

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH
PANAJI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI G D PADMAHSHALI ACCOUNTANT MEMBER

I T A. Nos.151/PAN/2025
(A.Y.2020-21)

Shri Mallikarjun Credit Soudharda Sahakari Limited, A/P Benadi, Taluka Chikodi, Belagavi-591215, Karnataka.	Vs.	Pr.CIT, C.R.Building, Navanagar, Hubli-580025, Karnataka
PAN .No.AABAS3055M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Veeranna M Murgod.AR
Revenue by	Shri.Captain Pradeep Arya.CIT DR

सुनवाई की तारीख/Date of Hearing:	14.08.2025
घोषणा की तारीख/Date of Pronouncement:	21.08.2025

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Pr. Commissioner of Income Tax (Pr.CIT) Hubli passed u/s 263 of the Act. The assessee has raised the grounds of appeal challenging the revision order passed by the Pr.CIT set aside the order passed by the assessing officer.

2. The brief facts of the case are that, the assessee is a souharda cooperative registered under the Karnataka souharda sahakari Act 1997 and is engaged in the activity of accepting deposits and providing credit facilities to its

members. The assessee has filed the return of income for the A.Y 2020-21 on 28-1-2021 disclosing a total income of Rs.1,83,330/- after claiming deduction u/sec 80P of the Act of Rs.26,75,667/- Subsequently the case was selected for scrutiny under CASS and notice u/sec 143(2) and u/sec 142(1) of the Act are issued calling for details in respect of claims and the information supporting the return of income filed. The assessee has filed the details and information on various dates and the Assessing Officer (A.O) has dealt on the submissions/details and has accepted the returned income and assessed the total income of Rs.NIL and passed the order u/sec 143(3) r.w.s144B of the Act dated 19.09.2022.

3. Subsequently, the Pr. CIT on perusal of the records and information found that the order passed by the AO under section 143(3) r.w.s 143B of the Act is erroneous and prejudicial to the interest of the revenue and issued revision notice U/sec 263 of the Act. The Pr.CIT is of the view that the interest income from cooperative banks and commercial/scheduled banks is not entitled to deduction u/sec 80P(2)d of the Act. In compliance to the notice u/sec263 of the Act, the assessee has filed the details and explanations on 20.02.2025. Whereas the Pr.CIT was not satisfied with the explanations and submissions and is of the opinion that the order passed by the AO is erroneous and prejudicial to the interest of the revenue. Further the Pr.CIT is of the opinion that the interest income earned

from cooperative/commercial banks should be treated as income from other sources and accordingly issued directions to the AO and set-aside the order 143(3) r.w.s 143B of the Act and has passed order u/s 263 of the Act dated 21.03.2025. Aggrieved by the order of the Pr.CIT, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the Pr. CIT has erred in considering the order passed by the AO is erroneous and prejudicial to the interest of the revenue, irrespective of the fact that the assessee has complied with the information and the notices through ITBA and the A.O. having verified and examined the facts has accepted the same. The Ld. AR submitted that the assessee has disclosed the interest income and deposits held with the co-operative banks and commercial banks. Further the deduction of interest on deposits with the cooperative bank has to allowed u/sec 80P2(d) of the Act as the cooperative bank is treated as a cooperative society for eligibility of deduction u/s 80P(2)(d) of the Act. The AO having considered these facts, has applied his mind and made an enquiry on details filed and also complied with the scrutiny guidelines and accepted the returned income. Whereas the observations of the Pr. CIT in the revision order are in correct. Further the Ld. AR substantiated the submissions with factual paper book and judicial decisions and prayed for allowing the appeal.

5. Per Contra, the Ld. DR submitted that the AO has not considered the facts of earning of interest income from cooperative banks and also commercial banks and has overlooked the provisions of section 80P of the Act and has not conducted enquiry and the Ld. DR relied on the order of the Pr.CIT.

6. We heard the rival submissions and perused the material available on record. Prima-facie the Pr.CIT has passed the revision order with a directions to the assessing officer on two aspects of issues (i) interest income earned from cooperative banks and (ii) interest income earned from commercial banks. On the first disputed issue with respect to interest income on deposits earned from cooperative banks. The AO has considered the submissions, facts of interest income on deposits with the Cooperative banks and the eligibility of claim of deduction. The Ld. AR referred to the assessment order emphasizing that the AO has called for the details in respect of scrutiny under CASS. The assessee has received notice u/s 142(1) of the Act dated 9-11-2021 and in particular the AO has called the details as per the annexure and particularly in point 3 – on eligibility of deduction u/sec80P of the Act and details of interest earned from co-operative society, co-operative bank and nationalized banks. In compliance, the assessee has filed the details through ITBA portal with the submissions as called for in lieu of notices u/s 142(1) of the Act on

various dates and the e-proceedings response acknowledgements and details are placed at page 4 to 27 of the paper book. The Ld. AR emphasized that the interest income derived by a co-operative society from its deposits with the co-operative banks would be entitled for deduction U/sec 80P (2)(d) of the Act. The Ld.AR highlighted that the assessee has received interest on fixed deposits with the co-operative banks and the Co-op bank is treated as a cooperative society for eligibility of deduction u/s 80P(2)(d) of the Act. The AO has considered these facts in the assessment proceedings and accepted the claim. Whereas the AO has applied the mind and accepted the assessee's submissions in the complete scrutiny in respect of interest income on deposits with the cooperative banks. We rely on the decision of the Honble High Court of Bombay in the case of M/S Grasim Industries Ltd Vs CIT (321 ITR 92) considered the law laid down by the Honble Supreme Court on the scope of the revisionary proceedings initiated under sec263 of the Act and the observations are read as under:

“Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be “erroneous in so far as it is prejudicial to the interests of the Revenue”. This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83, the Supreme Court held that

the provision “cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer” and “it is only when an order is erroneous that the section will be attracted”. The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression “prejudicial to the interests of the Revenue”, the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote)

“The phrase ‘prejudicial to the interests of the Revenue’ has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282.”

7. Further In the case of Nagesh Knitwears P Ltd (2012)(345 ITR 135), the Hon’ble Delhi High Court has elucidated and explained the scope of the provisions of sec. 263 of the Act and the same has been extracted by the Delhi High court in the case of CIT Vs. Goetze (India) Ltd (361 ITR 505) as under:-

“Thus, in cases of wrong opinion or finding on merits, the Commissioner of Income tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order is not sustainable in law and the said finding must be recorded. The Commissioner of Income tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the Commissioner of Income tax must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the Commissioner of Income tax and he is able to establish and show the error or mistake made by the

Assessing officer, making the order unsustainable in law. In some cases possibly though rarely, the Commissioner of Income tax can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter to the Assessing Officer would imply and mean the Commissioner of Income tax has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question....” Similar view has been expressed by Hon’ble Madras High Court in the case of CIT Vs. Amalgamations Ltd (238 ITR 963).

8. We considering the facts, ratio of decisions of the Honble High courts and submissions are of the opinion that the directions of the Pr.CIT order to the assessing officer in respect of interest income earned from cooperative banks to be charged under income from other sources cannot be sustained and accordingly we allow the grounds of appeal in favour of the assessee pertaining to the disputed issue on interest income earned from the cooperative banks.

9. On the second disputed issue, with respect to interest income earned from commercial banks/scheduled banks. The contentions of the Ld.AR are that the interest income earned from scheduled banks shall constitute the business income and thus eligible for claim of deduction u/sec80P of the Act. The Ld.DR submissions are that the PCIT has dealt on the facts which proves that the A.O. has not applied his mind and not made enquiries on this disputed issue. We find the A.O has called for the information, but

there is no examination and verification of the facts or findings by the A.O on the income earned from commercial banks/scheduled banks. Accordingly, the matter needs to be verified and reasons for claim by the assessee should be justified. Accordingly, We do not find infirmity in the order of the Pr.CIT on the directions to A.O. for verification on this disputed issue of interest income earned from commercial banks and accordingly, we dismiss this ground of appeal of the assessee.

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

Order pronounced in the open court on 21.08.2025.

-S/d-
(GD PADMAHSHALI)
ACCOUNTANT MEMBER
Panaji Dated: 21/08/2025

-S/d-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The Pr. CIT
4. CIT
5. DR, ITAT,
6. Guard file.

//True Copy//

BY ORDER,
(Asstt. Registrar)ITAT,
Panaji

		Date	<u>Initial</u>	
1.	Draft dictated on			PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			