on which interest income of Rs.1,84,324/- was earned. The Id. Pr.CIT was of the opinion that such interest income does not qualify for deduction u/s.80P(2)(a)(i). According to the Id. Pr.CIT, the AO had failed to examine the eligibility of such income for deduction u/s.80P. Therefore, the assessment order passed by the AO dt.15.94.2021 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 re-examine the assessee's claim of deduction u/s. 80P(2)(a)(i) and re-framing the assessment based on factual evidence.

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. When the matter was called on, one appeared on behalf of the assessee despite due service of notice of hearing. We therefore proceed to dispose of the appeal ex parte the qua 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 para.

6. We heard the Id. DR 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".

7. In the present case, we find that admittedly the interest income was earned from the 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.

8. 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.

9. We find the issue under consideration which is subject matter of revision is in favour of the appellant society by the above 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.

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

Order pronounced on this 24th day of July, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th 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