



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI SATBEER SINGH GODARA,
JUDICIAL MEMBER AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1171/PUN/2023
निर्धारण वर्ष / Assessment Year:2018-19

Ruby Hall Clinic Karmachari Sahakari Patsanstha Maryadit, Sasoon Road, Haveli, Pune – 411001. PAN: AAAAR9852L	V s	The PCIT, Pune-4.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Deepak S. Sasar – AR
Revenue by	Shri Ajay Kumar Keshari - DR
Date of hearing	31/07/2024
Date of pronouncement	31/07/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by Assessee against the order of ld.Principal Commissioner of Income Tax, Pune-4 passed under section 263 of the Income tax Act, 1961 dated 24.03.2023 for the A.Y.2018-19. The assessee has raised the following grounds of appeal :

"1. THE LD. PRINCIPAL COMMISSIONER HAS ERRED IN INVOKING THE PROVISIONS OF SECTION 263 OF THE INCOME TAX ACT, 1961 ON THE GROUND THAT THE ASSESSMENT ORDER PASSED BY THE ASSESSING OFFICER DATED 28.02.2021 FOR THE A.Y. 2018-19 IS NOT ONLY PREJUDICIAL TO THE INTEREST OF THE REVENUE BUT IS ALSO ERRONEOUS.

2. THE LD. PRINCIPAL COMMISSIONER HAS PASSED THE ORDER



U/S 263 OF THE ACT ON SURMISES AND CONJECTURES AND THEREFORE IS LIABLE TO BE SET ASIDE.

3. THE LD. PRINCIPAL COMMISSIONER HAS WRONGLY CLASSIFIED THE APPELLANT CO-OPERATIVE SOCIETY AS CO-OPERATIVE BANK.

4. THE LD. PRINCIPAL COMMISSIONER HAS WRONGLY DIRECTED TO DISALLOW THE DEDUCTION CLAIMED UNDER SECTION 80P OF THE INCOME TAX ACT 1961.

5. THE LD. PRINCIPAL COMMISSIONER HAS WRONGLY DIRECTED TO RE-DO THE ASSESSMENT WHICH IS ALREADY MADE UNDER SECTION 143(3) OF THE INCOME TAX ACT 1961 ON THE BASIS OF CASS SELECTION OF CASES.

6. THE APPELLANT CRAVE LEAVE TO ADD, DELETE, AMEND, ALTER, VARY AND/OR WITHDRAW ALL OR ANY ONE OF THE ABOVE GROUNDS OF APPEAL.”

Findings & Analysis:

2. We have heard both the parties and perused the records. In this case, the Ld.Principal Commissioner of Income Tax, Pune had passed the order u/sec. 263 on 24/03/2023 for AY 2018-19. The Pr.CIT held as under in para 12 of the order:

Quote, “ 12. In view of all these facts, the Assessment Order dated 28/02/2021 is hereby set aside to the Assessing Officer on the limited issue of re-examination of the assessee’s claim of deduction under section 80P of the Income-tax Act, 1961. However, before arriving at any conclusion, the Assessing Officer shall be reasonable opportunity to the assessee to adduce the evidence and information with regard to:

A. Whether the assessee is to be considered as a “Co-operative Bank” in view of the facts mentioned in para 2.1 above and



consequently ineligible to claim any deduction u/s 80P in view of provisions of section 80P(4).

B. Even if the assessee can be considered as Co-operative Society, to examine:-

- i. the Source of deposits made with all institutions from which interest income is earned with specific details and nexus as to whether those deposits are made from the deposits received from the members which are returnable to the members or from out of the surplus funds arising from profits and gains.*
- ii. Whether the deposits are made with institutions which are registered with RBI for carrying out business of Banking.*
- iii. Whether the Principle of Mutuality is satisfied to allow deduction u/s 80P in respect of income earned from deposits made with Co-op Banks.” Unquote.*

2.1 Accordingly, the Assessing officer passed order u/s 143(3)

r.w.s 263 on 28/02/2021. The Assessing officer held as under :

Quote,“The interest and dividend income amounting to Rs.18,74,289/- is from Banks and not from Co-Operative Society and therefore, is liable to be added to the total income of the assessee.”Unquote.

2.2 Then, the AO made an addition of Rs.18,74,,289/- to the total income of the assessee.

3. In this case the assessee had filed return of income electronically on 03/102018 declaring NIL income. During the regular assessment proceedings, the Assessing Officer(AO) observed that assessee has earned interest of Rs.18,73,289/- from Bank and dividend income of Rs.1,000/-. Ld.Assessing Officer



held that assessee is not eligible to claim deduction u/sec.80P(2)(d) of the Act, for Rs.18,74,289/-which was interest from Bank and Dividend Income. Accordingly, AO made addition of Rs.18,74,289/- and assessed the total income at Rs.18,74,289/- in the original assessment order passed u/sec.143(3) on 28.02.2021. Against this order, the assessee filed an appeal ld.CIT(A) who upheld the addition. Assessee filed appeal against the order of ld.CIT(A) before the ITAT, against the impugned addition of Rs.18,74,289/-. The ITAT in ITA No.31/PUN/2024 for A.Y.2018-19 vide order dated 18.03.2024 held that assessee is eligible for deduction under section 80P for the impugned interest and dividend of Rs.18,74,289/-. Thus, the issue has attained finality, i.e. the interest and dividend of Rs.18,74,289/- was eligible for deduction u/sec.80P(2) of the Act.

3.1 However, against the original assessment order dated 28.02.2021, the ld.Pr.CIT has invoked provisions of section 263 of the Act. In these facts and circumstances of the case, it is evident that ITAT has already held in assessee's own case that interest and dividend of Rs.18,74,289/- was eligible for deduction u/sec.80P of the Act. Therefore, the original assessment order dated 28.02.2021



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has merged with the order of ITAT. Therefore, the order of Id.Pr.CIT u/sec.263 is not maintainable as the original assessment order is not erroneous and prejudicial to the interest of the revenue.

4. Even otherwise, the Hon'ble Andhra Pradesh High Court in the case of Vavveru Co-operative Rural Bank Limited Vs. CCIT 396 ITR 371(AP HC), order dated 15.03.2017 held that interest earned from fixed deposits kept with the Nationalized Banks is eligible for deduction under section 80P(2)(a) of the Act in the case of Co-operative Credit Societies registered under Societies Act. Therefore, the AO has adopted a plausible view in the original assessment order and hence the assessment order was not erroneous and prejudicial to the interest of the Revenue. Accordingly, the grounds of appeal raised by the assessee are allowed in above terms.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 31st July, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 31st July, 2024/ SGR*



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आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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