

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1324/MUM/2024  
Assessment Year: 2018-19**

Adhar Nagri Sahakari Patpedhi Maryadit, 001, Adhar Nagri Sahakari Patpedhi Maryadit Uttan Road, Morva, Bhayander, Thane, Maharashtra – 401101  (PAN : AAAAA9693G)	Vs.	Principle Commissioner of Income Tax-1, Thane
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Dharan Gandhi, Advocate  
Revenue : Shri Ramakrishna Bandi, CIT DR

Date of Hearing : 07.08.2024  
Date of Pronouncement : 28.10.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. PCIT, Thane, vide order no. ITBA/COM/F/17/2023-24/1062382625(1), dated 11.03.2024 passed against the assessment order by the National e-Assessment Centre, Delhi, u/s. 143(3) r.w.s. 143(3A) and 143(3B) of the Income-tax Act (hereinafter referred to as the "Act"), dated 06.04.2021 for Assessment Year 2018-19.

2. The solitary issue involved in this appeal is challenging the jurisdiction of the Id. PCIT for invoking the provision of section 263 of the Act on the ground that the assessment order passed by the A.O. is erroneous and prejudicial to the interest of the Revenue.

2.1. Assessee has raised additional grounds vide application dated 26.06.2024 which are reproduced as under:

*“1. The Ld. PCIT-1, Thane had no jurisdiction to pass an order u/s 263 of the Income tax Act, 1961 dated 11.03.2024, therefore, should be set aside.*

*2. The assessment order dated 06.04.2021 itself is bad in law and therefore, the order u/s 263 of the Act dated 11.03.2024 is also bad in law.”*

2.1. In the course of hearing, these additional grounds were submitted to be not pressed. Accordingly, these additional grounds are dismissed as not pressed.

3. Brief facts of the case are that the assessee is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 and is carrying out activities of accepting deposits from members and lending advances to them as well as reinvesting money. Assessee filed its return of income on 31.10.2018, declaring total income at Nil. Assessee's case was selected for complete scrutiny and the assessment order dated 06.04.2021 was passed u/s. 143(3) in which the return of income declared by the assessee was accepted as such *“by observing that assessee is a co-operative society and has earned income from interest on advances to members and other co-operative societies and co-operative banks. On the basis of submission made by assessee and material available on record, the returned income is accepted.”*

3.1. Ld. PCIT invoked the provisions of section 263 on the ground that assessment order is erroneous and prejudicial to the interest of the Revenue and set aside the assessment order with the direction to

examine the applicability of provisions of section 80P(2)(d) of the Act for a claim of Rs.50,17,605/- and also to verify the applicability of deduction u/s. 80P of the Act on 'other income' amounting to Rs. 13,42,465/-. Assessee is in appeal before us, challenging the order of the Id. PCIT passed u/s. 263 of the Act.

4. Identical issue had come up in assessee's own case in Assessment Year 2017-18 which was dealt by the Coordinate Bench of ITAT, Mumbai in ITA No.702/Mum/2022, dated 06.01.2023. We have perused the said order and observe that it squarely covers the case of the assessee before us, there being no material change in the facts and applicable law, except for change in the quantum of claim. The relevant observations and findings of the Coordinate Bench in assessee's own case (supra) are extracted below for ease of reference which are applied in the present case *mutatis mutandis*.

*"13. From the above facts, we find that the A.O. has sought for details pertaining to all the issues raised by the Id. PCIT during the assessment proceedings and has also received adequate reply from the assessee by way of written submission and documentary evidences to substantiate the assessee's claim, pertaining to these issues. So from this, we can infer that there was no lack of enquiry pertaining to the issues raised. While considering the fact that whether there was inadequacy in conducting the enquiry by the A.O. was to be looked into in view of the propositions laid by the various courts. The assessee has relied on the decision of the Hon'ble Delhi High Court in the case of Brahma Centre Development Pvt Ltd. (supra), wherein it was held that the inadequacy in conducting the enquiry by the A.O. cannot be the reason for the Id. PCIT to invoke the provision of section 263 of the Act.*

*14. From the facts of the case, it is observed that the A.O. has enquired into the details of the cash deposits during demonetization period and there is no infirmity in the conclusion arrived at by the A.O. For the issue pertaining to the deduction u/s. 80P to the assessee for which the assessee has also furnished sufficient evidences in support of its claim, we are of the view that as there are divergent views in relation to interest received from the deposits made in co-operative banks, the A.O. is said to have taken one of the view possible and has allowed the impugned deduction.*

*15. From this, we are of the considered view that the A.O. has considered the submissions of the assessee and has taken one of the plausible view and passed the assessment order. We find no latches and mistakes committed by*

*the A.O. while passing assessment order. In view of the decision by Hon'ble Apex Court in Malabar Industrial Co. Ltd. (supra) merely because two plausible views are available and the A.O. has taken one view, the jurisdiction u/s. 263 of the Act cannot be exercised and we thereby hold that exercise of power u/s. 263 of the Act was not in accordance with the law."*

5. Thus, considering the facts on record and decision of the Coordinate Bench in assessee's own case for immediately preceding year on similar fact pattern, the impugned order passed u/s. 263 is quashed. Submissions made by the Id. Counsel of the assessee on the legal issues are rendered academic in nature and hence not dealt with.

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

Order is pronounced in the open court on 28 October, 2024

Sd/-  
(Pavan Kumar Gadale)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

**Dated: 28 October, 2024**

MP, Sr.P.S.

**Copy to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai