

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
SHRI ARUN KHODPIA (ACCOUNTANT MEMBER)

I.T.A. No. 3105/Mum/2025
Assessment Year: 2020-21

M/s. Dharavi Sahakari Maryadit 2/18, Gulmohammad Chawl, Sant Kakkaya Marg, Dharavi, Mumbai-400017 PAN:AAAAD6460C (Appellant)	Vs.	Principal Commissioner of Income Tax, Mumbai 20 Room No.418, 4 th Floor, Piramal Chamber, Lalbaug, Parel, Mumbai-400012 (Respondent)
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Appellant by	Shri Sunil Desai
Respondent by	Shri Umashankar Prasad, CITD.R.

Date of Hearing	04.09.2025
Date of Pronouncement	28.10.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The Present appeal filed by the assessee arises out of order dated 18/03/2025 passed by Ld.PCIT Mumbai-20, for assessment year 2020-21 on following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the learned PCIT erred in invoking provision of section 263 treating the

order passed by the learned Assessing Officer as erroneous and prejudicial to the interest of the revenue.

2. On the facts and in the circumstances of the case and in law, the learned PCIT erred in cancelling and setting aside the assessment order and directing the AO to make necessary enquiry and verification in respect of deduction u/s 80P of Rs. 54,47,586, when on record the appellant has been consistently claiming deduction every year.

3. Appellant craves leave to add, alter and/or modify the grounds of appeal on or before the date of hearing of the appeal.”

Brief facts of the case are as under:

2. The assessee file its return of income for the year under consideration on 29/12/2020 declaring total income at loss of Rs.1,47,96,198/-. The assessee claimed deduction of Rs.54,47,586/- under section 80P of the act. The return was selected for complete scrutiny under CASS to examine following issues:

- high creditors/liabilities
- investments/advances/loans
- high interest expenditure/finance costs
- deduction from total income under chapter 6A

3. Subsequently, notice under section 143(2) of the act was issued along with notice under section 142(1) of the act. The assessee furnished various details from time to time and had filed its reply to the notice is issued wide letter dated 29/07/2021, 22/09/2021, 29/12/2021, 21/01/2021, and 25/02/2022 before the Ld.AR. Considering the submissions filed, the Ld.AO accepted the return of income filed by the assessee reassessment order on 02/09/2022 under section 143 (3) read with 144B of the act.

4. Subsequently, the Ld.PCIT upon perusing the assessment records observed that, during the assessment proceedings, the assessing officer allowed deduction of Rs. 54,47,586/- under sections 80P of the act, without carrying out any verification. The Ld.PCIT noted that, the assessing officer did not examine the claim of the assessee.

4.1 The Ld.PCIT thus issued notice under section 263 of the Act on 24/12/2024, that reads as under:

 <p>GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX PCIT, Mumbai-20</p>			
<p>To, DHARAVI SAHAKARI PATPEDHI MARYADIT 2/18, GULMOHAMAD CHAWL SANT KAKKAYA MARG, DHARAVI , Mumbai MUMBAI Dharavi S.O 400017 , Maharashtra India</p>			
<p>PAN/TAN: AAAD6460C</p>	<p>AY: 2020-21</p>	<p>DIN & Notice No : ITBA/REV/F/REV1/2024- 25/1071537194(1)</p>	<p>Dated: 24/12/2024</p>

NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year **2020-21**.

In this regard, a hearing in the matter is fixed on **09/01/2025 at 03:00 PM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

Please refer to the above.

2. In your case, return of income for the A.Y. 2020-21 was filed on 29.12.2020, declaring a total income of Rs. (-) 1,47,96,198/-. Subsequently, the return was selected for scrutiny assessment and the assessment was made u/s. 143(3) r.w.s. 144B on 02.09.2022, accepting the returned income of Rs. (-) 1,47,96,198/-.
3. Upon verification of the assessment records, it is observed that you were failed to substantiate the claim of Rs. 54,47,586/- u/s. 80P of the Act related to the deduction from total income under Chapter VI-A. Further, you were required to substantiate your claim for deduction u/s. 80P(4), which is not available to co-operative banks except for Primary Agricultural Credit Society or Primary Co-Operative Agricultural and Rural Development Bank. In the absence of the required documentary evidence, the claim remains unexplained.
4. Additionally, the Supreme Court ruling in the case of *The Mavilayi Service Coop. Bank Ltd (2021)* confirmed that co-operative banks are excluded from the scope of section 80P,

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:418,4th Floor, PIRAMAL CHAMBER, LAL BAUG, PAREL, MUMBAI, Maharashtra, 400012
Email: MUMBAI.PCIT20@INCOMETAX.GOV.IN, Office Phone:02224117682

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN- Document Identification No.

AAAAAGI 000- DHARAVI SAHAKARI PATPEDHI MARYADIT
A.Y. 2020-21
ITBA/REV/F/REV1/2024-25/1071637194(1)

except for certain types of primary agricultural co-operative societies. Thus, the interest income from co-operative banks is not eligible for deduction under this section. Consequently, the assessment order passed u/s. 143(3) r.w.s. 144B dated 02.09.2022 is 'erroneous' and 'prejudicial to the interest of the revenue' in the light of the facts mentioned above.

5. In view of the above, you are requested to showcause as to why assessment order passed u/s. 143(3) read with Section 144B dated 02.09.2022 should not be revised u/s. 263 of the Income Tax Act, 1961.

6. In this regard, a hearing in the matter is scheduled on **09.01.2025 at 03:00 PM**. You are requested to attend in person or through an authorized representative to submit your representation, along with supporting documents or information regarding the issues involved. If there is no compliance by the given date, it will be presumed that you do not wish to avail yourself of this opportunity, and an order under Section 263 of the Income Tax Act, 1961, will be passed accordingly.

JAY KISHOR MISHRA
PCIT, Mumbai-20

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

4.2 The Ld.PCIT during the revision proceedings, called for various documents and submissions furnished by the assessee during the assessment proceedings. It was noted that, the assessee furnished submission in respect of the issue under consideration, vide letter dated 22/09/2021 and 21/01/2022 placed at pages 9 and 18 of the paper book, wherein submission provided by the assessee reads as under:

“Deduction under chapter VIA, Rs.54,47,586: the assessee has claimed deduction under section 80P of the income tax act since it fulfils all conditions stipulated in section 80 P.”

4.3 The Ld.PCIT thus was of the opinion that, the Ld.AO did not verify the deduction claimed by the assessee even though this

issue was one of the subject matter for verification in the scrutiny assessment notice, based on limited submission by the assessee Ld.AO did not verify any document or called for any further evidence is in support of the claim from the assessee and accepted the assessee's submission.

4.4 The Ld.PCIT thus by placing reliance on various decision observed and held as under:

“6. Considering the facts mentioned above and relying on the judicial pronouncements, I am satisfied that the order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue in terms of Section 263 of the Act. Hence, the assessment order is cancelled and set-aside to the AO for making fresh assessment in the light of the discussion above. The AO shall make necessary inquiry and verification in respect of deduction of Rs. 54,47,586/- claimed under section 80P of the Act and shall give opportunity of being heard to the assessee before passing necessary order”

Aggrieved by the order of the Ld.PCIT, assessee is in appeal before the *Tribunal*.

5. The Ld.AR submitted that, the notice dated 29/06/2021 issued under section 143 (2) of the act, indicating one of the reason for scrutiny being deduction claimed under set chapter VI A, Placed in the paper book at page 1-13 on the paper. He further submitted that, vide notice dated 03/12/2012 specific query in para D was raised, calling upon assessee to furnish details of earnings under the relevant heads against which deduction was claimed note on eligibility criteria of deduction claimed under different sections of chapter VIA and documentary evidence in respect of the investment/expenditure/repayment etc made to claim the deduction.

5.1 The Ld.AR submitted that, to the above notice, assessee filed its reply vide letter dated 21/01/2022 placed at page 18 -25 of paper book. The Ld.AR the submitted that, all relevant details in respect of the claim of deduction was filed before the Ld.AO and therefore deduction under section 80P of the act stands verified by the Ld.AO during the assessment proceedings. He submitted that merely because the assessing officer did not carry out any investigation on this issue, will not justify the initiation of proceedings under section 263 of the Act.

5.2 On the contrary, the Ld.DR vehemently supported the order passed by the Ld.PCIT. He submitted that, the assessee filed submission in respect of the deduction claimed vide reply dated 21/01/2022 merely stating that assessee satisfies the conditions to claim deduction under section 80P. He submitted that the Ld.AO did not verify manner in which the assessee claimed deduction under section 80P. The Ld.DR submitted that as per explanation 2 of section 263, the present case falls under lack of investigation, and therefore invoking provisions of section 263 stands satisfied.

We have perused the submissions advanced by both sides in the light of the records placed before us.

6. Admittedly, notice under section 143(2) was issued to the assessee wherein one of the reasons for selection for scrutiny was to verify the deduction claim by the assessee under chapter VIA as against the total income. However during the assessment proceedings, the Ld.AO limited the verification in respect of the other issues, where he called for relevant documents in support. It is noted that, the Ld.AO except for issuing questionnaire

against which the assessee has replied in a very brief manner as noted by the Ld.PCIT, did not further proceed or take any necessary step to verify the claim of the assessee. The notice issued by the Ld.AO called for all necessary documents in support of the deduction under chapter VIA. However there is nothing on record to establish that assessee furnished specific details in respect of the claim except for filing general submission as recorded herein above and financial statements/bank statements. The Ld.AO also did not call upon assessee to furnish specific details in respect of the deduction claimed under section 80P.

