

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.341/Bang/2022
Assessment Year : 2016-17

Jaladurga VSS Sangha Tellaru, No.4,/101 & 4/100, Tellar Post, Karkala Taluk-576 117. PAN : AABAJ 9681 N	Vs.	The Pr. Commissioner of Income Tax, Panaji.
APPELLANT		RESPONDENT

Assessee by	:	Shri S.V Ravishankar, Advocate
Revenue by	:	Shri Manjunath Karkihalli, CIT (DR)

Date of hearing	:	14.07.2022
Date of Pronouncement	:	16.08.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member :-

This appeal is filed by the assessee against the order u/s 263 of the Act passed by the Pr.CIT(A), Panaji dated 30.3.2021 with the following grounds of appeal:-

"1. The order of the learned Principal Commissioner of Income-tax Panaji, passed under section 263 of the Act in so far

as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The notice issued for initiation of proceedings under section 263 of the Act, is bad in law.

3. The learned CIT is not justified in law in invoking the jurisdiction under section 263 of the Act and setting aside the order of the AO, as being "erroneous and prejudicial to the interest of the revenue", which is contrary to fact, on the facts and circumstances of the case.

4. The learned CIT is not justified in law in holding that the order passed by the Assessing officer is bad in law, without appreciating that there was no error in the order passed, much less prejudicial to the interest of revenue, on the facts and circumstances of the case.

5. The learned CIT failed to appreciate that the provision of section 263 of the Act shall be attracted only when the order is both erroneous and prejudicial to the interest of revenue and since the order passed under section 143(3) of the Act was not erroneous, much less prejudicial, the invoking of section 263 was not warranted, on the facts and circumstances of the case.

Merits:

6. The learned CIT failed to appreciate that that, the assessing officer has made detailed enquiries and disallowed the entire claim of deduction and thus the order of assessment could not be said to be prejudicial to the interest of revenue, on the facts and circumstances of the case.

7. The learned CIT was not justified in appreciating that the selection of scrutiny was for limited reasons and the same has been performed to the fullest extent and no inference could have been made that the assessing officer has made inadequate enquiry, on the facts and circumstances of the case.

8. The learned CIT failed to appreciate that the scrutiny was not converted into a full scrutiny to presume that the

assessing officer has not made adequate enquiry, no verification could have been made, since it was beyond the scope of enquiry by the assessing officer, on the facts and circumstances of the case.

9. The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

10. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered.”

2. From the above grounds, it is clear that the issue raised is challenging order passed by the Pr.CIT u/s 263 of the Act.

2.1 The brief facts of the case are that the assessee is a cooperative credit society and filed its return of income for assessment year 2016-17 on 2/3/2017 declaring total income of Nil after claiming deduction u/s 80P(2)(a)(i) of the Act for Rs.25,60,957/-. The AO completed the scrutiny assessment and disallowed the deduction claimed u/s 80P(2)(a)(i) and determined the income at Rs.25,60,957/-. Subsequently, the Pr.CIT called the record and observed that there is certain provisions amounting to Rs.13,35,661/- under the head provisions for depreciation, audit fees, gratuity fund, repair and NPA and also interest expense of Rs.1,32,663/- was also debited under the head 'interest on accrual basis, which has not been examined by the AO as per law. Therefore order passed by the AO u/s 143(3) is erroneous and prejudicial to the interest of the revenue. The Pr.CIT(A) observed in para 4,5 and 6 as under:-

“4.1 have considered the submissions made by the assessee and have gone through the assessment records, The AO has placed reliance On the decision of Honble Supreme Court in the case of Citizen Cooperative Society Ltd [Civil Appeal No10245 of 2017 reported in (2017) 397 hR 11 and disallowed the deductions claimed by the assessee u/s 80P(2) of the Income Tax Act, 1961, It is noticed that the AO has disallowed the deduction claimed against interest income from investments with other banks and assessed the same as Income from Other Sources. A perusal of the Profit and Loss account shows that the assessee has debited an amount of Rs.1335,661/- on account of provision for depreciation, audit fees, gratuity fund, repair and NPA which are not allowable expenditure under the Income-tax Act1961.

5 In its submission the assessee has stated that provisions have been made towards staff gratuity fund and staff provident fund. As per the provisions of section 36 of the Income-tax Act, 1961, employer's contribution to a Recognised Provident Fund or a Superannuation Fund is allowed as a deduction on payment basis i.e. only in the year in which it is actually paid, This deduction is not on the accrual basis and is on payment basis only. Similarly, employer's contribution to an approved gratuity fund for benefit of his employees is deductible on payment basis. Likewise, when employees contribute to the gratuity fund and this contribution is deposited by the employer within the stipulated due date it can be claimed as a deduction.

6. With regard to payment of interest, as per the provisions of Section 438 any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a co operative bank shall be allowed (irrespective of the previous year in which the liability to Pay such sum was incurred by the assessee according to the method, of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him. In the submissions made above, the assessee has stated that interest payable to

SCDCC Bank of Rs.1,89,698 1- is included in the provision made for interest payable. Therefore, this amount does fall under the purview of the above section and requires to be disallowed. With regard to the provisions made for interest towards members, it is to be analysed whether the provision is towards an ascertained/unascertained liability after considering the method of accounting followed by the assessee, the different classes of members in the society i.e. regular/nominal/others to whom interest is paid and whether the interest payment warrants deduction u/s.40(a)(ia) of income-tax Act,1961. Similarly, the provisions made towards audit, depreciation and NPA requires to be examined with the regard to its applicability under the relevant provisions of Income-tax Act, 1961,

6. In view of the above, the Assessing Officer is directed to make an order de nova after considering the above mentioned issues, evidences on record, evidences in support of the claims of the assessee and the relevant provisions of the Act. The order will be passed after providing due opportunity of being heard to the assessee.”

2.2 From the above observations of the Pr.CIT, it is clear that he directed the AO for denovo assessment after considering the issues, evidences on record, and also to follow relevant provisions of the Act.

2.3 The Id.AR reiterated the submissions made before the AO and submitted that the issues were examined by the AO at the time of scrutiny assessment and against which, the assessee replied on 17th December 2018, which is placed on the paper book page no.27 to 39. He also referred to page No.38 regarding the details of the

provisions and the same were also provided to the AO. He further submitted that the assessee has been charged for the provisions made towards liability paid in the subsequent years and the depreciation for the building. He further submitted that the AO had taken one possible view on the disputed issue then the Pr.CIT cannot exercise his jurisdiction on the same issue. He has filed paper book containing page nos. 1 to 54.

2.4 Alternatively, he submitted that if the profit of the assessee is increased then the assessee is eligible for deduction under Chapter VIA of the Act and he will also get benefit of Circular No.37/2016 dated 2/11/2016.

3. On the other hand, the ld.DR relied on the order of the Pr.CIT and he submitted that the order passed by the AO is erroneous and prejudicial to the interest of revenue as per sec. 263 Explanation II of the Act. No doubt, the AO has issued questioner and the assessee had submitted details but the AO did not examine the correctness of the provisions made in the profit and loss account, which ought to have been done during the course of scrutiny proceedings. Primarily the AO is investigating officer and thereafter he is adjudicating officer, without verifying the submissions of the assessee, the AO passed the order, which is erroneous and prejudicial to the interest of the revenue.

4. We have heard the rival submissions and carefully considered the same along with the order of the authorities below as well as the documents referred to and relied on before us during the course of the hearing. We observe from the profit and loss account, that the assessee has made provisions as under:-

depreciation fund of building	- Rs.50,401/-
Towards staff gratuity fund	- Rs.1,75,000/-
Staff PF	- Rs,2,93,760/-
Building Repair Fund	- Rs.4,50,000/-
Audit fee provision	- Rs.29,000/-
Interest Expenses	- Rs.1,32,663/-
NPA Provision	- Rs.3,37,500/-

4.1 We observe from the statements filed before the AO on 17/12/2018 that the assessee had explained the proposed addition of Rs.13,35,661/- regarding provision under the different heads but in the assessment order there is no discussion of the same and there was also any material which suggest that during the course of assessment proceedings, the AO had considered and has not taken any decision on the points raised and replied by the assessee. After detailed analysis of the individual head wise, we observe that in regard to depreciation fund, the depreciation has to be provided on the WDV basis. From the financial statement it is clear what is WDV value of the building and on the liability side assessee has also credited building fund provisions. We further

observe that the value of building is Rs.10,08,022/- at the year end and if we calculate the depreciation @ 5%, the depreciation on building comes to Rs.50,401/-. It means it is not the WDV value shown in the balance sheet. Further in respect of provision for staff gratuity fund and staff PF, it is allowable as per proviso to sec. 36 of the Act. In respect of the building repair fund of Rs.4,50,000/-, the assessee has created provision for financial year 2016-17. In the profit and loss accounts for the financial year 2015-16, the taxable profit has not been reversed and we also observe from the details submitted at Sl.No.15, the assessee has purchased a locker for Rs.70,000/- which is a capital expenditure. How the assessee can claim expenditure for the future year from the current year's profit.

4.2 In respect of audit fee provision of Rs.29,000/-, for the financial year 2015-16 then the provision can be made because it was a certain liability, therefore, considering the entire set of facts, the contention of the Id.AR in regard to provision for audit fee is accepted. In respect of interest expenditure payable, this issue has been dealt by the Pr.CIT at para No.6. Under the provision made for interest payable as per sec.43B of the Act any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a cooperative bank. The Id.AR stated that the interest payable to SCDCC Bank is Rs.1,89,698/- is included in the provision made for interest payable and it has to be examined by the AO.

4.3 On careful examination of the documents available before us, we observe that the AO has not dealt these issues and it is also not examined by the AO while passing the assessment order. First he is an investigation officer thereafter he is an adjudicating officer. Accordingly, as per sec. 263 Explanation (ii), the AO has not examined the issue in details which are ought to have been examined while framing the assessment order. In view of the above observations, the order passed by the AO is erroneous and prejudicial to the interest of revenue. However, the assessee is eligible for deduction u/s 80P on the profit from business carried on by him as per the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs.CIT (2021) 123 taxmann.com 161 u/s 80P(2)(a)(i). We also observe that the assessee will get benefit of Circular No.37/2016 dated 02.11.2016. The AO is directed to give effect of the decision of Hon'ble Supreme Court cited supra and Circular issued by CBDT while passing the order.

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

Order pronounced in court on 16th day of August, 2022

Sd/-

(BEENA PILLAI)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, 16th August, 2022
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.