

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.378/Ahd/2023
Assessment Year: 2018-19**

Posun Credit Co. Op. Society Limited, 1 st Floor, Lilawati Centre, M.G. Road, Station Road, Anand – 388 001 Gujarat [PAN – AAAAP 0756 D]	Vs.	The Principal Commissioner of Income Tax, Vadodara-1, Vadodara.
(Appellant)		(Respondent)
Assessee by	Shri S.N. Divatia & Shri Samir Vora, ARs.	
Revenue by	Shri H. Phani Raju, CIT-DR	
Date of Hearing	26.06.2024	
Date of Pronouncement	23.08.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 27.03.2023 passed by the PCIT, Vadodara-1, for the Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal :-

- 1.1 *The order u/s.263 passed on 27.03.2023 by Pr. CIT-1, Vadodara holding that the order of assessment passed u/s 143(3) on 22.01.2021 was erroneous and prejudicial to the interest of the revenue to the extent of issue relating to deduction u/s. 80P(2)(d) in respect of interest income from Keira District Central Co.Op. Bank of Ltd. of Rs.15,70,347/- without making adequate inquiry is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 *The order passed by u/s.263 on 27.03.2023 by Pr.CIT-1 Vadodara holding the order of assessment passed u/s.143(3) on 22.01.2021 as erroneous and prejudicial to the Revenue is illegal and unlawful. The Id. Pr. CIT has erred in law and or on facts in invoking the powers of revision u/s. 263 of the Act, since the condition precedent were not satisfied.*

- 2.1 *The Id. Pr. CIT has grievously erred in law and or on facts in holding that the AO had allowed the relief u/s.80P(2)(d) without inquiring into the claim by considering sec.80P(4).*
- 2.2 *That in the facts and circumstances of the Id. Pr. CIT ought not to have held that the order of assessment passed u/s.143(3) on 22.01.2021 by AO to the extent of failure to consider the provisions of sec.80P(4) vis-à-vis 80P(2)(d) was erroneous and prejudicial to the interest of the Revenue for want of proper inquiry and on merits held the same to be inadmissible.*
- 2.3 *The Id. Pr. CIT has failed to appreciate that the provision of sec.80P(4) was not applicable to a Co.Op. Society engaged in providing credit facility to its members and the same does not ceased to be a Co.Op. Society for the purposes of sec.80P(2)(d)."*

3. The assessee filed return of income on 03.08.2018 declaring income of Rs. Nil. The Assessment Order was passed under Section 143(3) read with Section 143(3A) & 143(3B) of the Income Tax Act, 1961 on 22.01.2021, after making addition of Rs.11,58,473/- on account of interest received from Nationalised Banks. The PCIT observed that the assessee is a Co-operative Credit Society registered under Gujarat Co-operative Act and has accepted deposits from Members, thereafter made advances to Members of the Society. The PCIT further observed that the assessee has shown revenue from advances to Members and earned interest from Nationalised Banks and Co-operative Banks amounting to Rs.48,84,758/- and declared net profit of Rs.41,09,258/- under the head income from business or profession. The PCIT observed that the assessee claimed total deduction amounting to Rs.36,18,006/- under Section 80P(2)(d) of the Act. The assessee earned interest on loans amounting to Rs.21,55,938/-, interest from Central Bank of India of Rs.11,58,472/- and interest from Kaira District Central Co-operative Bank amounting to Rs.15,70,347/-. The Assessing Officer treated the interest earned from Central Bank of India as income from other sources and disallowed the same but allowed the deduction in respect of interest earned from Kaira District Central Co-operative Bank. The PCIT invoked Section 263 of the Act and issued show cause notice to the assessee. In response to the said show cause notice, the assessee submitted reply on various occasions alongwith submissions. After taking into account the same, the PCIT held that in view of the Explanation-2 to Section 263(1) of the Act, the Assessment Order was passed by the Assessing Officer, allowing relief without enquiring into the claim and in

accordance with the binding decisions of the jurisdictional High Courts. Thus, the PCIT set aside the Assessment Order dated 22.01.2021 with the direction to the Assessing Officer to pass fresh Assessment Order *denovo*.

4. Being aggrieved by the Assessment Order, the assessee filed present appeal before us.

5. The Ld. AR submitted that the issue related to deduction under Section 80P(2)(d) of the Act was examined by the Assessing Officer during the assessment proceedings and thereafter, in fact, has disallowed the interest income from Nationalised Banks. The Ld. AR further submitted that the interest income from Kaira District Central Co-operative Bank was also received and was thoroughly verified by the Assessing Officer at the assessment stage and in fact there are several decisions which are in favour of the assessee and when there is no different set of decisions in favour of the assessee and against the assessee, the decisions which are more beneficial to the assessee should be taken into account as held by the Hon'ble Apex Court in the case of Vatika Limited (2014) 49 taxmann.com 249. The Ld. AR further submitted that invocation of Section 263 Explanation-2 in the present case is uncalled for and is not justifiable as the verification of the proper enquiry was made by the Assessing Officer at the assessment stage and in fact the second opinion cannot be the scope of provisions envisaged under Section 263 of the Act. Thus, the Ld. AR submitted that the order passed under Section 263 of the Act is not justifiable.

6. The Ld. DR relied upon the order of the PCIT passed under Section 263 of the Act and also relied upon the decision of Hon'ble Apex Court in the case of Totgar's Co-operative Sale Society vs. ITO (2010) 322 ITR 283 (SC).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that at the assessment proceedings the Assessing Officer has categorically questioned the assessee related to deduction claimed under Section 80P(2)(d) of the Act and the component of interest derived from Nationalised Banks and Co-operative Banks. The Assessing Officer has categorically made the enquiries full-fledged in respect of provisions of Section 80P(2)(d) of the Act and also

made addition to that extent regarding interest earned from Nationalised Banks. The observation of the PCIT that no proper enquiry was made and there are binding judicial precedent, will not be justifiable for invoking Section 263 Explanation-2 as there are several other decisions of the various Hon'ble Courts which decides this issue in favour of the assessee. Thus, the invocation of Section 263 of the Act by the PCIT is not justifiable and, therefore, order passed by the CPC, Income Tax Department, does not sustain.

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

Order pronounced in the open Court on this 23rd August, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 23rd August, 2024

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad