IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI

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

I T A. No.154/PAN/2025
(A.Y.2020-21)

The Belgaum Manufactures Co-op industrial Estate Limited, 10 342/690,Udyambag, Belgaum-590008, Karnataka	Vs.	Pr.CIT, C.R.Building, Navanagar, Hubli-580025, Karnataka.
PAN .No.AAAAT7254J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Pramod Y Vaidya.AR
Revenue by	Shri.Captain Pradeep Arya.CIT.DR

सुनवाई की तारीख/Date of Hearing	14.08.2025
घोषणा की तारीख/Date of Pronouncement	20.08.2025

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 assesse 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 cooperative society registered under Bombay Co-Operative

Societies Act 1925. The assessee has filed the return of income for the A.Y 2020-21 on 10.01.2021 disclosing a total income of Rs.Nil/- after claiming deduction of Rs.52,40,716/- u/sec 80P of the Act. 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 assesse has filed the details on 22.08.2022 and the Assessing Officer (A.O) has dealt on the submissions/details at Para 3 of the order 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 16.09.2022.

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 is not entitled to deduction u/sec 80P (2)d of the Act. In compliance to the notice u/sec263 of the Act dated 26.06.2024, the assessee has the details and explanations through e –filling portal on 9.07.2024. 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, 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 10.03.2025. 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 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, Honble ITAT decisions in the assessee own case 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 and overlooked the provisions of section 80P of the Act and has not conducted enquiry on interest income and the Ld. DR relied on the order of the Pr.CIT.

6. We heard the rival submissions and perused the material on record. The Ld.AR envisaged that the order passed by the Pr.CIT is bad in law as the order revised under revision proceedings passed by the Pr. CIT is not erroneous and not prejudicial to the interest of the revenue. The contentions of the Ld. AR that, 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 notice issued u/s 143(2) of the Act and filed reply on 15.07.2021 placed at page 5&6 of the paper book emphasizing that the AO has called for the details in respect of complete scrutiny under CASS to verify the issues of (i)Large "any other amount allowable as deduction" claimed in schedule BP of return (ii)High Liabilities as compared to low income/receipts and (iii) Large deduction under chapter VI-A(Business ITR). The assessee has also received notice u/s 142(1) of the Act dated 24-11-2021 from the AO placed at page 7&8 of the paper book, in particular the AO has

called the details as per the annexure and particularly in point (4) placed at page 8 " An amount of Rs.52,40,716/- is claimed as deduction u/sec80P(2)(d) of the Act. Explain how you are eligible for the said deduction as per section 80P (4) of the Act". The assessee has filed the details through ITBA portal with the submissions as called for in lieu of notice u/s 142(1) of the Act on 8-12-2021 and are placed at page 9 to 15 of the paper book.The Ld.AR referred to the submissions in respect of eligibility of deduction u/sec 80P(2)(d) of the Act at Para 4 of the reply letter and at Para 5 details of interest earned from investments with the other Cooperative banks placed at page 11&12 of the paper book. Further the assessing officer has issued show cause notice dated 18-08-2022 –Why the proposed variation should not be made- and incompliance to show cause notice, the assessee has filed the reply on 22-08-2022 with the supporting judicial decisions in the assessee own case for the earlier years placed at page 16 to 23 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 asssesse has received interest on fixed deposits and savings bank with the four 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 at page 3 Para 3.4 of the assessment order and accepted the return of income. Further the Ld. AR submitted that the Pr. CIT has erred in set aside the order of the AO which does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. The Ld. AR also submitted that explanation (2) to Sec. 263 of the Act are to be considered only when the AO has not applied his mind and no the facts are verified and no enquiry was conducted. The Ld. AR contended that the assessee has complied with the statutory notices and filed reply online through ITBA.

7. The AO has dealt on the facts of the disputed issue in the proceedings but there are few observations in the assessment order. Further the Pr.CIT has erred in overlooking the fact that the assessee has filed the written submissions on the disputed issue before the lower authorities and emphasized that AO having satisfied and accepted the returned income and hence the action of the Pr. CIT is not acceptable. 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."

8. 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 unstainable 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).

9. Considering the ratio of decisions of the Honble Hight courts, it is clear the Pr.CIT before holding the order of the A.O. is erroneous should conduct necessary inquiries. The Ld.AR submitted that the Pr.CIT has not considered the facts that the A.O has called for the information and the assessee has submitted the details of investments with the other cooperative banks and interest income in the

F.Y.2019-20 in lieu of notice u/s 142(1) of the Act and show cause notice of the A.O. Hence there cannot be any non application of mind by the A.O. Whereas the observations of the Pr. CIT are not correct and further if any query is raised in the assessment proceedings and it was responded by the assessee, mere fact that it is not dealt with by the A.O. in the order cannot implied that there is no application of mind. We find that the A.O has considered one of the possible views based on the information and it is not necessary that the A.O should put all the discussions/observations in the assessment order, as per explanations (2) to sec 263 of the Act the authority has to invoke provisions only when there is no verification and enquiry conducted by the A.O. Whereas the A.O has applied his mind and verified the facts. The Ld. AR referred to the submissions, financial statements, judicial decisions and explanations filed before the A.O. We find the Hon'ble High Court of Bombay in CIT Vs. Gabriel India Ltd.(203 ITR 108) has observed as under:

Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1973-74 - Assessee claimed a sum of Rs. 99,326 described 'as plant relay out expenses' as revenue expenditure and ITO, after making enquiries in regard to nature of said expenditure and considering explanation furnished by assessee in that regard, allowed assessee's claim - Subsequently, Commissioner, exercising powers under section 263, cancelled order of ITO observing that order of ITO did not contain discussion in regard to allow ability of claim for deduction which indicated non-application of mind and that claim of assessee required examination as to whether expenditure in question was a revenue or capital expenditure and directed ITO to make a fresh assessment on lines indicated by him - Whether under section 263 substitution of judgment of Commissioner for that of ITO is permissible - Held, no - Whether ITO's conclusion can be termed as erroneous simply because Commissioner does not agree with his conclusion - Held, no - Whether ITO's order could be held to be 'erroneous' simply because in his order he did not make an elaborate discussion - Held, no - Whether provisions of section 263 were applicable to instant case and Commissioner was justified in setting aside assessment order - Held,

10. We Considering the overall facts, circumstances, ratio of the judicial decisions and the details submitted in the course of hearing are of the view that the if any query is raised in the assessment proceedings and it was responded by the assessee, mere fact that it is not dealt within by the A.O. in the order cannot implied that there is no application of mind and the A.O. has applied one of the possible view. Hence, the action of the Pr.CIT cannot be acceptable as the order passed

by the A.O. does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. Accordingly, we set aside the order of the Pr.CIT and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 20.08.2025.

-S/d-	-S/d-
(**GD PADMAHSHALI)**	**(PAVAN KUMAR GADALE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Panaji Dated: 20/08/2025

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)ITATPanaji

		Date	Initial	
	Draft dictated on			PS
	Draft placed before author			PS
	Draft proposed & placed before the second member			PS
	Draft discussed/approved by Second Member.			PS
	Approved Draft comes to the Sr.PS/PS			PS
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	File sent to the Bench Clerk			
	Date on which file goes to the AR			
	Date on which file goes to the Head Clerk.			
	Date of dispatch of Order.			
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