आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ऐ" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM AND SHRI PRADIP KUMAR KEDIA, AM

आयकर अपील सं. / ITA No.1682/PN/2013

निर्धारण वर्ष / Assessment Year : 2002-03

Kolhapur Udyam Co-op. Society Ltd.,
1328/25, 'A', Y.P. Powar Nagar,
Kolhapur - 416002 …. अपीलार्थी/Appellant

PAN: AAAAK0364N

Vs.

The Income Tax Officer,
Ward 1(3), Kolhapur …. प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1988/PN/2013

निर्धारण वर्ष / Assessment Year : 2003-04

Kolhapur Udyam Co-op. Society Ltd.,
1328/25, 'A', Y.P. Powar Nagar,
Kolhapur - 416002 …. अपीलार्थी/Appellant

PAN: AAAAK0364N

Vs.

The Income Tax Officer,
Ward 1(3), Kolhapur …. प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1989/PN/2013

निर्धारण वर्ष / Assessment Year : 2006-07

Kolhapur Udyam Co-op. Society Ltd.,
1328/25, 'A', Y.P. Powar Nagar,
Kolhapur - 416002 …. अपीलार्थी/Appellant

PAN: AAAAK0364N

Vs.

The Income Tax Officer (Systems),
Kolhapur …. प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni
प्रत्यर्थी की ओर से / Respondent by : Shri Anil Chaware

सुनवाई की तारीख / **Date of Hearing : 26.05.2016**		घोषणा की तारीख / **Date of Pronouncement: 30.05.2016**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of three appeals filed by the same assessee are against separate orders of CIT(A), Kolhapur, dated 23.07.2013, 06.08.2013 and 06.08.2013 relating to assessment years 2002-03, 2003-04 and 2006-07 against respective orders passed under section 143(3) r.w.s. 147 and 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, we make reference to the facts in ITA No.1988/PN/2013 to adjudicate the issue.

3. The assessee in ITA No.1988/PN/2013 has raised the following grounds of appeal:-

> 1) *On the facts and circumstances of the case and in law the Ld. CIT(A)-Kolhapur was not justified in confirming the action of the A.O. in disallowing the claim made by the A.O. under section 80P(2)(e) of the Act. It being lawfully allowable to the assessee the same be allowed to it as per precedents available in the matter.*
>
> 2) *On the facts and circumstances of the case and in law the Ld.CIT(A) has not properly appreciated the legal issues raised before him. He failed to appreciate the issue in its proper perspective that the original assessment completed under section 143(3) on 28-12-2005 was reopened after lapse of a period of four years and therefore, proviso to S. 147 squarely applied. In the reasons recoded the A.O. had not recorded any finding that the assessee failed to disclose fully and truly all necessary facts for completion of the assessment. In the absence of such finding the re-opening was bad in law and illegal. The Ld. CIT(A) was obliged to appreciate this legal position. In the absence of this the order is vitiated in law and be quashed.*

3) *On the facts and circumstances of the case and in law the Ld.CIT(A) also failed to appreciate the Second proviso to s. 147 inserted by Finance Act, 2008 w.e.f. 01-04-2008 in its proper perspective. The Ld. CIT(A) mentions about second proviso to S. 148 of the Act. By second proviso to S. 147 inserted w.e.f. 1-4-2008 the legislature intended that the A.O. may assess or reassess such income, other than the income invoking matters which are the subject matter of any appeal, reference, or revision which is chargeable to tax and has escaped assessment. The assessment years 2002-2003 to A. Y. 2006-07 were in appeal on the same identical issues which are pending for appellate adjudication. The Ld. CIT(A) was obliged to appreciate such legal position.*

4) *On the facts and circumstances of the case and in law the Ld. CIT(A) ought to have considered the directions of the Hon'ble Tribunal issued in appeal before it so filed challenging the section 263 order rejecting the claim of deduction under section 80P (2)(e) of the Act. The assessment for 2004-05 and 2005-06 have been restored to the file of the A.O. modifying the 263 order with directions to the A.O. The A.O. has not taken any action to reframe the said assessments following the directions. As a result of specific limitation provided in S. 153(2A) they are new barred by limitation meaning thereby the claim u/s. 80P(2)(e) having not disputed gets accepted. The same will apply mutatis mutandis this year also under appeal. It be held accordingly.*

5) *On the facts and circumstances of the case and in law the Ld.CIT(A)-Kolhapur was not justified in confirming the action of the A.O. in rejecting the claim made under section 80P(2)(e) of the Act. This action goes against the directions issued by the Hon'ble Tribunal on similar and identical issues though concerning A. Y. 2004-05 and 2005-06 in appeal before it. The Ld. CIT(A) ought to have considered the overall legal situation in its proper perspective in also considering the statutory principle that provisions of exemption are to be considered liberally.*

6) *On the facts and circumstances of the case and in law the Hon'ble Tribunal specifically observed in its appeal order in ITA/Nos/437-438/Pn/2009 decided on 24th August, 2011, that CIT has merely gone by the decision of the A.O. for A. Y. 2006-07 and did direct the modification of the assessment withdrawing the claim allowed under section 80P(2)(e) of the Act. In view of this the Hon'ble Tribunal observed that claim of the assessee is required to be examined having regard to the terms and conditions of the agreement with Sesa Goa and other relevant material. The order of the Ld. CIT(A) was passed ignoring all these mandatory directions to A.O. so given modifying the 263 order. The Ld. CIT(A)'s order offended the principles of natural justice and therefore not sustainable. It be quashed.*

7) *On the facts and circumstances of the case and in law the findings of Ld. CIT(A) enshrined in para Nos. 12 to 14 are therefore, vitiated in law and not sustainable. The same be quashed.*

8) *On the facts and circumstances of the case and in law the small delay of one day occurred in the filing of the appeal be condoned. The appeal fees have already been paid in 10-09-2013 that is before the expiry of limitation on 06-09-2013.*

9) *On the facts and circumstances of the case and in law the Ld. A.O. was not justified in levying interest u/s. 234-A, 234-B and 234-C of the Act and it be deleted.*

4. The assessee has raised several grounds of appeal. However, the first issue of reopening of assessment under section 147 / 148 of the Act is not pressed and hence, the same is dismissed as not pressed.

5. The second issue raised by the assessee in the present bunch of appeals is against the allowability of deduction under section 80P(2)(e) of the Act.

6. We proceed to decide the present bunch of appeals together by this consolidated order, since the issue raised in all the appeals is similar i.e. allowability of claim of deduction under section 80P(2)(e) of the Act.

7. The learned Authorized Representative for the assessee at the outset pointed out that the issue in the present appeal is squarely covered by the order of Tribunal in assessee's own case in ITA Nos.437 & 438/PN/2009, relating to assessment years 2004-05 & 2005-06, order dated 24.08.2011 and in ITA No.262 & 263/PN/2014, relating to assessment years 2008-09 and 2009-10, order dated 30.01.2015, wherein the issue has been set-aside to the file of Assessing Officer.

8. The learned Departmental Representative for the Revenue fairly admitted that the Tribunal has set-aside the issue for adjudication to the file of Assessing Officer.

9. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee is a co-operative society engaged in the business of supply of range of facilities to its members which mainly include making available galas / plots on long lease basis for use in the member's

industry. The Assessing Officer has observed that the assessee had claimed the benefit of section 80P of the Act in respect of its income. The said claim of benefit under section 80P(2)(e) of the Act was denied to the assessee. The CIT(A) upheld the order of Assessing Officer.

10. We find that the issue has been elaborately considered by the Tribunal in assessee's own case in assessment years 2008-09 and 2009-10 and the matter has been restored to the file of Assessing Officer with directions. The relevant findings of the Tribunal are as under:-

> *"8. We have heard the parties and also perused the record. The main plank of the argument of Ld. Counsel is that the assessee society is also providing credit facilities to its members in addition for providing other services which are not the facts in the case of Totgars Co-operative Sale Society Ltd. 322 ITR 283. He submits that the interest income earned by the assessee is an operational income and hence, even though the same is not covered u/s. 80P(2)(d) but it is covered u/s. 80P(2)(a)(i) of the Act and the assessee is eligible to claim deduction in respect of entire interest income. We have also heard the Ld. DR.*
>
> *9. Admittedly, in the present case the assessee has kept the deposits with the State Bank of India (SBI) which is a nationalized bank and not a Co-operative bank or Co-operative Society. Hence, in terms of Sec. 80P(2)(d) of the Act, the said interest income is not covered. The plank of argument is that the assessee society is providing credit facilities also and hence, it is operational income, we find that this argument is not dealt with by the Ld. CIT(A). Moreover, the relevant material is also not before us like Memorandum and bye-laws of the assessee society, audited statement of account etc. The contention of the assessee is that the funds parked with the State Bank of India are out of the activity of the assessee to provide credit facilities. We consider it fit to restore this issue to the file of the Ld. CIT(A) for fresh adjudication in the light of our above observations. The assessee has to establish that the interest income earned from the State Bank of India is out of the activity of the providing credit facilities to its members. Accordingly, Ground No. 1 is allowed for the statistical purpose."*

11. Following the same parity of reasoning, where the issue in assessee's own case in assessment years 2008-09 and 2009-10 is similar to the issue before us in the present appeal, we set-aside this issue also back to the file of Assessing Officer to decide the same in line with the directions of Tribunal in the order dated 30.01.2015. The ground of appeal raised by the assessee with regard to invoking of jurisdiction under section 147 / 148 of the Act are

dismissed and the other grounds of appeal raised on merits of allowability of deduction under section 80P(2)(e) of the Act are allowed for statistical purposes.

12. The facts and issue in ITA No. 1682/PN/2013 & 1989/PN/2013 are identical to the facts and issue in ITA No. 1988/PN/2013 and our decision in ITA No.1988/PN/2013 shall apply *mutatis mutandis* to ITA Nos. 1682/PN/2013 & 1989/PN/2013.

13. In the result, all the appeals of assessee are partly allowed.

Order pronounced on this 30th day of May, 2016.

Sd/-	**Sd/-**
(PRADIP KUMAR KEDIA)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 30th May, 2016.

GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u> :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Kolhapur;
4. आयकर आयुक्त / The CIT-I/II, Kolhapur / CIT (Central), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ऐ" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune