

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B”, KOLKATA**

**BEFORE SH. P.M. JAGTAP, VICE PRESIDENT AND
SH. S.S.GODARA, JUDICIAL MEMBER**

ITA No. 806/KOL/2019
[Assessment Year: 2014-15]

The Electro Urban Co-Operative Credit Society Ltd., CESC House, Annex Building, 1 st Floor, Chowringhee Square, Kolkata-700 001. PAN- AADAT 5699 Q	vs	Principal Commissioner of Income Tax, Kolkata-12, Kolkata.
(Appellant)		(Respondent)

Appellant by	Sh. Sanjay Bhattacharya, FCA.
Respondent by	Sh. Radhey Shyam, CIT.
Date of Hearing	10.02.2020
Date of Pronouncement	10.07.2020

ORDER

PER SH. S.S. GODARA, JUDICIAL MEMBER:

This assessee’s appeal for AY 2014-15 arises against the order dated 20.03.2019 passed by the Pr. Commissioner of Income Tax, Kolkata-12, Kolkata in M. No. PCIT-12/Kol/263/2018-19/ in proceedings u/s 263 of the Income tax Act, 1961 (in short the “Act”).

Heard both the parties. Case file(s) perused.

2. We advert to the relevant facts in the instant case. This assessee is a cooperative credit society. Apart from carrying out co-operative credit activity, it owns four holiday homes on its own and also maintains/runs similar other holiday homes which are provided to its members in lieu of charging concessional maintenance charges. The assessee had filed its return on 21.11.2014 declaring NIL income. The Assessing Officer completed

his regular assessment on 03.06.2016 assessing its taxable income at ₹3,67,94,200/-.

3. Case file suggests that the PCIT thereafter issued his Section 263 notice dated 11.04.2018 proposing to invoke his revision jurisdiction for the following reason(s):

“From the assessment order as well as records & information received for the A.Y. 2014-15, it has been noticed that the following aspects of the return of income/computation of income were not properly looked into by the A.O. concerned which are as follows:-

The case was selected for scrutiny through CASS. The reasons for selection were:-

i) "Large Deduction claimed under chapter VI-A ii) Large Deduction claimed U/s.57".iii) Low income in comparison to high loans/advances/Investment in shares iv) High interest expenditure against new capital added in work in progress or addition made to fixed assets & v) Mismatch in sales turnover reported in Audit report and ITR.

The assessment for the A.Y. 2014-15 was completed U/s.143(3) on 03/06/2016 determining the total income at Rs.3,67,94,200/-.

On perusal of the assessment records, it was seen that the assessee was an employees' Co-operative Society having the area of its membership confined to the permanent employees of CESC Ltd. It had income from the activity of providing credit facilities to its members and interest on deposit with the The West Bengal State Co- operative Bank Ltd. as well as income from interest on deposit with commercial bank.

From the details available on the record it was observed that in the Income & Expenditure Account, assessee had declared Gross receipt of Rs.30,19,125/- under the head "Income from Other Sources" on account of maintenance of Holiday Homes and claimed expenses of Rs. 32,18,553/- as well as depreciation of Rs.1,49,456/- aggregating to Net Loss of Rs.3,48,884/-. As per Balance Sheet, Fixed assets include the following Holiday Homes which were owned by the assessee. Maintenance charges received as well as payments made in respect of these properties were as under:-

Particular	Asset Value(Rs.)	Receipts(Rs.)	Payments(Rs.)
Bakkhaii Holiday Home Building	4,99,495/-	1,04,950	65,412/-
Digha Holiday Home Properties	84,04,005/-	8,91,375/-	10,09,565/-
Kechki Holiday Home House Building	6,83,939/-	65,600/-	1,88,910/-
Santiniketan Holiday Home Properties	41,05,352/-	4,55,110/-	4,29,340/-
Total		15,17,035/-	16,93,227/-

From the above details, it was clear that out of the total receipts from Holiday Homes, Rs. 15,17,035/- was received from the properties owned by the assessee and also Rs. 16,93,227/- was the amount of expenses attributable to such properties. At the same time, Rs. 15,02,090/- was received from the Holiday

Homes which were not owned by the assessee and the expenses corresponding to such properties were to the extent of Rs. 15,25,326/-, clearly having Loss of Rs. 23,236/-.

Section 22 of I.T. Act, 1961 states about the income earned from any building or land appurtenant thereto of which assessee was the owner, which was to be treated under the head "Income from House Property". Accordingly Rs. 15,17,035/- was the income received from the Holiday Homes owned by the assessee. Therefore, such income should have been treated as "Income from House Property" and Rs. 15,02,090/- should have been assessed as income from other Sources."

4. The PCIT's revision order under challenge, passed after rejecting the assessee's detailed explanation, has directed the Assessing Officer to frame a fresh assessment going by the above extracted reasons. In other words, he has made it clear that the assessee's income derived from holiday homes under its ownership has to be assessed as income from house property and that from the other holiday homes is to be treated as income from "other" sources followed by the corresponding consequential computation.

5. After giving our thoughtful consideration to rival submission against and in support of the PCIT's impugned revised directions. We find no reason to sustain the PCIT's foregoing stand that the assessee's income derived from its holiday homes has to be bifurcated on ownership basis (supra). Learned CIT(DR) fails to dispute that the Assessing Officer had very examined the very issue and assessed the assessee's income from the said holiday homes under the business head than that claimed as income from other sources (supra). The PCIT's observations in para 14 of the impugned order that the assessee could not demonstrate that "the income from holiday homes as disclosed by it was in any manner whatsoever was examined" during assessment; turns out to be factually incorrect since the Assessing Officer had not only carried out necessary enquiries but also he changed the

head of its income from “other sources” to business (supra). Hon’ble Delhi high court in *ITO vs. D.G. Housing Projects Ltd. [2012] 343 ITR 329 (Delhi)* hold that the twin limbs of no enquiry or inadequate enquiry and an erroneous decision by the assessing authority stand on a different footing and the CIT cannot simply remand the issue back for afresh assessment qua the latter.

6. We further notice that the issue of the assessment of assessee's income derived from holiday homes claimed as income from other sources in the computation but held as income from business during assessment in subsequent AY 2015-16; stands decided in its favour in the CIT(A)'s order dated 28.02.2018 (page 18 in records) i.e. much prior to the PCIT's issuing Section 263 show cause notice dated 11.04.2018. This tribunal’s decision in the *Kolkata Reserve Bank Employees Co-operative Credit Society Ltd. ITA 2253/Kol/2016* holds that such an income from holiday homes is not eligible for Section 80P(2)(i) deduction being not business income. It is crystal clear therefore that the head of assessee’s income derived from its holiday homes i.e. whether it is income from house property as per the PCIT, business income going by the Assessing Officer in assessment and the CIT(A) and the residuary had of “other” sources in its computation; respectively, is purely a debatable issue. It thus could not be held that that the Assessing Officer’s action sought to be revised as erroneous and causing prejudice to interest of the Revenue. Hon’ble apex court’s landmark decision in *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)* holds that both these conditions need to simultaneously exist before Section 263 revision is

set in motion. We conclude in these facts and circumstances that the PCIT's action under challenge is not sustainable since the Assessing Officer had taken one of the possible views only in this factual backdrop. It is reversed therefore. The Assessing Officer's regular assessment dated 03.06.2016 is restored as a necessary corollary.

7. Before parting, it is noted that the order is being pronounced after ninety days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the foregoing period needs to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dated 14th May, 2020.*

8. In the result, this assessee's appeal is allowed.

Order pronounced in the open court on 10.07.2020.

**Sd/-
(P.M. JAGTAP)
VICE PRESIDENT**

**Sd/-
(S.S.GODARA)
JUDICIAL MEMBER**

Date: 10.07.2020
Bidhan

Copy forwarded to:

1. **Appellant**- The Electro Urban Co-Operative Credit Society Ltd., CESC House, Annex Building, 1st Floor, Chowringhee Square, Kolkata-700 001.
2. **Respondent**- Principal Commissioner of Income Tax, Kolkata-12, Kolkata.
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (Sent through e-mail).

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches