

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI RAVISH SOOD, JM**

**ITA No.1249//PUN/2018
Assessment Year :2013-14**

Rena Sahakari Sakhar Karkhana Ltd.,
A/P Niwada, Tq. Renapur, Dist. Latur.Appellant

PAN NO. AAAAR1864N

V/s.

Pr. Commissioner of Income-tax 2,
Aurangabad Respondent

Assessee by : Shri Girish Ladda, A.R
Department by : Shri Kalika Singh, D.R

Date of Hearing : 06-01-2022
Date of Pronouncement : 07-01-2022

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax-2, Aurangabad, dated 27.03.2018 under Sec.263 of the Income Tax Act, 1961 (for short 'Act'), which in turn arises from the order passed by the A.O u/s 143(3) of the Act, dated 07/03/2016. The assessee has assailed the impugned order on the following grounds of appeal before us:

- "1. The notice issued u/s 263 by the Principal Commissioner of Income-tax-2, Aurangabad and the order passed u/s 263 are illegal, bad in law and without jurisdiction.
2. That having regard to the facts and circumstances of the case, Pr. CIT has erred in law and on facts in assuming jurisdiction in passing the order u/s 263, more so when the assessment order passed u/s 143(3) is neither erroneous nor prejudicial to the interest of Revenue.
3. The Pr. CIT-2 erred in holding that assessee not eligible for deduction of Rs. 75,38,534 u/s 80P(2)(d) of the Income-tax Act and further erred in setting aside the issue to the A.O.

4. The order of Pr. CIT passed u/s 263 may please be vacated and that of the A.O may please be restored.
5. Appellant prays for just and equitable relief.
6. Appellant prays to add, alter, amend and/or withdraw the ground/s during the appellate proceedings.”

2. Briefly stated, the assessee which is a cooperative society had e-filed its return of income for A.Y. 2013-14 on 30.09.2013, declaring a total income at Rs.10,82,95,522/-. Original assessment was thereafter framed by the A.O vide his order u/s 143(3) of the Act, dated 07.03.2016 and the income of the assesses was assessed at Rs. 12,07,02,770/-.

3. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee. It was observed by the Pr. CIT that the assessee had during the year shown interest income from FDs with Co-operative Banks amounting to Rs.75,38,534/-, against which it had claimed deduction under Sec.80P(2)(d) of the Act. It was observed by the Pr. CIT, that the A.O while framing the assessment had allowed the aforesaid claim of deduction raised by the assessee. Observing, that as co-operative banks were commercial banks and not a co-operative society, therefore, the Pr.CIT was of the view that the assessee was not eligible for claim of deduction under Sec.80P(2)(d). In the backdrop of his aforesaid conviction, the Pr. CIT was of the view that the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016, therein allowing the assesses claim for deduction under Sec. 80P(2)(d), had therein rendered his order as erroneous, insofar it was prejudicial to the interest of the revenue. Accordingly, the Pr.CIT not finding favour with the reply of the assessee, wherein the latter had tried to impress upon him that it was duly eligible for claim of deduction under Sec.80P(2)(d) of the Act, therein “set aside” the order of the A.O with a direction to re-decide the issue afresh and reframe the assessment.

4. The assessee being aggrieved with the order of the Pr.CIT has carried the matter in appeal before us. As the present appeal involved a

delay of 52 days, therefore, the Id. A.R took us through the reasons leading to the same. It was submitted by the Id. A.R that as the then counsel of the assessee society who was looking after its tax matters, viz. Shr. Ravikiran Pandurang Todkar, Chartered Accountant was taken unwell due to kidney failure and had undergone kidney transplant, therefore, due to his unavailability the appeal could not be filed within the stipulated time period. Our attention was drawn towards the 'affidavit' of the assessee society wherein the aforesaid facts were deposed. On the basis of the aforesaid facts, it was submitted by the Id. A.R that the delay involved in filing of the present appeal in all fairness may be condoned. Per contra, the Id. D.R did not object to the seeking of condonation of the delay in filing of the appeal by the assessee society. After giving a thoughtful consideration, we are of the considered view, that as there were justifiable reasons leading to delay on the part of the assessee in filing of the present appeal before us, therefore, the same merits to be condoned.

5. On merits, it was submitted by the Id. A.R, that as the A.O while framing the assessment had after making necessary verifications taken a plausible view, therefore, the Pr. CIT had exceeded his jurisdiction by seeking to review the order passed by him in the garb of the revisional powers vested with him under Sec.263 of the Act. It was submitted by the Id. A.R, that the issue as regards the eligibility of the assessee for claim of deduction under Sec.80P(2)(d) on interest income derived from investments/deposits lying with co-operative banks was squarely covered by the various orders of the coordinate benches of the Tribunal viz., (i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT "G" Bench, Mumbai); Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO-21(2)(1), Mumbai, ITA No. 6547/Mum/2017 (ITAT Mumbai); and (iii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune). On the basis of his aforesaid contentions, it was averred by the Id. A.R that as the Pr. CIT had exceeded his jurisdiction and had not

only sought to review the plausible view that was taken by the A.O after necessary deliberations which was in conformity with the order of the jurisdictional bench of the Tribunal, therefore, his order may be vacated and that of the A.O be restored.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the order passed by the Pr. CIT under Sec.263 of the Act. It was submitted by the Id. D.R, that as the assessee was not eligible for claim of deduction under Sec.80P on the interest income received on the investments/deposits lying with the co-operative banks, therefore, the Pr. CIT finding the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016 as erroneous, insofar it was prejudicial to the interest of the revenue, had rightly 'set aside' his assessment with a direction to re-adjudicate the issue therein involved. Our attention was also drawn by the Id. D.R to his written submissions and certain judicial pronouncements in support of his aforesaid contention.

7. We have heard the Id. authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether or not the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order. In our considered view, the issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with the co-operative bank, other than a Primary

Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not co-operative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.

8. After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr. CIT. Before proceeding any further, we may herein cull out the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us.

“80P(2)(d)

(1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2). The sums referred to in sub-section (1) shall be the following, namely :-

(a).....

(b).....

(c).....

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;”

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) to Sec. 80P of the Act, vide the Finance Act, 2006 with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in

relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardize the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term 'co-operative society' had been defined under Sec. 2(19) of the Act, as under:-

“(19) “Co-operative society” means a cooperative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;”

We are of the considered view, that though the co-operative banks pursuant to the insertion of sub-section (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

9. In so far the judicial pronouncements that have been relied upon by the Id. A.R are concerned, we find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

- (i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT “G” Bench, Mumbai);
- (ii). Majalgaon Sahakari SAKhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune)

(iiii). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1),
Mumbai

We further find that the **Hon'ble High Court of Karnataka** in the case of **Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn)** and **Hon'ble High Court of Gujarat** in the case of **State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj)**, had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the **CBDT Circular No. 14, dated 28.12.2006** also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Although, in all fairness, we may herein observe that the **Hon'ble High Court of Karnataka** in the case of **Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn)**, as had been relied upon by the Id. D.R before us, had held, that a co-operative society would not be entitled to claim deduction under Sec. 80P(2)(d); but then, the **Hon'ble High Court** in the case of **Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn)** and **Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj)**, had observed, that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. Backed by the aforesaid conflicting judicial pronouncements, we may herein observe, that as held by the **Hon'ble High Court of Bombay** in the case of **K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom)**, where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of

the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the **Hon'ble High Court of Karnataka** in the case of **Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn)** and that of the **Hon'ble High Court of Gujarat** in the case of **State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj)**, wherein it was observed that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

10. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and allowed the assessee's claim for deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with co-operative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 of the Act for dislodging the same. Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263 of the Act, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we set-aside his order and restore the order passed by the A.O under Sec. 143(3), dated 07.03.2016.

11. Resultantly, the appeal filed by the assessee is allowed.

Order Pronounced in the open Court on 07.01.2022.

Sd/-
(Inturi Rama Rao)
Accountant Member

sd/-
(Ravish Sood)
Judicial Member

Pune, दिनांक 07.01.2022

Copy of the Order forwarded to :

1. Rena Sahakari SakharKarkhana Ltd.
A/P Niwada, Tq. Renapur, Dist. Latur.,'
2. The Addl. CIT, Latur Range
3. The ACIT Latur Circle, Latur
4. Guard File.

BY ORDER,
Senior Private Secretary
ITAT, Pune.

Date of dictation	06-01-2022
Date on which the typed draft is placed before the dictating member	06-01-2022
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	10-01-2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	