

IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAWAN SINGH JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 2539/Mum/2019 (Assessment Year 2014-15)

M/s Vadasinor Pragati Samaj Co-operative Credit Society Ltd. 45/49, 1 st Floor, Babu Genu Road, Kalbadevi, Mumbai-400002. PAN: AAAAV6905G	Vs.	Principal Commissioner of Income Tax – 18 Mumbai.
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Appellant

Respondent

Appellant by	: Shri Sanjay S. Parikh (AR)
Respondent by	: Shri Sushil Kumar Poddar (CIT-DR)
Date of Hearing	: 04.12.2019
Date of Pronouncement	: 13.12.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of ld. Principal Commissioner of Income Tax-18 (ld. PCIT), Mumbai dated 05.03.2019 passed under section 263 of the Income Tax Act (the Act). The assessee has raised the following grounds of appeal:

A) Revision o/s. 263

- 1) The learned Principal Commissioner of Income Tax - 18, Mumbai (PCIT) erred on facts and in law in holding that the assessment order is erroneous in so far as it is prejudicial to the interests of Revenue and directing the AO to re-assess the income of the appellant by disallowing the deduction u/s. 80P(2)(d) of Rs.12,87,629/-.
- 2) The learned PCIT failed to appreciate that the order of the AO was neither erroneous nor prejudicial to the interests of the Revenue and hence, could not be revised u/s. 263.

3) The learned PCIT failed to appreciate that the order of the AO was in line in certain decisions wherein it was held that deduction u/s. 80P(2)(d) was allowable and as two views were possible on the said issue and the AO having adopted one of the views, the order of the AO could not be considered to be erroneous.

4) The Appellant prays that the order u/s. 263 may be held to be bad in law and the direction of the PC IT to reassess the income of the appellant by excluding the deduction claimed by the appellant u/s. 80P(2)(d) of Rs. 12,87,629/- may be deleted.

2. Facts in brief as gathered from the orders of lower authorities are that assessee is a Co-operative Society, filed its return of income for Assessment Year 2014-15 on 27.09.2014 declaring Nil income. The case was selected for scrutiny and after serving statutory notice under section 143(2) and 142(1) of the Act. The assessment was completed under section 143(3) of the Act accepting the return of income without any variance. Subsequently, the assessment was revised by Id. PCIT vide its order dated 05.03.2019.

3. Before revising the assessment order, the Id. PCIT by show-cause notice dated 05.02.2019. The operative part of show-cause notice is extracted in para-2 of the order. In the show-cause notice, the Id. PCIT noted that Assessing Officer has erroneously allowed the deduction under section 80P(2)(d) on the interest received of M/s Vadasinor Pragati Samaj Co-operative Credit Society Ltd. resulting into under assessment of tax. The assessee filed its reply dated 12.02.2019. The essence of reply of assessee is recorded by Id. PCIT in para-3 of its

order as under. The main contents of the reply of the assessee are as under;

- (i) That the assessee is a credit co-operative society and not a co-operative bank within the meaning of Explanation to Section 80P(4) of the Act. It does not operate like a bank inasmuch as it does not accept funds from non-members or issue cheque books or carry out any activities that banks carry out. It accepts fixed deposits and recurring deposits only from its members and gives loans to needy members' under-various schemes. The surplus, if any, of idle funds are invested with co-operative banks.
- (ii) That both Maharashtra State Co-operative Bank & Mumbai District Central Co-operative Bank are also co-operative societies, governed by Maharashtra State Co-operative Society Act, 1960. This being so, the assessee is qualified for deduction u/s 80P(2)(d) in respect of its interest income derived from its investments with other co-operative societies.
- (iii) That, without prejudice to the above, the provisions of Section 263 of the Income-tax Act do not apply in this case because the Assessing Officer had fully verified the facts of the case before allowing deduction u/s 80P(2)(d).
- (iv) That merely because the Principal Commissioner's view is different from the view held by the Assessing Officer, the conclusion cannot be that the latter has erroneously allowed deduction u/s 80P(2)(d) of the Act. Where two views are possible, and the Assessing Officer has taken one view with which the Commissioners does not agree, the order cannot be treated as erroneous and prejudicial to the interests of revenue.

4. The reply of assessee was not accepted by Id. PCIT by taking view that it is well settled rule of interpretation that may not be of legislature should be read or used by Parliament should be rendered nugatory. If the term 'Co-operative society' is to be read as a 'Co-operative Bank', it would render the entire provision redundant and nugatory. The deduction under section 80P(2)(d) is allowable to the Co-operative Society in respect of any income by way of interest or dividend derived by a Co-operative Society from its investment with any other Co-operative Society. Thus, deduction is allowable on interest income, which is derived from investment with a Co-operative Society and not a Co-operative Bank. The Id. PCIT after discussing the various case law on the ratio that as and when the Assessing Officer failed to apply his mind on the factual aspect available on record, the assessment order passed by him is erroneous. The assessment order was treated as erroneous and prejudicial to the interest of revenue. The assessment was set-aside on the issue of allowability of deduction of interest of Rs. 12,87,629/- under section 80P. The Assessing Officer was directed to pass the assessment order afresh after following the due process and grant opportunity to the assessee. Aggrieved by the order of Id. PCIT, the assessee has filed the present appeal before this Tribunal.
5. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue

and perused the material available on record. The Id. AR of the assessee submits that the Assessing Officer during the assessment raised query with regard to deduction under section 80P. The assessee filed its detailed reply before the Assessing Officer, copy of which is placed on record vide paid no. 14 & 15 of the Paper Book. The Id. AR for the assessee further submits that after considering the explanation of the assessee, the Assessing Officer allowed the deduction of interest from investment with other Co-operative Society namely Maharashtra State Co-operative Bank and Mumbai District Co-operative Bank. Both the Banks/Institutions governed by Maharashtra Co-operative Societies Act and accordingly, the assessee is entitled for deduction under section 80P.

6. The Id. AR of the assessee fairly submits that though there is no discussion in the assessment order about the deduction allowed in favour of assessee, however, the order was passed after due application of mind and that the order is neither erroneous nor prejudicial to the interest of revenue. The Id. AR of the assessee submits that in a number of decisions including Special Bench of Ahmedabad Tribunal in ACIT vs. People's Co-operative Credit Society held that a Co-operative Society providing credit facility to its member cannot be said to be carrying of banking business and therefore, cannot be denied benefit under section 80P(2)(a)(i) by invoking the provision of section 80P(4).

In support of his submission, the Id. AR of the assessee relied upon the following decisions:

- Malabar Industrial Co. Ltd. vs. CIT [2000] 243 ITR 83(SC),
- CIT vs. Max India Ltd. [2007] 295 ITR 282 (SC),
- Quepem Urban Co-operative Credit Society Ltd. vs. ACIT [2015] 377 ITR 272 (Bom. HC).
- PCIT vs. Goa PWD Staff Co-operative Credit Society Ltd. [2016] 242 Taxman 0422 (Bom. HC.)
- CIT vs. Gabriel India Ltd. [1993] 203 ITR 108 (Bom.)
- CIT vs. Jafari Momin Vikash Co-op. Credit Society Ltd. [2014] 362 ITR 331 (Guj. HC.
- ACIT vs. Metrocity Criminal Courts employees Mutually Aided co-op. Credit Society Ltd. [2015] 39 ITR (Trib.) Hyderabad.
- In Lady Ratan Tower Cooperative Housing Society Ltd.
- ACIT vs. People's Co-operative Credit Society Ltd. [2019] 180 DTR (Ahd) (SB) (Trib.) 444.

7. On the other hand, the Id. DR for the revenue supported the order of Id.

PCIT. The Id. DR for the revenue invited our attention on the contents of assessment order and would submit that there is no reference or consideration about the issue raised by Id. PCIT, about show-cause notice on the issue of allowability of claim under section 80P. Further, the assessment order is silent about the allowance of deduction under section 80P. The reliance of Id. AR of the assessee on the alleged explanation furnished in the query raised by Assessing Officer. The Id DR for the revenue submits that perusal of copy of the alleged which is

available at page no. 14 & 15 of the Paper Book, there is no acknowledgement of Assessing Officer or proof of filing the same before the Assessing Officer. This reply does not bear the date or signature of Assessing Officer on its acknowledgement. The Id. DR further submits that the assessment order is passed without examining the issue. The Id. PCIT in its order has clearly spelt out by referring the decision of Gee Vee Enterprises vs. Addl. CIT (99 ITR 375) that Assessing Officer is not only adjudicator but also an investigator, cannot remain passive in the face of a return which is apparently in order but calls for further inquiry in the facts and circumstances of the case, the word “erroneous” prescribed in section 263 includes the failure to make such an enquiry by Assessing Officer. The Assessing Officer has not applied his mind on factual aspect of the record and allowed the deduction without enquiry and the assessment order is not only erroneous and prejudicial to the interest of revenue. The Id. DR submits that the twin condition as enunciated by celebrated case of Malabar Industrial Co. Ltd. vs. CIT (243 ITR 83) are clearly made out in the present case. The Id. CIT-DR prayed for dismissal of appeal.

8. In the rejoinder submission, the Id. AR of the assessee submits that Id. PCIT while issuing show-cause notice under section 263 dated 05.02.2019 has clearly written in its show-cause notice that the Assessing Officer erroneously allowed the deduction. Thus, the

language of show-cause notice itself suggests that the issue of deduction under section 80P was considered by Assessing Officer while passing the assessment order. Now, the question is if the deduction under section 80P is allowed without examining the issue or allowed erroneously.

9. The ld. AR of the assessee further submits that the Hon'ble Jurisdictional High Court CIT vs. Gabriel India Ltd. (2103 ITR 108 (Bom)) held that if the Assessing Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by ld. PCIT simply because of according to him, the order should have been written more elaborately. This section does not visualize the case of the judgment of the learned Commissioner for that of Income Tax Officer, who passed the order, unless the decision is held to be erroneous. It was further held that when the ITO examined the accounts, make enquiry applied his mind to the fact and determined the income either by accepting the accounts or by making some estimation himself. And the Commissioner on perusal is of opinion that the estimation made by Officer is on the lower side and left to the Commissioner, he would have estimated the figure on higher side, the order of Assessing Officer cannot be substituted by Commissioner. The ld. AR of the assessee further submits that on merit/deduction under section 80P this case is clearly covered by the decision of Tribunal.

- ❖ PCIT vs. Goa PWD Staff Co-operative Credit Society Ltd. [2016] 242 Taxman 0422 (Bom. HC.)
- ❖ CIT vs. Jafari Momin Vikash Co-op. Credit Society Ltd. [2014] 362 ITR 331 (Guj. HC.)
- ❖ ACIT vs. Metrocity Criminal Courts employees Mutually Aided co-op. Credit Society Ltd. [2015] 39 ITR (Trib.) Hyderabad.
- ❖ ACIT vs. People's Co-operative Credit Society Ltd. [2019] 180 DTR (Ahd) (SB) (Trib.) 444.

10. We have considered the submission of the learned representative of the parties and have gone through the orders of authorities below. In the return of income, the assessee claimed interest income under the head Income from Other Sources of Rs. 12,87,629/- and after setting up of loss of Rs. 2,87,471/-, the assessee claimed deduction under Chapter-VA of Rs. 10,00,158/-. The income under the head 'Income from other Sources' the assessee claimed it as deductible under section 80P as interest income from Cooperative Societies. The Assessing Officer while passing the assessment order accepted the return of income. Admittedly, no discussion on the disallowance under Chapter-VA, including the deduction under section 80P in the assessment order. The Id. PCIT issued show-cause notice under section 263 for proposed revision of assessment order vide notice dated 05.02.2019. In the show-cause notice apart from the other contents, the Id. PCIT has mentioned that Assessing Officer has 'erroneously' allowed the deduction under section 80P(2)(d) on interest received from M/s. Vadasinor Pragati

Samaj Co-operative Credit Society Ltd. (supra). The assessee filed its detailed reply vide reply dated 12.02.2019, summary of which is already correctly recorded by Id. PCIT as we have referred above in para-14 & 15. The contention of assessee was not accepted by PCIT by taking view that after insertion of sub-section (4) of section 80P w.e.f. 01.04.2007, the legislature has excluded Co-operative Bank from the ambit of section 80P, which deals with the deduction in respect of Co-operative Societies. The Id. PCIT also opined that the mandate of legislature should be read that no word used by Parliament should be rendered nugatory and if the word “Co-operative Society” is to be read as Co-operative Bank, it would be rendered the entire provision nugatory. It is further held that deduction under section 80P(2)(d) is allowable to the Co-operative Society in respect of interest or dividend by a Co-operative Society from its investment with other Co-operative Society.

11.The Hon’ble jurisdictional High Court in Quepem Urban Co-operative Credit Society Ltd. vs. ACIT (377 ITR 272) held that Co-operative Society could not be regarded as a Co-operative Bank, mere fact that insignificant proportion of revenue was coming from non-members and was entitled for deduction under section 80P(2)((a)(i).

12.Further, the coordinate Bench of Mumbai Tribunal in Lady Ratan Tower C-operative Housing Society Ltd Vs ITO (supra), while following the decision of coordinate bench in Kaliandas Udyog Bhavan Premises Co-

op. Society Ltd. (ITA No. 6547/Mum/2017 dated 25.04.2018) held that income by way of interest derived by assessee from its investment held that other Co-operative Society shall be deducted in computing the total income. We have further noted in Kaliandas Udyog Bhavan Premises Co-op. Society Ltd.(supra) the decision was rendered by making reliance upon the decision of Hon'ble Karnataka in PCIT & Anr vs. Totagars Cooperative Sale Society (392 ITR 74) and Hon'ble Gujarat High Court in SBI vs. CIT (389 ITR 578 (Guj.) also held that interest income earned by assessee on investment held that a Co-operative Bank would be eligible for claim of deduction under section 80P(2)(d).

13.Considering the aforesaid legal preposition, we are of the view that assessee is entitled for deduction on interest earned from Co-operative Bank which are primarily a Co-operative Society, thus, in our view, the deduction allowed by Assessing Officer are in accordance with various judicial pronouncement, which cannot be branded as erroneous. The jurisdictional High court in Gabriel India Ltd. (supra) held that power of suo-moto revision under section 263 of the Act, is in the nature of supervisory jurisdiction and can be exercised, if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise the power of revision under this sub-section viz. (i) The order should be erroneous; and (ii) by virtue of the order being erroneous and prejudicial must have been caused to the interest of

revenue. Further, the order cannot be termed as erroneous unless it is not in accordance with law, if the Assessing Officer acting in accordance with law make certain assessment, the same cannot be branded as erroneous by Commissioner simply because, according to him, he order should have been written more elaborately.

14.As we have noted above, the order passed by Assessing Officer, though not speaking, however, is in accordance with law, so far as deduction under section 80P is concerned. Therefore, in our consider view, the twin condition as enunciated under section 263 are not furnished in the present case. Therefore, the Id. PCIT was not justified in treating the assessment order for revising it by exercising power under section 263.

15.So far as objection/statement of CIT-DR is concerned that the Assessing Officer has not made proper enquiry or the order is silent about the deduction claimed and allowed to the assessee under section 80P. As we have noted earlier that Id. PCIT while issuing show-cause notice himself has recorded in the show-cause notice itself that Assessing Officer has erroneously allowed the deduction under section 80P(2)(d) on interest received from a Credit Co-operative Society. Hence, we are not convinced with the submission that issue was not examined by Assessing Officer as the language of show-cause notice itself suggest that Assessing Officer erroneously allowed the deduction. Hence, the

grounds of appeal raised by assessee are allowed, resultantly, the revision order passed by ld. PCIT is quashed.

16. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 13/12/2019.

Sd/-
S. RIFAUH RAHMAN
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 13.12.2019

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Copy of the Order forwarded to :

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| 1. Assessee | 2. Respondent |
| 3. The concerned CIT(A) | 4. The concerned CIT |
| 5. DR "F" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai