

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

**BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.958/Bang/2023
Assessment Year: 2018-19

M/s. Pane Mangalore RSS Bank Panemangalore RSS Limited Panemangalore Bantwal 574 231 PAN NO : AAAAP3195J	Vs.	ITO Ward-2(1) Mangaluru
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, A.R.
Revenue by	:	Shri Subramanian S., D.R.

Date of Hearing	:	09.01.2024
Date of Pronouncement	:	09.01.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against the order of PCIT passed u/s 263 of the Income Tax Act, 1961 (in short “The Act”) dated 03.11.2023 for the assessment year 2018-19. The assessee has raised following grounds of appeal:

- 1. The order of the learned P.C.I.T passed u/s. 263 of the Act in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned P.C.I.T failed to appreciate that there was no error much less an error prejudicial to the interest of the revenue in the order passed by the learned Assessing Officer warranting revision u/s.263 of the Act and consequently, the order passed by the P.C.I.T. requires to be cancelled.*
- 3. The learned P.C.I.T. is not justified in holding that the order of assessment passed u/s. 143[3] of the Act, dated 19/04/2021 was erroneous and prejudicial to the interest of revenue on the ground that*

the same was not passed in accordance with the decision of the Hon'ble Supreme Court and Jurisdictional High Court of Karnataka prejudicial to the interests of the assessee under the facts and in the circumstances of the appellant's case.

- 3.1 The learned P.C.I.T failed to appreciate that the appellant had duly followed the ratio of the judgements of the Hon'ble Supreme Court and jurisdictional High Court and offered the entire interest income earned on deposits with co-operative and other banks under the head "Other Sources" and thus, there was no case to hold that the assessment order passed by the learned A.O. was not in accordance with the binding judgements prejudicial to the interest^ of the assessee under the facts and in the circumstances of the appellant's case.*
- 3.2 The learned P.C.I.T. further failed to appreciate that the learned A.O. had passed the order u/s 143(3) after making sufficient inquiries and with proper application of mind, and thus the same could not be held as erroneous by labelling the same to be not in accordance with binding judgements prejudicial to the interest of the assessee to warrant revision u/s 263 of the Act under the facts and in the circumstances of the appellant's case.*
- 4. The learned P.C.I.T ought to have appreciated that the appellant had not claimed any deduction U/s 80P(2)(d) of the Act in respect of Interest Income of Rs. 1,54,05,706/- earned from deposits made with co-operative and other banks and thus, the question of allowance of any deduction in the assessment order passed does not arise for the same to be labelled as an erroneous order prejudicial to the interest of revenue and therefore, the impugned order passed u/s. 263 of the Act directing the disallowance of deduction is contrary to law and facts of the appellant's case.*
- 5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered.*

2. Facts of the case are that the National e-assessment Centre, Delhi has passed an assessment order u/s. 143(3) r.w.s. 144B of the Act for the assessment year 2018-19 on 19.04.2021, assessing a total income of Rs. Nil. On perusal of the assessment records, the Id. PCIT observed that assessee has received interest income from various banks including co-operative banks to the tune of Rs.1,54,05,705/-. The Id. PCIT observed that as per the provisions of section 80P(2)(d) of the Act, deduction U/s 80P is not allowable on income received from banks including co-

operative banks. The Hon'ble Karnataka High Court in the case of Totgar's Co-operative Sales Society (ITA No. 10066/2016 dated 16.06.2017) has held that the interest earned on deposits with co-operative banks are not eligible for deduction u/s 80P(2)(d) of the Act. The Id. AO in his assessment order has not applied the above legal provisions which was binding on him. The Id. AO ought to have disallowed the deduction u/s 80P(2)(d) of the Act in respect of interest income arising from banks including co-operative banks.

3. After hearing the Id. A.R., the Id. PCIT has passed the order as follows:

“5. On merits assessee contended that the interest receipts from various Co-operative Banks amounting to Rs. 1,54,05,705/- is part of operational income of the assessee co-operative society and hence it is eligible for deduction u/s. 80P(2)(a)(i). According to the assessee, said deposits were made as per statutory obligation to maintain the SLR. In support of such contention assessee relied on decision of various courts and tribunals.

6. As seen from para 10 of the order of Karnataka High Court in the case of Totagars Co-operative Sales Society (395 ITR 611), the said assessee was also accepting deposits from its members and provides credit facility to its members in addition to the other activities of marketing of agricultural produce. Even under such circumstances Hon'ble Supreme Court has held such income as not part of operational income in the decision reported in 322 ITR 283. When the interest so received from co-operative bank is not operational income as held by the Apex Court, deduction u/s. 80P(2)(a)(i) cannot be granted on such income. Further, such income i.e. income from Co-operative Bank is not eligible for deduction u/s. 80P(2)(d) in view of the binding decision of Karnataka High Court in the case of Totagars Co-operative Sales Society reported in 395 ITR 611. Although Authorized Representative of the assessee quoted another decision of Karnataka High Court in this issue, the same was rendered in January 2017 i.e. prior to the decision reported in 395 ITR 611. As per the ratio laid down in Govinda Nayak v/s Western Patent Press Company Limited AIR 1980 KAR 92(FB) the later decision will have more binding force than the earlier one. Considering the above, it is held that assessee is not eligible for deduction of such income u/s.80P(2)(d) also. Assessing Officer may pass consequential order.”

Against this assessee is in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. In this case, assessee has considered interest income earned from SCDCC Bank Ltd./Syndicate Bank and Co-operative Societies, Dividend from SCDCC Bank Ltd. and Dividend from Co-operative Bank as income from other sources as follows:

Schedule 7 for computation of income placed at page no.5 of paper book:

Income considered under other heads

Interest received – FROM SCDCC BANK/SYND BANK/ CO OP. SOCIETIES	1,54,05,706
Dividend Taxable – FROM SCDCC BANK LIMITED.	11,87,500
Dividend Taxable – FROM OTHER COOP SOCIETIES	7,919
Rent received	<u>3,605</u>
Grand Total	<u>1,66,04,730</u>

4.1 Since the assessee has not claimed deduction u/s 80P(2)(a)(i) or 2(d) of the Act on the above income, the ld. AO has not disturbed the computation of income on this. The ld. AO has considered the deduction claimed by the assessee u/s 80P of the Act in schedule 16 in the computation of income which is as follows:

Schedule 16 for computation of income placed at page no.7 of paper book:

80P

Profits Exempt u/s 80P(2)(a) 80P(2)(a)(i) : Banking/credit facilities to its members	1,43,71,168
Profits Exempt u/s 80P(2)(d) DIVIDEND RECD FROM OTHER CO-OP SOCIETIES	7,919
Income exempt u/s 80P	<u>1,43,79,087</u>

Accordingly made deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the Act.

4.2 The Id. PCIT without understanding that the assessee is not claiming deduction u/s 80P(2)(a)(i) or 80P(2)(d) of the Act on the income shown in Schedule 7 as above, he directed the Id. AO not to grant deduction u/s 80P(2)(a)(i) & 80P(2)(d) of the Act on the above income of Rs.1,54,05,706/-, which is shown as **“income from other sources”** by assessee in Schedule 7 to computation of income. Being so, in our opinion, the order passed by Id. AO vide order dated 19.4.2021 is not prejudicial so far as erroneous to the interest of revenue, when there was no claim by assessee u/s 80P(2)(a)(i) or 80P(2)(d) of the Act in respect of income shown by assessee in schedule 7 as discussed above. Accordingly, we annul the revision order passed by Id. PCIT u/s 263 of the Act.

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

Order pronounced in the open court on 9th Jan, 2024

Sd/-
(George George K.)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 9th Jan, 2024.
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.