

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

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| ITA No.1108/Bang/2025 |
| Assessment Year : 2020-21 |

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| M/s. BSNL Employees Co-operative Credit Society Limited 1 st Floor, R.R. Mahalaxmi Mansion Pinto Road, Near Desai Cross Hubballi 580 020 Karnataka PAN NO : AAAAT7546B | Vs. | PCIT Hubballi |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Sri V. Narendra Sharma, A.R. |
| Respondent by | : | Sri N. Balusamy, D.R. |

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| Date of Hearing | : | 15.12.2025 |
| Date of Pronouncement | : | 30.01.2026 |

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the Id. PCIT, Hubli dated 23.03.2025 vide DIN & Order No. ITBA/REV/F/REV5/2024-25/1074892709(1) passed u/s 263 of the Income Tax Act, 1961 (in short “The Act”) for the Assessment Year 2020-21.

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

1. The order of revision passed by the learned Principal Commissioner of Income Tax, Hubballi under Section 263 of the Act dated 23/03/2025, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
2. The learned Principal Commissioner of Income Tax is not justified in law and on facts to set aside the assessment order passed under section 143[3] r.w.s. 144B of the Act dated 20/08/2022 and direct the assessing officer to modify the original assessment passed by the learned assessing officer after verification of details, on the facts and circumstance of the case.
3. The learned Principal Commissioner of Income tax is not justified in passing an order of revision under section 263 of the Act, as the order passed under section 143 [3] r.w.s. 144B of the Act dated 20/08/2022, was passed pursuant to proper enquiry by the learned assessing officer, on the facts and circumstances of the case.
4. The learned Principal Commissioner of Income Tax, has grossly erred in revising the order passed by the learned Assessing officer without appreciating that there is no error, much less prejudicial to the interests of the Revenue to warrant a revision and therefore the order passed by the

learned Principal Commissioner of Income Tax is ultra vires to the scope of Section 263 and requires to be cancelled on the facts and circumstances of the Appellant's case. The direction to make fresh assessment order after examining the facts amounts to ordering fishing and roving enquires without any material in support thereof and consequently the impugned order of revision passed is bad in law and is liable to be cancelled.

5. The learned Principal Commissioner of Income Tax, failed to appreciate that when the issue is subject matter of the appellate proceedings, as per the proviso to section 263 of the Act, the learned Principal Commissioner of Income-tax, was not justified in directing the learned assessing officer to deny the claim of deduction of the appellant under section 80P [2] [d] of the Act claimed on the interest received by the appellant from Co-operative Banks / Financial Institutions and treat the same as Income from other sources as per the provisions of section 56 of the Act, on the facts and circumstances of the case.
6. The learned Principal Commissioner of Income Tax, is not justified in directing the learned assessing officer to deny the claim of deduction of the appellant under section 80P [2] [d] of the Act claimed on the interest received by the appellant from Co-operative Banks / Financial Institutions and treat the same as Income from other sources as per the provisions of section 56 of the Act, on the facts and circumstances of the case.

7. The learned Principal Commissioner of Income tax failed to appreciate that the Assessing Officer before completing the assessment order under section 143 [3] r.w.s. 144B of the Act on 20/08/2022 had made detailed enquiries and having applied mind and considering the facts the order of assessment has been passed. Hence on the very same issue no action can be taken under Section 263 of the Act as the actions of the Assessing Officer is pursuant to applying his mind to the matter and in accordance with law, on the facts and circumstances of the case
8. The learned Principal Commissioner of Income tax has passed an unsustainable order which is based purely on assumptions and presumptions. The order is arbitrary and full of surmises, without considering the relevant material and not properly appreciating the submissions and details filed by

the appellant and consequently passed a perverse order, on the facts and circumstance of the case.

9. The Appellant craves leave to add, alter, substitute and delete any or all the grounds of appeal urged above.
10. For the above and other grounds to be urged during the hearing of the appeal, the Appellant prays that the appeal be allowed in the interest of equity and justice.

3. The brief facts of the case are that the assessee is a co-operative society registered under the Mysore Co-operative Society Act, 1959 on 21/08/1963. It is the credit society formed by the employees of the BSNL and membership of the society is restricted to the employees of the BSNL. The society is accepting the deposits from the BSNL employees and extending the credit facilities to BSNL employees only and not to the general public. The assessee society filed its return of income for the AY 2020-21 on 31/10/2020 declaring total income of Rs.NIL after claiming deduction u/s 80P of the Act amounting to Rs. 56,46,002/-. The Gross Total Income exclusively comprised income from business Rs.53,24,108/- and

Income from other sources Rs. 3,21,894/-. The case of the assessee society was thereafter selected for complete scrutiny under the E-assessment Scheme, 2019 on the following issues:-

- i) High creditors/liabilities.
- ii) Investment/Advances/Loans.
- iii) High Interest expenditure/finance costs
- iv) **Deduction from total income under Chapter VI-A**

3.1 Accordingly, the notice u/s 143(2) of the Act dated 29/06/2021 as well as notice u/s 142(1) of the Act dated 18/10/2021 were issued to provide specific details such as **break up of interest income**, sources of investments and loans extended, details of liabilities, explanation to claim of deduction u/s 80P, details of depositors etc. In response to the statutory notices, the assessee had uploaded computation of income, **note on eligibility to claim deduction u/s 80P**, Registration Certificate of Society, **Details of interest income** and bank account statement, details of deposits accepted, details of advances and **interest earned** and details of fresh loan given to its members. The details as provided had been examined by the AO.

3.2 More particularly with regard to claim of deduction under chapter VIA, the AO while passing the assessment order had categorically observed as follows -

Deduction under Chapter VIA

7. As per the return of income, the assessee society arrived at a Gross Total Income of Rs. 56,46,002/- and claimed the entire amount as deduction under section 80P of the Act. This claim has made the Total Income of the assessee to be declared as "Nil". The Gross Total Income exclusively comprised income from business Rs.53,24,108/- and income from other sources Rs.3,21,894/-.

7.1 As regards to the deduction of Rs.53,24,108/- claimed as deduction u/s 80P(2)(a)(i) Income Tax Act, 1961 as profit from specified activities of Banking/Credit Facilities to its members, the assessee has filed justification alongwith various judgements. On perusal of all the submissions made by the assessee society it is seen that the assessee is registered as a Co-operative Society under the Mysore Co-operative Societies Act 1959 of Karnataka on 21-08-1963. It is the credit society formed by the employees of the BSNL and membership of the society is restricted to the employees of the BSNL. The society is accepting the deposits from the BSNL Employees and extending the credit facilities to BSNL employees only and not to general public.

7.2 As on 31.03.2020 the society has total 699 members, out of which 673 are Regular Members and 26 are Nominal Members. For the purpose of satisfying the condition of Principle of Mutuality, the assessee has stated that the nominal members are the retired members of BSNL who are allowed to keep the deposits with society but no loan is advanced to them. Assessee has also stated that the nominal members of the society are only 3.7% of the total members which are much below 15% as allowed under section 18 of the Karnataka Co-operative Society Act, 1959.

7.3 The arguments of the assessee was examined in detail in the context of claim of deduction under section 80P. This section covers limited income of specified entities and the sum referred to in Section 80P(2)(a)(i) is "income from carrying on the business of banking or providing credit facilities to its members only". As per Section 80P(2)(a)(i), profits attributable from the activity of carrying on the business of banking or providing credit facilities to its members by a Co-operative Society is eligible for deduction.

8. Materials available on record revealed that the assessee had surplus funds that were invested as deposits with Karnataka Central Co-op. Bank and received an interest of Rs.3,15,438/- and Rs. 6,456/- as an interest received on the saving account held with the ICICI Bank. Thus a total interest income of Rs. 3,21,894/- is treated as business income by the assessee and claimed deduction u/s 80P(2)(d) r.w.s.80P(2)(a)(i) Income Tax Act, 1961. In support of its claim the assessee has stated that the assessee has statutory reserve of Rs.4,00,45,312/- as on 31.03.2020 and as per Govt. of Karnataka directives, the assessee has to invest minimum 10% of reserve in Karnataka Central Co-op. Bank Ltd. and accordingly assessee has invested Rs.38.00 Lakhs in it and earned an interest of Rs.3,15,438/-. It is a business income of the assessee and hence is eligible for deduction u/s 80P of the Act. ✓

8.1 The assessee was issued the Show Cause Notice alongwith the Draft Assessment Order

vide DIN No. TBA/AST/F/143(3)(SCN)/2022-23/1043974436(1) dated 21.07.2022 along with the above Draft Assessment Order and was requested to furnish its say on the proposed addition. In response to this assessee has filed detail justification/submission dated 01.08.2022. In respect of interest earned of Rs. 3,15,438/- from Karnataka Central Co-operative Bank and Rs. 6,456/- received interest from ICICI Bank and held that as per section 80P(2)(d) of the Income Tax Act, 1961 interest and dividend income received on investment with other co-operative societies are fully exempted and we had accordingly claimed deduction of Rs.3,15,438/- u/s 80P(2)(d) of the Act includes co-operative bank also. All co-operative banks are co-operative societies registered under co-operative societies Act of the respective states. In respect of interest received from ICICI Bank of Rs.6,456/- as society has not kept any deposit with ICICI Bank but interest was earned on flexi deposit from amount lying in current account and hence it is our business income and eligible for deduction u/s 80P(2)(d) of the Income Tax Act, 1961. In support of these claims assessee has rely on various Hon'ble High Courts and ITAT's case laws where it is held that earn on deposit with co-operative societies/co-operative banks are fully exempted u/s 80P(2)(d) of the Income Tax Act, 1961. The submission of the assessee are verified and placed on record which is also available on the case history of the assessee case.

8.2 From perusal of the submission and various case laws, it is clear that assessee society is eligible for deduction u/s 80P(2)(d) of the Income Tax Act, 1961 in respect of interest income of Rs.3,15,438/- earned from Karnataka Central Co-operative Bank. But plea of the assessee in respect of interest earned from ICICI Bank of Rs.6,456/- as society had not kept any deposit with ICICI Bank but interest was earned from flexi deposit from amount lying in current account and hence it is our business income and eligible for deduction u/s 80P(2)(d) of the Income Tax Act, 1961 is considered but not acceptable because ICICI Bank is doing commercial banking activity, which are not member of the co-operative societies as such, as being done by an ordinary investor is liable to be taxed under the head "Income from other sources." Hence, an amount of Rs.6,456/- as interest earned from ICICI Bank which is not fall under the definition of co-operative society, is treated as income from other sources of the assessee hence is not eligible for deduction u/s 80P of the Act. Thus, interest income of Rs. 6,456/- received on the saving bank account held with ICICI Bank is clearly the income from other sources. Therefore, claim of deduction of Rs.6,456/- u/s 80P treated as an income of the assessee society as an income from other society for the A.Y.2020-21.

Thus, the AO has categorically observed that a total interest income of Rs. 3,21,894/- is treated as business income by the assessee and claimed deduction u/s 80P(2)(d) r.w.s 80P(2)(a)(i) of the Act as the assessee had the statutory reserve of Rs.4,00,45,312/- as on 31/03/2020 and as per Govt. of Karnataka directives, the assessee has to invest minimum 10% of reserve in Karnataka Central Co-operative Bank Ltd and accordingly assessee has invested Rs.38 lakhs in it and earned an interest of Rs. 3,15,438/-. It is a business income of the assessee & hence is eligible for deduction u/s 80P of the Act. Thus, the AO after proper examination of the details along with the documentary evidence/written submission/explanation etc. submitted by the assessee, completed the assessment proceedings u/s. 143(3) r.w.s 144B of the Act by holding that only interest received from the ICICI Bank amounting to Rs. 6,456/- did not fall under the definition of co-operative society and accordingly treated the same as Income from Other sources & hence not eligible for deduction u/s 80P of the Act.

3.2 The ld. Principal Commissioner upon calling for the assessment records and on examination of the same, observed that the order passed u/s. 143(3) r.w.s. 144B of the Act on 20/08/2022 was erroneous in so far as it is prejudicial to the interest of revenue on the issue of interest income earned from various banks and co-operative banks allowed as deduction u/s 80P of the Act. The ld. Principal Commissioner noticed that the assessee society had earned interest income from Co-operative Banks/ Commercial Banks amounting to **Rs.3,21,899/-** which according to him needed to be taxed under the head “Income from other Sources” u/s 56 of the Act. Hence, the said amount would be ineligible for deduction u/s 80P(2) of the Act, which the AO had failed to examine and considered the same in the total income under the head income from other sources in view of the decision of the Hon’ble Supreme Court in the case of

Totagars Co-operative Sale Society Limited vs. Income Tax Officer reported in 322 ITR 283 (SC) which held that utilization of surplus fund/ investments are taxable under the head “income from other sources” and therefore not eligible for deduction under section 80P(2)(a)(i) of the Act.

3.3 Further, the Id. Principal Commissioner also of the opinion that since the income earned was interest on FDs/ Reserve fund/Liquidity assets with co-operative Banks/Commercial banks, rather than interest/ dividend income from other co-operative societies, therefore the said income would also be not eligible for deduction under section 80P(2)(d) of the Act in view of the decision of the Hon’ble Supreme Court in the case of Totagars Co-operative Sale Society Limited vs. ITO(2010) 188 taxman 282 which affirmed that interest earned on deposits with banks would fall under the head “income from other sources” u/s. 56 of the Act and not under section 28 of the Act. Further, in this regard the Id. PCIT also relied upon the decision of Hon’ble High Court of Karnataka in the case of Principal Commissioner of Income Tax vs. Totagars Co-operative Sale Society Ltd. in ITA No.100066/2016 dated 16/06/2017 which held that the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a scheduled bank or co-operative bank. Considering the above, as the interest income earned from FD/ Reserve fund/ Liquidity assets with Co-operative banks/Commercial banks **needs to be brought to tax under the head “income from other sources”**, the Id. PCIT found the assessment order passed to be erroneous in so far as it is prejudicial to the interest of revenue and accordingly the proceeding under 263 of the Act was initiated by issuing notice dated 28/02/2025 to file its objections, if any.

3.4 In response to the said notice, the assessee submitted its reply on 17/03/2025 by stating that assessee had claimed the interest income earned from co-operative society's as deduction under 80P(2)(a)(i) of the Act in as much as the interest income had been earned from the investment made by the society as per Govt. of Karnataka directives according to which the assessee has to invest minimum 10% of reserve in Karnataka Central Co-operative Bank Ltd and hence the assessee has invested Rs.38 lakhs in it and earned an interest of Rs. 3,15,438/-. It is a business income of the assessee & hence is eligible for deduction u/s 80P of the Act. Further, the assessee submitted that the AO had allowed the deduction u/s. 80P(2)(d) of the Act as all the co-operative banks are co-operative societies registered under the co-operative societies Act of the respective states. It was submitted that the AO had rightly allowed the deduction u/s. 80P(2) of the Act as claimed by the society after proper examination & due application of mind since the interest earned cannot be considered as income from other sources. The assessee placed reliance on the judgments of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. [2015] 55 taxmann.com 447 as well as in the case of Lalitamba Pattina Souharda Sahakari Niyamita [2019] 307 CTR 770 and accordingly submitted that these interest income are attributable to the profits and gains of the business of providing credit facilities to its members only & the AO had taken one of the plausible view in allowing deduction u/s 80P(2)(d) of the Act by placing reliance on the judgment of the Jurisdictional High Court in the case of the Totgars' Co-operative Sales Society Limited [2017] **392 ITR 74.**

3.5 The ld. PCIT after perusal of the submission of the assessee did not accept the reply of the assessee in view of the decision of Hon'ble Supreme Court in the case of Totagars Co-operative Sale Society

Limited vs. ITO (2010) 188 Taxman 282 as well as the decision of the Hon'ble Karnataka High Court in the case of Principal Commissioner of Income Tax, Hubli vs. Totagars Co-operative Sale Society, Sirsi in ITA No. 100016/2016 dated 16/06/2017 and thus held that the AO has failed to make **proper enquiry** regarding nature of business income declared by the assessee society which included interest income from Co-operative Bank/Commercial bank and did not comply with the ratio laid down by the Hon'ble Supreme Court & Jurisdictional High Court(Supra). Thus, **Clause (a) and clause (d)** of the explanation-2 of section 263 are attracted in the instant case.

3.6 In view of the above, the ld. PCIT was of **considered opinion** that the assessment order passed u/s. 143(3) r.w.s 144B of the Act on 20/08/2022 was erroneous in so far as it is prejudicial to the interest of revenue as the issue in respect of taxing interest income on account of investment in commercial and Co-operative banks u/s 56 of the Act needs further verification on the part of the AO and accordingly the assessment order passed u/s. 143(3) r.w.s. 144B dated 20/08/2022 by the NaFAC was partly set-aside u/s. 263 of the Act with a direction to the AO to pass fresh assessment order by examining the facts discussed above.

4. Aggrieved by the order of the ld. PCIT passed u/s. 263 of the Act, dated 23/03/2025, the assessee has filed the present appeal before this Tribunal.

5. Before us, the ld. A.R. of the assessee Sri V Narendra Sharma, Advocate vehemently submitted that the order passed by the ld. PCIT is illegal & without jurisdiction as neither the order passed by the AO is erroneous either of fact or of law nor prejudicial to the interest of revenue to the income tax administration as a whole. Further the ld. AR of the assessee submitted that the ld. PCIT failed to appreciate

that there was no error by the AO in allowing the deduction claimed u/s. 80P(2) of the act in view of various judgments of jurisdictional High Court which held that interest earned from co-operative bank/commercial bank are attributable to the business of assessee and should be allowed deduction u/s. 80P(2)(a)(i) of the Act. Further, the Hon'ble Karnataka High Court in another case of Totgars' Co-operative Sales Society Limited [2017] **392 ITR 74** has held that the Co-operative Society Bank is merely a variety of the Co-operative Societies. Further, the ld. A.R. of the assessee submitted that the ld. Principal Commissioner have no power to substitute the judgement as taken by the AO and held to be erroneous and prejudicial interest to the revenue especially when the AO has taken one of the plausible view. Lastly, the ld. A.R. of the assessee submitted that in the pretext of revision proceedings, the ld. PCIT cannot direct the AO to tax the interest income under income from other sources especially when AO being Quasi-judicial authority after proper examination had taken an opinion which is also in accordance with the decision of the Jurisdictional High Court which are binding upon the AO.

6. The ld. JCIT D.R. Sri N. Balusamy on other hand heavily supported the order of the ld. PCIT, Hubli and vehemently submitted that the Order of the AO was erroneous in so far as it is prejudicial to the interest of revenue as the interest income earned from Co-operative/Commercial banks should have been taxed as Income from 'Other Sources' under the provisions of section 56 of the Act. The ld. DR also heavily relied upon the judgments of the Supreme Court in the case of Totagars Co-operative Sale Society Limited vs. ITO (Supra), Citizen Co-operative Society Ltd. (397 ITR 1) as well as Kerala State Co-operative Agricultural and Rural Development Bank Ltd. in Civil Appeal No. 10069 of 2016 along with the decision of the Hon'ble Jurisdictional High Court of Karnataka in the case of Principal Commissioner of Income Tax vs. Totagars Co-operative Sale

Society Ltd (supra) in support of his contention in order to justify the revision made by the commissioner.

7. We have heard the rival submission, perused material available on record. On going through the assessment order dated 20/08/2022, we take a note of the fact that the assessee had claimed the entire Interest of Rs.3,21,894/- as business income as the amount were invested in the statutory reserves as per the Govt. of Karnataka directives & all these interest earned are attributable to the business of the assessee. The AO however, allowed interest of Rs. 3,15,438/- u/s 80P(2)(d) of the Act by holding that all co-operative banks are co-operative societies registered under co-operative societies Act of the respective states by relying upon the judgement of the Hon'ble Karnataka High Court in the another case of 'Totgars' Co-operative Sales Society Limited [2017] **392 ITR 74** which has held that the Co-operative Society Bank is merely a variety of the Co-operative Societies. However, on going through the order of the Id. CIT, we take note of the fact that the main reason cited by the Id CIT is that the AO has passed the order by allowing the deduction claimed u/s 80P(2) of the Act on interest income received from co-operative banks/financial institutions other than co-operative societies whereas the same was ought to be included under the head of "Income from Other Sources" which has to be taxed u/s 56 of the Act & not income from business/profession in the light of the judgement of Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. Income-Tax Officer, Karnataka [2010] 188 Taxman 282 (SC). Therefore, we are of the considered opinion that it is not a case that no enquiry or verification was conducted by the AO. It is also not a case that the order has not been passed in accordance with any decision which is prejudicial to the assessee rendered by jurisdictional High Court or Supreme Court. In fact the AO relied upon the decision of the jurisdictional High court in the case of

Totgars' Co-operative Sales Society Limited [2017] **392 ITR 74** in holding that the interest income earned from Co-operative Society Bank is merely a variety of the Co-operative Societies. Further, we are also of the considered opinion that the judgement of Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. Income-Tax Officer, Karnataka (supra) relied upon by the ld. CIT is completely on different set of facts & thus distinguishable with the present facts. Thus, we are of the considered opinion that the AO has **taken a plausible view** in allowing the claim of the assessee u/s 80P(2) of the Act and therefore, in our considered opinion the ld. PCIT could not have set aside the order of assessment merely on the ground that the AO has not applied the law correctly.

7.1 In the similar facts & circumstances of the case, the co-ordinate bench of this Tribunal in the case of "Adarsha Souharda Sahakari Niyamit V. Pr. CIT" reported in (BANG-Trib.) 2026 ITR 470 has held as under-

"7. We have heard the rival submission, perused material available on record. We are of the considered opinion that in an appeal against an assessment order, the Tribunal exercises regular appellate jurisdiction over the assessment, examining the correctness of additions, disallowances, and other determinations made by the AO on facts and Law, however, for an appeal against a revision order u/s 263 of the Act, the Tribunal is essentially confine itself to examine (1) Whether the very assumption of 263 jurisdiction is valid (2) whether the PCIT's conclusion on "erroneous and prejudicial" are sustainable in law and (3) Whether due process (opportunity of hearing, inquiry) was followed. While doing so equal importance must also be given to the AO's recorded enquiries and reasoning, the PCIT's satisfaction & reasons keeping in mind that section 263 of the Act is a revision, not the Appellate power. Further, when the PCIT has chosen to set aside the order of the AO, the Tribunal is not entitled to go beyond and sustain the Order of PCIT on grounds different from that relied by the ld. PCIT.


7.1 The division Bench of the Hon'ble High Court of Kerala in the case of Commissioner of Income Tax v. Chandrika Educational Trust reported in (1994) 207 ITR 108 had held as under:-

"In entertaining an appeal from the Commissioner's order what the Tribunal does is to examine whether the said order is sustainable in law and whether it is within the powers conferred by section 263.

Therefore, when the Commissioner has chosen to set aside the order of the Income-tax Officer only on a particular ground, the Tribunal is not entitled to go beyond and sustain the order of the Commissioner on grounds different from that relied on by the Commissioner himself.”

7.2 The Hon’ble High Court of Kerala at Ernakulam in the case of Save a Family Plan (India) v. The Deputy Commissioner of Income Tax (Exemptions) in ITA No.81 of 2025 dated 05/11/2025 had again reiterated the same.

7.3 In view of the above, it is pertinent here to first go through the notice for hearing dated 28/02/2025 issued by the ld. PCIT stating the reasons for invoking the Revision Proceedings u/s 263 of the Act which are reproduced below for ease of reference & convenience-

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Hubli**

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| To, ADARSHA SOUHARDA SAHAKARI NIYAMIT SIRSI 1 NAYAK BUILDING , HOSPET ROAD SIRSI SIRSI 581401 , Karnataka India | |
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| PAN/TAN: AAAAA0323P | AY: 2020-21 | DIN & Notice No : ITBA/REV/F/REV1/2024- 25/1073851726(1) | Dated: 28/02/2025 |
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NOTICE FOR THE HEARING

M/s/Mr/Ms

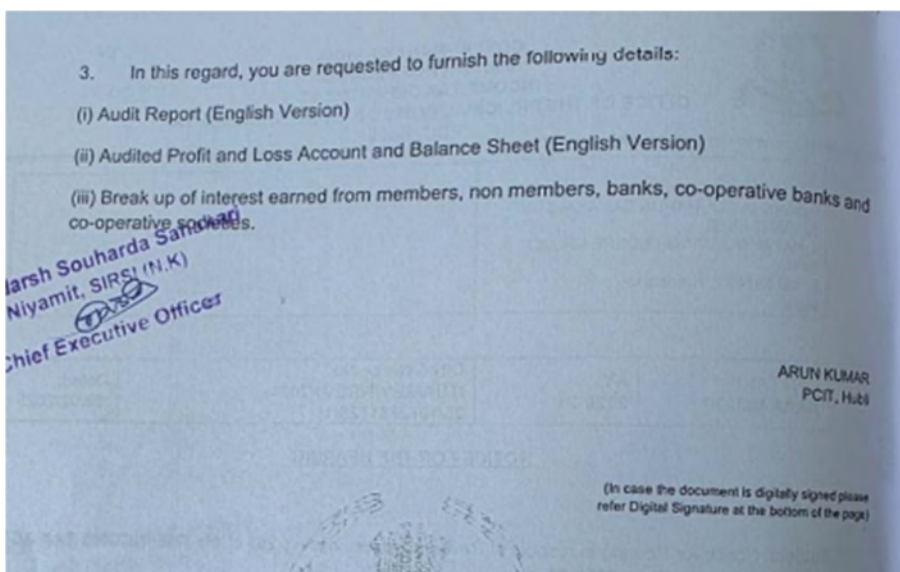
Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year 2020-21.

In this regard, a hearing in the matter is fixed on **18/03/2025 at 11:15 AM**. 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

Upon calling for case records in your case and examination of the same, it is found that assessment was completed u/s 143(3) read with section 144B of the Income-Tax Act, 1961, on 05.09.2022. On verification of case records, it is found the you had received certain interest income on investment in banks which was required to be added to income of the assessee u/s 56 of the Income-tax Act, 1961, as held by The Hon'ble Supreme Court in the case of *Tolgars Co-operative Sale Society Ltd. vs. Income Tax Officer, 322 ITR 283(SC)* that utilization of surplus fund/investment taxable under the head "income from other source" and therefore not eligible for deduction u/s 80P.

2. In view of the above the assessment proceedings u/s 143(3) r.w.s 144B of the Income-tax Act dated 05.09.2022 is found to be erroneous in so far as it is prejudicial to the interest of Revenue, within the meaning of Section 263 of the Income-tax Act, 1961, as such the AO has failed to examine and verify the above issue and failed to tax the income from other sources. Therefore, you are requested to furnish your objections, if any, in writing along with necessary documentary evidences by 18.03.2025, failing which order u/s 263 of the Act would be passed on merits after taking into account all the materials available on record.

Note: If digitally signed, the date of digital signature may be taken as date of document.
C.R. BUILDING, NAVANAGAR, HUBBALLI, Karnataka, 580025
Email: HUBLPCIT@INCOMETAX.GOV.IN.



7.4 On going through the above show cause notice for hearing in respect of revision proceedings u/s. 263 of the Act, the reasons cited by the ld. PCIT primarily is that the assessee had received certain interest income on investment in banks which are required to be added to the income of the assessee u/s. 56 of the Act as held by the Hon'ble Supreme Court in the case of Totagars Cooperative sale Society Limited vs. Income Tax Officer (322 ITR 283) and in view of the above, the assessment proceedings u/s. 143(3) r.w.s 144B of the Act dated 02/09/2022 is found to be erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Act, as such the AO has failed to examine and verify the above issue and failed to tax the income from other sources. Thus, we are of the considered opinion that the ld. PCIT had principally exercised his jurisdiction u/s. 263 of the Act merely because he is of the opinion that interest income on investment in commercial banks co-operative banks were required to be added to income of the assessee u/s. 56 of the Act in view of the Apex court decision cited supra. Further, we also take note of the fact that in the above said notice for hearing dated 28/02/2025, the ld. PCIT failed to even mention under which clause(s) of the explanation- 2 of section 263 of the Act, the Assessment order shall be deemed to be erroneous in so far as it is prejudicial to the interest of Revenue. Thus, this is not the case of the revenue that no enquiry has been conducted by the AO but in fact the ld. PCIT is of the opinion that interest income on investment in commercial banks co-operative banks were required to be added to income of the assessee u/s. 56 of the Act & accordingly the deduction claimed by the assessee u/s 80P(2)(a)(i) of the Act is not allowed.

7.5 Now before proceedings further, it is apposite here to mention the relevant provision of Income Tax Act which is reproduced below:-

Revision of orders prejudicial to revenue.

263. (1) The [[Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or] Commissioner may call for and examine the record of any proceedings 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 1.] - For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

(a) An order passed [on or before or after the 1st day of June, 1988] by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall include—

(i) an order of assessment made by the Assistant Commissioner [or Deputy Commissioner] or the Income Tax Officer on the basis of the directions issued by the [Joint] Commissioner under section 144A;

(ii) an order made by the [Joint] Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer [or the Transfer Pricing Officer, as the case may be,] conferred on, or assigned to, him under the orders or directions issued by the Board or by the [Principal Chief Commissioner or] Chief Commissioner or [Principal Director General or] Director General or [Principal Commissioner or] Commissioner authorized by the Board in this behalf under section 120; [

(iii) an order under section 92CA by the Transfer Pricing Officer;]

(b) "record" [shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the [Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or] Commissioner;

(c) Where any order referred to in this sub-section and passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988], the powers of the * [Principal Commissioner or] Commissioner under this sub-section shall extend [and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]

[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.

[Explanation 3.—For the purposes of this section, “Transfer Pricing Officer” shall have the same meaning as assigned to in the Explanation to section 92CA.]

[(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation. -In Computing the period of limitation for the purposes of subsection (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

7.6 On plain reading of the aforesaid provisions of the Act, it is very apparent that the ld. PCIT may call for and examine the record of any proceeding under the Act and if he considers that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, the ld. PCIT 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 an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. This provision was the subject matter of interpretation by the Apex Court in the case of *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83/109 Taxman 66 (SC), where the Supreme Court has held as under:-

"A bare reading of this provision makes it clear that the prerequisite to the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-Tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent - if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue recourse cannot be had to section 263(1) of the Act. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax".."

"..The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the Revenue is

losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.

The phrase "prejudicial to the interest 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 interest of the Revenue, unless the view taken by the Income Tax Officer 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."

7.7 *In the case of Dawjee Dadabhoy & Co. v. S.P. Jain [1957] 31 ITR 872 (Cal.) explaining the meaning of the words prejudicial to the interest of the revenue it was held as under:*

"The words, "prejudicial to the interests of the revenue", have not been defined, but it must mean that the orders or assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. It can mean nothing else."

7.8 *Thus, we are of the considered opinion that the ld. Principal Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the Revenue. Therefore, it is clear that the ld. PCIT cannot exercise the power of revision solely on the ground that the order passed is erroneous. The ld. PCIT gets jurisdiction only if such erroneous order is also prejudicial to the interest of the Revenue. Prejudicial to the Revenue means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the Assessing Authority if the lawful revenue to the Government has not been realized or cannot be realized, as the said order is prejudicial to the interest, of the Revenue and also erroneous, the ld. PCIT gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of Assessing Officer sought to be revised is erroneous and (b) it is prejudicial to the interest of the Revenue. If one of them is absent, i.e., if the order of the Income tax officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is sine qua non for the Commissioner to exercise his jurisdiction under section 263 of the Act.*

7.9 *Further, the term 'erroneous' has not been defined under the Act. The Apex Court in the above case also held that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being*

erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. Further, the phrase 'prejudicial to the interests of the revenue' is not an expression of art and is also not defined in the Act. The various High Courts have treated loss of tax as prejudicial to the interests of the revenue. If due to an erroneous order of the AO, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. 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. There must be some grievous error in the Order passed by the AO, which might set a bad trend or pattern for similar assessments, which on abroad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration. Further, what is erroneous and prejudicial to the interest of the revenue is judicially tested by plethora of decisions however, the scope was further extended by introduction of explanation 2 to section 263 which is inserted by the Finance Act, 2015 with effect from 01/06/2015. This explanation empowers the PCIT from 01.06.2015 to invoke the provision of section 263 to the assessment order to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Principal CIT,-

- (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 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.”*

7.10 The Hon'ble High Court of Delhi in the case of Commissioner of Income-tax- XIII v. Ashish Rajpal reported in (Del-HC) (2010) 320 ITR 674 had remarkably extracted the parameters and principles laid down by the Courts which govern the exercise power by the Commissioner under the provisions of section 263 of the Act:-

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| <i>(i)</i> | <i>The power is supervisory in nature, whereby the Commissioner can call for and examine the assessment records</i> |
| <i>(ii)</i> | <i>The Commissioner can revise the assessment order if the twin conditions provided in the Act are fulfilled, that is, that the assessment order is not only erroneous but is also prejudicial to the interest of the revenue. The fulfilment of both the conditions is an essential prerequisite. [See Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC)]</i> |
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| (iii) | <p><i>An order is erroneous when it is contrary to law or proceeds on an incorrect assumption of facts or is in breach of principles of natural justice or is passed without application of mind, that is, is stereo-typed, inasmuch as, the Assessing Officer, accepts what is stated in the return of the assessee without making any enquiry called for in the circumstances of the case, that is, proceeds with 'undue haste'. [See Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375 (Delhi)].</i></p> |
| (iv) | <p><i>The expression "prejudicial to the interest of the revenue" while not to be confused with the loss of tax will certainly include an erroneous order which results in a person not paying tax which is lawfully payable to the revenue. [See Malabar Industrial Co. Ltd.'s case (supra)].</i></p> |
| (v) | <p><i>Every loss of tax to the revenue cannot be treated as being "prejudicial to the interest of the revenue". For example, when the Assessing Officer takes recourse to one of the two courses possible in law or where there are two views possible and the Commissioner does not agree with the view taken by the Assessing Officer which has resulted in a loss. [See CIT v. Max India Ltd. [2007] 295 ITR 282 (SC)].</i></p> |
| (vi) | <p><i>There is no requirement of issuance of a notice before commencing proceedings under section 263 of the Act. What is required is adherence to the principles of natural justice by granting to the assessee an opportunity of being heard before passing an order under section 263. [See Electro House's case (supra)].</i></p> |
| (vii) | <p><i>If the Assessing Officer acts in accordance with law his order cannot be termed as erroneous by the Commissioner, simply because according to him, the order should have</i></p> |

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| | <i>been written 'more elaborately'. Recourse cannot be taken to section 263 to substitute the view of the Assessing Officer with that of the Commissioner. [See CITv. Gabriel India Ltd. [1993] 203 ITR 108 (Bom.)].</i> |
| (viii) | <i>The exercise of statutory power under section 263 of the Act is dependent on existence of objective facts ascertained from prima facie material on record. The evaluation of such material should show that tax which was lawfully exigible was not imposed. [See Gabriel India Ltd.'s case (supra)].</i> |

7.11 Now, in the light of the above principles laid down by the Hon'ble Apex Court & Hon'ble Delhi High Court, it is apposite here to first examine whether the AO passed an assessment order without making inquiries or verification or the order had not been passed in accordance with any decision which is prejudicial to the assessee rendered by the Jurisdictional High Court or Supreme Court as alleged by the ld. PCIT in the revision Order. The facts in brief as observed by the AO are that the assessee is a registered Cooperative Society engaged in the business of providing credit facility to its members. For the AY 2020-21, the assessee society filed its return of income on 25/12/2020 by declaring total income of Rs. NIL after claiming deduction u/s. 80P(2)(a)(i) of the Act amounting to Rs.32,69,917/-. When we grabbed a look at the assessment order passed by the AO, we noticed that the AO after due verification & examining the details along with the documentary evidence/ written submission/ explanation etc. did not draw any adverse inference in respect of the issues for which the case was selected for Scrutiny under CASS. Further, the AO while passing the assessment Order had categorically observed that the assessee society uploaded its written submission with relevant documents and after considering all the written submissions, the assessment is being completed accepting the returned income. Undisputedly, the one of the issues for which the case of the assessee was selected for scrutiny was "Deduction from Total Income under Chapter VI-A".

7.12 Further on going through the notice u/s 142(1) of the Act dated 16/11/2021 issued along with the annexure (placed at 123- 124 of PB), we noticed that the AO had sent list of detailed questionnaire in respect of the issues for which the case was selected for complete Scrutiny. The AO had categorically asked for the following details with respect to the deductions claimed under chapter VI-A during the year under consideration as reproduced below

1. Computation of amount of deduction claimed under section 80P of the Act.
2. Note on eligibility of deduction u/s 80P of the Act.
3. Details of Loans & Advances given & taken during the year under consideration and for immediately preceding year.
4. Details of all type of investment made in F.Y. 2019-20.

7.13 Further, we take note of the fact that the assessee society in its reply filed on 18/03/2025 contended before the ld. PCIT that the assessee society had claimed deductions u/s 80P(2)(a)(i) of the Act as all its incomes are from carrying on its business activities with the members only, and hence the profit generated by these activities is fully deductible. The assessee society also submitted that as the society is engaged in carrying on the business of banking and providing credit facilities to its members as envisaged in section 80P(2)(a)(i) of the Act, they have claimed the deduction for entire amount under section 80P(2)(a)(i) of the Act only. Further, it was submitted that the earnings of the society i.e. interest income, Service charges, Nominal Member fees, Late fees, Dividend etc. are attributable to the activity of "providing credit facility to its members" and hence the deduction was rightly claimed under section 80P(2)(a)(i) of the Act. Lastly, the assessee society submitted that the assessee being a Souharda Co-operative under the Karnataka Souharda Sahakari Act, 1997 and providing credit facilities to members are rightly eligible to claim deduction u/s 80P(2)(a)(i) of the Act.

7.14 Finally, the AO after considering & examining the details/written submission /explanation concluded the assessment proceedings by accepting the returned income. Therefore, we are of the considered opinion that it is not a case that the AO had passed an order of assessment without making any inquiries or verification and accordingly the allegation of the ld. PCIT that the AO had failed to examine and verify the issue of interest is not at all tenable. Where the enquiry had been conducted and the AO had reached a particular conclusion, though reference to such enquiries had not been made in the order of Assessment, it was apparent from the record, without any thing to show how & why the enquiry conducted by the AO was not in accordance with law, the invocation of jurisdiction by the ld. PCIT is unsustainable. The Assessing Officer while passing an order of assessment performed quasi Judicial function, applies his mind judiciously based on the facts & circumstances of the case for the purpose of protecting the interest of revenue. In the present case the AO after calling for the details/ explanation/evidence & after making proper enquiries or verification came to the conclusion that no adverse inference is drawn with respect to the issues selected for complete scrutiny. However, the ld. PCIT holds that the assessing officer had not conducted necessary inquiries or verification and not made the additions of interest income under the head "income from other sources" as per the decision of the Apex court & Jurisdictional High Court & thereby invoked clause (a) of the Explanation-2 of section 263 of the Act. No doubt clause (a) of the above explanation deems the order to be erroneous and prejudicial to the interest of the revenue in case order is passed without making enquiries or verification which should have been made in the opinion of the Principal Commissioner or Commissioner; however we observed that the AO passed an Order of assessment after making inquiries or verification and taken a plausible view. As discussed earlier the Assessing Officer in the order of assessment is not required to give detailed reasoning in respect of each and every item of deduction and therefore, the question whether there has been an application of mind before allowing deduction has to be examined from the record of the case. The question of lack of enquiry / inadequate enquiry is also required to be kept in mind and mere inadequacy of the enquiry would not confer jurisdiction on the Commissioner of Income Tax under Section 263 of the Act. In this regard we

respectfully rely on the judgement of the Hon'ble High court of Karnataka in the case of The Commissioner of Income Tax v. M/s Chemsworth Pvt. Ltd Reported in (2020) 275 TAXMAN 408 which has held as under-

“6. Thus, from close scrutiny of Section 263 it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under Section 263 of the Act firstly, the order of the Assessing Officer is erroneous and secondly, that it is prejudicial to the interest of the revenue on account of error in the order of assessment.

7. The aforesaid provision was considered by the Supreme Court in MALABAR INDUSTRIAL CO. LTD.I supra and it was held that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer and every loss of revenue as a consequence of the order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue. It was further held that where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, the order passed by the Assessing Officer cannot be treated as erroneous order prejudicial to the interest of the revenue. The principles laid down in the aforesaid decision were reiterated by the Supreme Court in 'CIT VS. MAX INDIA LTD.,' 295 ITR 282 (SC) and recently in 'ULTRATECH CEMENT LTD. AND ORS. VS. STATE OF RAJASTHAN AND ORS.', CIVIL APPEAL NO.2773/2020 DECIDED ON 17.07.2020.

8. In the backdrop of aforesaid well settled legal principles, we may examine the facts of the case in hand. In 'CIT VS. SUNBEAM AUTO LTD.', 332 ITR 167, it has been held by Delhi High Court that Assessing Officer in the order of assessment is not required to give detailed reasoning in respect of each and every item of deduction and therefore, the question whether there has been an application of mind before allowing expenditure has to be examined from the record of the case. The question of lack of enquiry / inadequate enquiry is also required to be kept in mind and mere inadequacy of the enquiry would not confer jurisdiction on the Commissioner of Income Tax under Section 263 of the Act. In the instant case, the Commissioner of Income Tax has held that the enquiry conducted by the Assessing Officer is inadequate and has assumed the revisional jurisdiction. The assessee has filed all the details before the Assessing Officer and Assessing Officer has accepted the contention of the assessee that no expenditure is attributable to the exempt income during the relevant Assessment Year. Thus, while recording the aforesaid finding, the Assessing Officer has taken one of the plausible views in allowing the claim of the assessee and therefore, the Commissioner of Income Tax could not have set aside the order of assessment merely on the ground of inadequacy of enquiry, the order passed by the Commissioner of Income Tax is not sustainable in law and the same has rightly been set aside by the Tribunal.

In view of preceding analysis, the substantial question of law framed by this court is answered against the revenue and in favour of the assessee.”

7.15 Thus, in the present case also the ld. PCIT had held that the enquiry conducted by the AO is not proper and assumed the revisional jurisdiction. The assessee society in the present case had filed all the details along with the written submissions & the AO had accepted the contention of the assessee that the interest received from Co-operative Bank/Commercial banks are attributable to the business of the assessee & accordingly allowed deduction u/s 80P(2)(a)(i) of the Act. Thus, the AO has taken a

plausible view in allowing the claim of the assessee and therefore, in our considered opinion the ld. PCIT could not have set aside the order of assessment merely on the ground of inadequacy of enquiry, the order passed by the ld. PCIT is not sustainable in law.

7.16 Now coming to the allegation of the ld. PCIT that clause (d) of the explanation-2 of section 263 is also attracted in the instant case. Undisputedly, clause (d) of the above explanation deems the order to be erroneous and prejudicial to the interest of the revenue in case 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. We are of the considered opinion that in the present case the clause (d) of the explanation-2 of section 263 is also not applicable in the present case as the AO had passed an assessment order by taking a plausible view also supported by the various judgments of Hon'ble High Court of Karnataka. Further, we are also of the considered opinion that if two views were possible and the AO had taken one of the views, then also the same could not have been interfered with. Section 263 of the Act does not visualize a case of substitution of the judgment of the Commissioner for that of the subordinate authority who passed the order which is sought to be revised. The Order passed by a subordinate authority in exercise of its quasi-judicial power vested in him in accordance with law, cannot be termed erroneous merely because the Commissioner does not feel satisfied with the conclusions reached.

7.17 The following are the judgments of the Jurisdictional High Court in favour of the assessee which held that interest received by Co-operative Society from Co-operative Banks/Commercial Banks are attributable to the business of the assessee and accordingly allowed the deduction u/s 80P(2)(a)(i) of the Act

- 1) Tumkur Merchants Souharda Credit Cooperative Ltd. v. Income-tax officer Ward-V, Tumkur reported in [2015] 230 Taxman 309*
- 2) Lalitamba Pattina Souhardasahakari Niyamita v. The ITO in ITA No.100004 of 2018 dated 19/02/2018*
- 3) Guttigedarara Credit Co-operative Society Ltd. v. Income-tax Officer, Ward 2(2), Mysore(2015) 377 ITR 464*

7.18 However on the other hand there are certain judgments of the same Jurisdictional High Court which held that the interest received from Co-operative Bank/Commercial Bank are liable to tax u/s 56 of the Act under the head "Income from other Sources" & these interest are even not liable for deduction even u/s 80P(2)(d) of the Act. These judgments are detailed below-

- 1) Pr. CIT v. Totagars Co-operative Sale Society (2017) 395 ITR 611*
- 2) M/s Judicial Employees House Building Cooperative Society Limited v. Income Tax Officer in ITA No. 93/2024 dated 16/09/2025.*

7.19 Thus, the point of discussing all above is that undisputedly the issue is debatable & the AO had taken one of the possible views. As can be seen that the view taken by the AO was a plausible view & it is also not a case that the view taken by him is unsustainable in law & therefore the same could not have been interfered with. Further, the Hon'ble Supreme Court in the case of Commissioner of Customs (import) v. Dilip Kumar & Co [2018] 95 taxmann.com 327 / [2018] 9 SCC 1 held

that if there are two views possible in the matter of interpretation of a charging section, the one favourable to the assessee needs to be applied. Applying the aforesaid ratio in the present fact of the case, we find no fault with the AO in taking the plausible view of treating the interest chargeable u/s 28 of the Act being attributable to the business of the assessee & allowed the deduction claimed u/s 80P(2)(a)(i) of the Act.

7.20 Further, when we look at the decision of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. V. Income Tax Officer reported in [2010] 188 Taxman 282/ 322 ITR 283 (SC) heavily relied upon by the ld. PCIT as well as the ld. DR, the Hon'ble Supreme Court was dealing with a case where the assessee therein, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount payable to its members from whom the produce bought was invested in a short-term deposit/security. Such amount retained by the assessee therein was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or under section 80P(2)(a)(iii) of the Act. On these facts Hon'ble Supreme Court held that the assessing officer was right in taxing the interest income indicated above under section 56 of the Act. Hon'ble Supreme Court, also clarified that they are confining the said judgement to the facts of that case. Therefore, the reliance placed by the ld. PCIT on the decision of Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. V. Income Tax Officer (Supra) is completely distinguishable on the facts of the present case. In holding so, we draw our support & guidance from the decision of the Hon'ble High Court of Karnataka in the case of Guttigedarara Credit Co-operative Society Ltd. v. Income-tax Officer, Ward 2(2), Mysore reported in (2015) 377 ITR 464 which held as under-

“9. The word 'attributable' used in the said Section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 ITR 84 (at page 93) as under:—

'As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor- General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable

to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.'

10. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Co-operative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

11. In this context when we look at the judgment of the Apex Court in Totgars Cooperative Sale Society's case (supra), on which reliance is placed, the Supreme Court was dealing with a case where the assessee/Co-operative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

12. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State Co-operative Bank Ltd. [2011] 336 ITR 516/200 Taxman 220/12 taxmann.com 66."

7.21 Thus, we can safely conclude that the view taken by the AO was a plausible view and the view taken by him also cannot be said to be passed not in accordance with the decision of the Hon'ble jurisdictional High Court or Hon'ble Supreme Court. Thus, in the given facts and circumstances of the case, two views are possible

and one view has been adopted by the Assessing Officer, then that alone would not be sufficient to exercise the powers under section 263 of the Act by the Commissioner of Income-tax. In holding so we rely on the decision of the Hon'ble High Court of Karnataka in the case of Commissioner of Income-tax v. Gokuldas Exports reported in [2011] 333 ITR 214 has held as under-

“15. By a long catena of judgments of various High Courts and the Supreme Court, it is too well settled that if in the given facts and circumstances of the case, two views are possible and one view has been adopted by the Assessing Officer, then that alone would not be sufficient to exercise the powers under section 263 of the Act by the Commissioner of Income-tax.

16. The phrase "prejudicial to the interests of the Revenue" under section 263 of the Act has to be read in conjunction with the expression "erroneous" order 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.

17. It appears that one of the views that has been taken in this case by the Assessing Officer was on account of the fact that section 80HHC has been amended by Parliament as many as 11 times. Unfortunately, even after 11 amendments, the clouds of confusion have not been cleared and the doubt still looms large in the minds of the Revenue, which resulted into passing of the order by the Assessing Officer, allowing the deduction under section 80HHC of the Act as claimed by the assessee, which according to him was lawfully permitted.

In this regard see (i) Malabar Industrial Company v. CIT [2000] 243 ITR 83 (SC).

(ii) CIT v. Max India Ltd. [2007] 295 ITR 282 (SC).

18. In view of the aforesaid settled legal position, we are of the considered opinion that the Commissioner of Income-tax committed a grave error in invoking the jurisdiction conferred on him under section 263 of the Act. Thus the said question (1) is answered in favour of the assessee and against the Revenue.”

7.22 Again the Hon'ble High Court of Karnataka in the case of Commissioner of Income Tax v. Aztec Software Technology Ltd reported in (2020) 428 ITR 245 had again reiterated the same & held as under-

“7. The aforesaid provision was considered by the Supreme Court in Malabar Industrial Co. Ltd. v. CIT 243 ITR 43 SC and it was held that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer and every loss of revenue as a consequence of the order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue. It was further held that where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, the order passed by the Assessing Officer cannot be treated as erroneous order prejudicial to the interest of the revenue. The principles laid down in the aforesaid decision were reiterated by the Supreme Court in 'CIT v. Max India Ltd.' 295 ITR 282 (SC) and recently in 'Ultratech Cement Ltd. and ORS. v. State of Rajasthan and ORS.' [CIVIL APPEAL No. 2773/2020 decided on 17-7-2020].

8. In view of aforesaid enunciation of law, the facts of the case may be seen. The assessee is engaged in the business of computer software development and services. The expenditure incurred in foreign currency on traveling, professional charges and onsite service charges are for development of software at clients site outside India, the assessee has neither rendered any technical services nor has earned any receipt from rendering technical services. Therefore, there is no need to exclude the expenditure incurred in foreign currency from the export turnover. [SEE: 'Patani

Telecom (P.) Ltd. v. ITO' [2008] 22 SOT 26 (Hyd.) and 'Chancepond Technologies (O) Ltd. v. Asst. CIT' [2008] 22 SOT 220 (Chennai)]. Thus, the view taken by the Assessing Officer was a plausible view and the view taken by him cannot be said to be erroneous. Therefore, in view of well settled legal position, invocation of powers in the fact situation of the case under section 263 of the Act could not have been held to be justified. The Tribunal has therefore, rightly set aside the order passed by the Commissioner of Income-tax (Appeals).

In view of preceding analysis, substantial questions of law framed by this court are answered against the revenue and in favour of the assessee.”

7.23 Further, the Apex court in the case of Commissioner of Income-tax (Central) , Ludhiana v. Max India Ltd reported in (2007) 295 ITR 282 again reiterated that 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 interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The relevant Para are reproduced as under:-

“2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under section 263 has to be read in conjunction with the expression "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 interest of the revenue. For example, when the 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 Incometax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law.-----”

7.24 In view of the above discussion & respectfully following the decisions of the Hon'ble jurisdictional High Court as well as Hon'ble Supreme Court, we held that the assessment order dated 05/09/2022 passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue and accordingly we annul the order passed by the ld. PCIT u/s 263 of the Act.

8. In the result the appeal filed by the assessee is allowed.”

7.2 In view of the above discussion & respectfully following the above decision of the co-ordinate bench of this Tribunal, we held that the AO after making inquiries /verification had taken a plausible view which is also not unsustainable & therefore the assessment order dated 20/08/2022 passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue and

accordingly we annul the order passed by the ld. PCIT u/s 263 of the Act.

8. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30th Jan, 2026

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 30th Jan,2026
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.