6.1 Undoubtedly, the Ld.AO has broad powers u/s.143(2) when it is a complete scrutiny. The notice issued under 143(2) was for complete scrutiny. However clarification and documents were called for in respect of unsecured loans only. During the assessment proceedings, the Ld.AO thus limited the scrutiny to issue relating to unsecured loans. There is nothing on record to suggest that, details relating to other issues were verified by the Ld.AO. It is noted that, the questioner issued by the assessing officer though required the assessee to furnish all information pertaining to computation of income verification unsecured loans was only made. At this juncture it is relevant to peruse provisions of section 263 of the Act that read as under :-

263. Revision of orders prejudicial to revenue.

(1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made

such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including,—

(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment;

or

(ii) an order modifying the order under section 92CA; or

(iii) an order cancelling the order under section 92CA and directing a fresh order under the said section.

Explanation 2.— For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be, shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

(Emphasis added)

6.2 Therefore, while deciding the question as to whether or not the jurisdiction was rightly exercised by the Ld.PCIT under Section 263 of the Act, we would have to take into consideration the provisions of Section 263 of the Act, sans Explanation 2, inserted by Finance Act 2015 w.e.f. 1/04/2015 that elucidated the circumstances when an assessment order can be held to be erroneous and prejudicial to the interests of the Revenue.

6.3 We also note that even before the said amendment, it stipulated the mandatory requirement of the order being “erroneous” as well as “prejudicial to the interests of the Revenue”. Therefore, what manifests from the above is the fact that, the twin conditions have to be met before assuming

jurisdiction under Section 263 of the Act, and the PCIT has to form an opinion that the order passed by the assessing officer is “erroneous” and “prejudicial to the interests of the Revenue”.

6.4 We also note that prior to the amendment, the scope of these words were explained by the *Hon'ble Supreme Court*. We refer to the decision of *Malabar Industrial Co. Ltd. Vs. CIT* reported in (2000) 243 ITR 83 *Hon'ble Supreme Court inter alia* laid down that, the prerequisite for exercise of jurisdiction by the Ld.PCIT under section 263 is that, the order of the assessing officer must be erroneous in so far as it is prejudicial to the interests of Revenue. The PCIT thus has to satisfy twin conditions, namely :

- (a) The order of the assessing officer sought to be revised is erroneous, and
- (b) It is prejudicial to the interests of the Revenue.

6.5 *Hon'ble Supreme Court* held that, if one of them is absent i.e; if the order of the assessing officer is erroneous, but is not prejudicial to the revenue, or, if it is not erroneous, but is prejudicial to the interest of the revenue, recourse cannot be had to section 263(1) of the Act. *Hon'ble Supreme Court* further held that:

9. 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 ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO 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 ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same

as such will be erroneous and prejudicial to the interests of the revenue - Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC).

6.6 The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in respect of return which is picked up for complete scrutiny. The assessing officer must ascertain the truth of the facts stated in the return. It is in this context that *Hon'ble Supreme Court* assigns such meaning to the word "erroneous" for the purposes of section 263.

6.7 In present facts of the case, the return was picked up for complete scrutiny, as per the notice issued under section 143(2). It was thus incumbent on the assessing Officer to investigate all the facts stated in the return, and circumstances would make prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because no inquiry was made, and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.

6.8 Considering the totality of the facts and the decisions relied by both sides as discussed herein above, we concur with the invoking provisions of section 263 by the Ld.PCIT as the assessing officer failed to carry out any inquiry on the deduction claimed by assessee under Chapter VI-A and failed to apply his mind while passing the assessment order in respect of the same.

7. On perusal of the directions issued by the loan and PCIT it is noted that, the Ld.AO is to make necessary enquiry and verification in respect of the deduction claimed under section 80P of the act by giving proper opportunity of being heard to the assessee. We do not find any infirmity with such direction and

the same is upheld. However the Ld.AO while carrying out necessary verification may keep the in mind the ratio and the principle laid down by Hon'ble Supreme Court in the case of *Mavilayi Service Co-operative Bank Ltd. v. CIT* reported in (2021) 123 taxmann.com 161 and in case of *Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. vs. Assessing Officer* reported in (2023) 154 taxmann.com 305.

With the above modified directions, we do not find any merit in the grounds raised by the assessee.

Accordingly the grounds raised by the assessee the stands dismissed.

In the result appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 28/10/2025

Sd/-

**(ARUN KHODPIA)
Accountant Member**

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai:

Dated: 28/10/2025

Poonam Mirashi,
Stenographer

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt.Registrar)

ITAT, Mumbai