आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.227/PUN/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Mohol Nagari Sahakari Patpurvatha Sanstha Maryadit, Marketyard Mohol, Tal. Mohol, Dist. Solapur – 413213. Maharashtra. PAN: AAAAM 1185 F	Vs	The Principal Commissioner of Income Tax, Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri S N Puranik – AR
Revenue by	Shri Sardar Singh Meena - DR
Date of hearing	13/03/2023
Date of pronouncement	22/05/2023

<u>आदेश/ ORDER</u>

<u>PER DR. DIPAK P. RIPOTE, AM:</u>

This appeal filed by the Assessee is directed against the order of ld.Pr.Commissioner of Income Tax, Pune dated 26.03.2022 under section 263 of the Income Tax Act, 1961 for the A.Y.2017-18. The Assessee has raised the following grounds of appeal:

"1. Pr. Commissioner has erred both on facts as well as Law in initiating Proceeding u/s 263, and passing Order under u/s 263, without application of mind.

Appellant prays to cancel the Order same being without Jurisdiction, abinitio invalid and Bad in Law.

2. Pr. CIT has erred in taking Jurisdiction to issue Notice Illegally on the issue of claim of deduction u/s 80P on Interest on Bank deposits, and Cash deposits during demonetization period which Assessing Officer himself has added.

Appellant Prays for cancellation of Order as same is not erroneous so far as prejudicial to the Interest of the Revenue.

3. The proceedings and Order u/s 263 passed by the Pr.CIT is without Jurisdiction and Bad in Law. Appellant prays to cancel the same, as Pr.CIT prohibited personal hearing stating so and inspite of request in last para of Submission.

4. Pr. CIT has erred in invoking provisions of sec 263, when as per 'Limited Scrutiny Directions' Assessing Officer has verified both the issues and concluded by disallowing Sec 80P claim on Bank Interest and adding deposits of high value receipt of cash.

5. Without prejudice to above grounds on validity of proceedings:

5.1 Pr.CIT has erred in giving finding that provisions of Sec 80P(2)(a)(i) are not applicable for Interest received from Co-operative Bank Deposits. When precedent in own case and other cases of Pune ITAT are brought to his Notice.

5.2 Pr. CIT also further erred in giving finding that provisions of Sec80P(2)(d) are not applicable to Interest on deposits with Co-operative Banks, inspite of High Court and Jurisdictional ITAT cases brought to his Notice. Appellant prays to allow the same.

6. Appellant request for levy cost on Pr.CIT - 4 for wrong proceedings u/s 263, without application of mind.

7. Pr. CIT is not justified in setting aside the matter to Assessing officer, when he has expressed his opinion."

2. At the outset of hearing, the ld.Authorised Representative of the assessee filed written submissions as under :

HONOURABLE MEMBERS,

I. **NO OPPORTUNITY OF PERSONAL HEARING:**

In Para 5 of the Notice Pr.CIT has in Bold Letters stated "*No personal hearing*" only Submission to be filed online, As such opportunity of personal hearing is denied violating the Principals of natural Justice.

On this aspect itself, the Order u/s 263 is Bad in Law. Appellant prays for cancellation of the same.

Against Assessing Officer's Order u/s 143(3) Appeal is Pending before CIT(A) filed much/much before proceeding Under Section 263, If Pr.CIT would have looked into Portal, would have found that Assessing Officer has **not allowed 80P deduction** on Interest on F.D. with Co-operate Banks of Rs. 6,03,95,763/-.

I. In Para 3 of the Notice u/s 263 dated 08/03/2022 CIT has alleged that, Assessing Officer has allowed deduction of Rs.1,65,95,311/- earned from Investment made with Co-operative Banks.

In Para 5 of the Order passed u/s 143(3) dated 16/12/2019, has held that Interest Income earned by the Society from Deposits with Co-operative Banks Rs.6,03,19,720/- and Interest on Deposits with Nationalized Bank Rs.76,043/- Total Interest of Rs.6,03,95,763/- is not allowable deduction u/s 80P.

Pr. CIT's objection is that out of Total Interest deposits of Rs.6,03,95,763 as discussed by Assessing Officer, Assessing Officer has allowed deduction for Rs.1,65,95,311/- which Assessing Officer should not have allowed Appellant made Submission before Pr. CIT quoting Pune ITAT decisions, which is reproduced in the Order u/s 263, Pune ITAT has consistently held that Interest on Deposits with Co-operative Banks is eligible deduction u/s 80P(2)(d) of the Act.

Therefore, It becomes clear that Honourable CIT, without examining Assessment records has issued this Notice and passed Order u/s 263 which is void and illegal and without jurisdiction.

If MISTAKE IN Order u/s 143(3) wrongly deducting Rs. 1,65,95,311/- which is rectifiable mistake, to which provisions of Sec. 263 does not apply.

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In fact, Assessing Officer has passed rectification Order u/s 154 dated 07/02/2020 with drawing this deduction granted, for which Assessee is only inform *"u/s 154 Order passed"* and issuing Fresh Tax Computation Sheet. (**Copy Enclosed**).

Appellant has made submission before Pr. CIT vide submission dated 24/3/2022 Enclosing Pune ITAT decision, which Pr. CIT has reproduced in Para.5 of his order u/s 263.

Appellant prays to confirm that Assessing Officer's action allowing Rs.1,65,95,311/- even inadvertently, which is subject matter of Revision, be confirmed as allowed, in view of the view taken by the Bench that Interest on deposits with Cooperative Banks is eligible u/s80P(2)(a)(i)/80P(2)(d) of the Act, 1961.

Pr. CIT has directed at (b) to "whether deposits are made with Institutions which are registered with RBI for carrying on Business of Banking".

It appears confusion in the mind of CIT. If it is not registered with RBI, or Registered with RBI. It remain Co-operative Society Registered under Co-operative Societies Act, and eligible for deduction u/s80P(2)(d) of the Act, 1961.

CIT Notice Para 3.2 Assessing Officer also has made addition of Rs.99,50,000/- with IDBI Bank during Demonetization period, and charged Tax @ provided u/s 115JBBE is clear from computation Sheet.

III. In Para 3.2 Second part Pr.CIT has alleged that Assessee has deposited Rs.2,14,41,500/- in *"YES BANK"* during the period of demonetization for which No addition is made by Assessing Officer.

This Amount, in fact, is not deposit in 'YES BANK', but in SOLAPUR DISTRICT CENTRAL CO-OPERATIVE BANK, By the Branches of Mohol Nagari Sahakri Patsanstha Ltd.

Thanking You,

Yours faithfully,
For Mohol Nagari Sahakari
Patpurvatha Sanstha Maryadit.

Manager
AR

3. On the other hand, the ld.Departmental Representative of the Revenue relied on the order of ld.CIT.

Findings and Analysis:

4. It is an admitted fact by the revenue that the assessee is a cooperative credit society registered under the Co-Operative Societies Act. The Pr.CIT has held the order u/s 143(3) dated 16/12/2019 as erroneous and prejudicial to the interest of revenue on two grounds:

- Interest Income earned by assessee is not eligible for deduction u/s.80P(2) of the Act.
- AO failed to make enquiry regarding cash deposits of Rs.2,14,41,500/-during the period 9/11/2016 to 31/12/2016 made in YES BANK by the assessee.

4.1 We have studied the order u/s 143(3) dated 16/12/2019 passed by the ITO, Ward-2, Pandharpur. The ITO has mentioned in the assessment order that the assessee has earned following Interest Income:

S.No	***Particulars***	***Amount***
1	*Interest received on investment with Co-op. Banks*	*6,03,19,720/-*
2	*Interest received on investment with Nationalised Banks*	*76,043/-*
	Total	*6,03,95,763/-*

5. The ITO had held that the entire Interest income of Rs.6,03,95,763/-is not eligible for deduction u/s 80P of the Act . The ITO also held that the impugned Interest Income is to be added as income from other sources. However, the ITO failed to add the said income to the total income. The final calculation given by the ITO in the assessment order is as under :

8. Subject to the above remarks, total income of the assessee society is computed as under :-

Income before deduction under Chapter-VI-A,

As per computation of Income	**Rs. 4,38,00,452/-**
Unexplained Money u/s.69A	***Rs. 99,50,000/-***
Gross Total Income	***Rs. 5,37,50,452/-***
Less: Deduction u/s 80P (Chapter VI-A)	***Rs.1,65,95,311/-***
Total Income	***Rs.3,71,55,141/-***
Or say	***Rs. 3,71,55,140/-***
	==========

Order passed u/s 143(3) of the I.T. Act, 1961. Issue DN & Challan. Charge interest u/s 234A, 234B. Initiate penal proceedings u/s 270A(2) of the Act for under reported income.

6. In these facts and circumstances of the case, it is observed that the ITO had held that amount of Rs.6,03,95,763/- is not eligible for deduction u/s 80P of the Act but forgot to add the said amount to total income finally calculated by him in the assessment order. In these facts of the case, we agree with the Pr.CIT that the Assessment Order is erroneous and prejudicial to the interest of revenue qua AO's mistake of not adding the amount which he himself held to be

non-eligible. However, this ITAT has repeatedly held that Cooperative Credit Society is eligible for claiming deduction under section 80P(2) of the Act on interest earned by them from Fixed Deposits kept with another cooperative Banks. ITAT Pune in the case of Kundalika Nagari Sahakari Patsanstha Maryadit178 TTJ 381 (Pune - Trib.) has held as under :

> Quote, " *The assessee has further furnished the break-up of FDs with different co-operative banks at pages 57 to 68 of the Paper Book with sample copies of FDs at pages 69 to 75 of the Paper Book. The claim of the assessee before us is that it was engaged in the business of providing credit facilities to its members, out of loan received from its members itself. The surplus amount which was on account of amount received from its members only, which had not been advanced to any of the members was invested in the banks, against which the said investment was made out of surplus funds available with the assessee, which in turn, were amounts advanced by the members itself. The said parking of funds with the co-operative banks was claimed by the assessee to be in the nature of its business activity as it was the requirement of Maharashtra Co-operative Societies Act, 1960, that 20 to 30% of total deposits*

are to be parked in the investments with co-operative banks. It is not the case of the Department that the amount invested by the assessee was out of any liabilities due by the assessee. In the absence of the same and following the same parity of reasoning laid down by the Hon'ble High Court of Karnataka in Tumkur Merchants Souharda Credit Co-operative Ltd. (supra) and the facts of the present case being at variance to the facts before the Hon'ble Supreme Court in Totgar Co-operative Sale Society Ltd. (supra), we hold that the assessee is entitled to the claim of deduction under section 80P(2)(a)(i) of the Act." Unquote.

7. Similar View is taken by ITAT Pune in the case of Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. Vs. ITO 186 ITD 220 (Pune - Trib.) [23-09- 2020].

8. Thus, the ITAT has repeatedly held that interest earned by Cooperative credit Society from Cooperative bank is eligible for deduction u/s 80P(2) of the Act. Hence, the order u/s 263 is quashed qua the issue of eligibility of the assessee for deduction u/s 80P(2) on Interest earned .

<u>Cash Deposits during Demonitization period</u>:

9. The ld.Pr.CIT has held assessment order as erroneous on the issue of not making proper inquiry qua cash deposits made during the period 09/11/2016 to 31/12/2016. It is an admitted fact that assessee had deposited cash of Rs.2,14,41,500/- during the impugned period in Bank and also cash of Rs.99,50,000/- deposited in IDBI Bank during the impugned period. The AO has mentioned in the assessment order that assessee has failed to file list of customers, closing cash balance as on 08/11/2016, source of cash deposits etc. The AO made addition of Rs.99,50,000/- deposited in IDBI Bank. But somehow AO failed to make addition of Rs.2,14,41,500/- which was cash deposited during the specified period. The assessee had not filed list of customers before, the AO and also failed to file it before the ld.Pr.CIT. Neither the assessee has filed any details regarding the cash deposited during the specified period before this Tribunal. In these facts of the case, we agree with the ld.Pr.CIT that the assessment order is erroneous and prejudicial to the interest of revenue qua this issue of cash deposits.

10. The section 263, Explanation 2 explains the meaning of the word "*erroneous in so far as prejudicial to the interest of revenue*". As per Explanation-2, any order passed without making enquiry or

any relief without inquiring into the claim, makes the order erroneous and prejudicial to the interest of the Revenue. In the present case the AO had asked specific questions but the Assessee failed to submit the details as called for by the AO. The Assessee has neither submitted the said details regarding the cash deposits even before the ld.Pr.CIT during the 263 proceedings nor before this Tribunal. Therefore, we agree with the ld.Pr.CIT that the assessment order is erroneous and prejudicial to the interest of revenue qua Cash Deposits discussed above. Hence, the order u/s 263 is upheld qua the cash Deposits.

10.1 Therefore, the Ground No.1 & 2 of the Assessee are partly allowed.

Ground No.3 :

11. The ld.Pr.CIT has granted opportunity to the assessee. The ld.Pr.CIT had issued notice u/s 263 and the assessee had filed reply dated 24/03/2022 to the said notice. The ld.Pr.CIT has considered the submission of the assessee. As per section 263, it is important to give opportunity to the assessee before passing the order. In this case said opportunity was provided by the assessee. The assessee filed reply vide letter dated 24/03/2022. Once, the assessee was made aware about the issues and assessee filed reply, we are of the opinion

that sufficient opportunity was granted to the assessee. There is nothing which assessee could not have explained by filling written submission. The assessee has failed to explain us, the facts or proposition of law which assessee could not explain in written submission and for which the personal hearing was mandatory. Therefore, in these facts and circumstances of the case, we dismiss the Ground No.3 of the Assessee regarding non-granting of personal hearing by ld.Pr.CIT.

Ground No.4:

12. It is fact that the case of the assessee was selected for Limited Scrutiny to verify the Chapter VIA deductions and Cash Deposits. The Pr.CIT has invoked the jurisdiction u/s.263 only with respect to these two issues of 80P deduction claim and cash deposited during the specified period. Therefore, we dismiss the Ground No.4 of the assessee.

Ground No.5:

13. The Ground No.5 is about eligibility of assessee to claim 80P deduction on Interest income. We have already adjudicated this ground in earlier paras. Accordingly ground number 5 is allowed.

Ground No.6:

14. We are of the opinion that there is proper application of mind by the ld.Pr.CIT on the facts and law. We have already discussed at length how the ld.Pr.CIT has considered all the facts. Therefore, we dismiss the ground number 6 of the assessee.

Ground No's.7 & 8 :

15. The Ld.AR has not pressed for the said grounds. Hence, the ground no.7 and 8 are dismissed.

16. Accordingly, appeal of the assessee is Partly Allowed.

Order pronounced in the open Court on 22nd May, 2023.

Sd/-	**Sd/-**
(S.S.GODARA)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 22nd May, 2023/ *SGR**

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.