

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 232 /Ahd/2018
Assessment Year 2012-13

Gujarat Fisheries Central Co. Operative Association Ltd. Sakar-S 2 to 4, Nehru Bridge Corner, Ashram Road, Ahmedabad PAN: AABAG5675M (Appellant)	Vs	Pr. Commissioner of Income Tax-5, Ahmedabad (Respondent)
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Assessee by: Shri Jignesh Parikh, A.R.
Revenue by: Shri James Kurian, CIT-D.R.

Date of hearing : 05-04-2022
Date of pronouncement : 15-06-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Pr. Commissioner of Income Tax, Ahmedabad-5 vide order dated 24/03/2017 passed for the assessment year 2012-13.

2. The assessee has taken the following grounds of appeal:-

“1. The learned Pr. CIT has erred in law and on facts in treating the case as fit for revision u/s 263 of The Income tax Act, 1961.

2. The learned Pr. CIT has erred in law and in facts in Assessing the Total Income at Rs. 1,02,11,170/- as against the originally assessed income of Rs. 1,06,410/-

3. The learned Pr. CIT has erred in law and in facts in rejecting the claim of the appellant u/s 80P with respect to Interest Income earned from various nationalized and scheduled banks and government companies to the tune of Rs. 50,37,428/-.

4. CIT has erred in law and in facts in rejecting the claim of the appellant u/s 80P by treating the Annual Crop Charges Income as Rent to the tune of Rs. 8,13,046/-.

5. The learned Pr. CIT has erred in law and in facts in rejecting the claim of the appellant u/s 80 P by treating the Income from Sale of Capital Assets as Business income to the tune of Rs. 42,54,286/-.

6. The learned Pr. CIT has erred in law and in facts in rejecting the claim of the appellant of setting off the brought forward business losses to the tune of Rs. 52,10,105/- against the income of A. Y. 2012-13.

7. The Pr. CIT has erred in law and in facts in initiating penalty notice u/s 271(l)(c) of the Act.

8. The appellant craves leave to add, alter or amend the ground of appeal before or at the time of hearing of the appeal.”

3. At the outset we note that the appeal is time barred by 243 days. The counsel for the assessee submitted that the assessee company did not have in-house consultants and it was due to the wrong advice of the chartered

accountant which was to the effect that since the Principal Commissioner of Income Tax had restored the matter back to the file of the assessing officer u/s 263 of the Act for fresh adjudication, no action was required at this stage. After the AO passed the assessment order confirming the additions pursuant to directions of the Principal Commissioner of Income Tax, the assessee again approached another consultant who advised that the appeal was to be filed against the order of the Pr. CIT and not the AO and accordingly, the appeal court was time barred. The counsel for the assessee has also filed an affidavit to the above effect. The counsel for the assessee placed reliance on the case of **Sreenivas Charitable Trust v. DCIT 280 ITR 357 (Madras)** to contend that there is no hard and fast rule in the matter of condonation of delay and the Courts should adopt a pragmatic approach and should exercise their discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause' the principle of advancing substantial justice is of prime importance and it should receive a liberal construction. In the instant facts, we are of the considered view that the assessee could demonstrate sufficient cause for delay in filing of appeal. Accordingly, we are hereby condoning the delay in filing the appeal of the assessee.

4. On merits, the facts of the case are that the assessee is a cooperative Society deriving income from trading in diesel, oil kerosene, etc. The Principal Commissioner of Income Tax observed that on perusal of the assessment order, it can be seen that the assessing officer had not properly investigated/scrutinized the case with reference to the following issues:

- (i) The assessee had claimed deduction under section 80P of the Act on interest earned from nationalized bank / Gujarat State Finance Corporation amounting to ₹ 51,43,838/- and not from deposits kept with co-operative society/cooperative bank. The same has to be disallowed as per the provisions of section 80P(2) of the Act. During the assessment, the AO had allowed the aforesaid claim of the assessee without examining this aspect.
- (ii) During the year, the assessee had shown rental income of ₹ 7,91,000/- on which exemption was claimed under section 80P(2)(c) of the Act. As per the provisions of section 80P(2)(c) of the Act, Ld. Pr. CIT observed that the assessee is only eligible to claim deduction to the extent of ₹ 50,000/- and the above exemption of ₹ 7,91,000/- has been incorrectly granted by the AO without considering/examining the facts of the case.
- (iii) During the period under consideration, the assessee has shown short-term capital gains (STCG) on sale of depreciable assets u/s 50 of the Act and the same was not offered for taxation. The principal CIT noted that the same was also not allowable for deduction under the provisions of section 80P of the Act and the same was wrongly allowed by the AO while finalizing the assessment without examining the facts of the case.
- (iv) The assessee had claimed set-off of business losses of AY 2011-12 of ₹ 52,10,105/- against the income of the present

year. During the course of assessment proceedings, this claim of set off was not verified by the AO and the loss claimed by the assessee was irregular as the income/loss was exempt under section 80P of the Act. Thus, the business loss claimed to the tune of ₹ 52,10,105/- without giving effect to the apportionment was irregular and wrongly allowed by the AO.

5. The assessee represented its case before the Pr. CIT, who after considering the assessee's submissions/representation dismissed the assessee's arguments and held that the AO had failed to apply the law correctly on the issues cited above. He accordingly held that the provisions of section 263 of the Act are applicable in the instant facts and set aside the assessment proceedings with a direction to the AO to carry out proper examination, enquiry and verification after allowing reasonable opportunity to the assessee. The assessee is in appeal before us against the above order of the Ld. Pr. Ld. CIT(A).

5.1 At the outset the counsel for the assessee challenged the initiation of proceedings under section 263 of the Act and drew our attention to pages 332 to 336 of the paper book and argued that the action under section 263 of the Act was solely on the basis of a revenue audit objection as is evident from letter dated 30/01/2017 issue by the AO to Principal Commissioner of Income Tax (at 336 of paper book). The counsel for the assessee submitted that the Principal Commissioner of Income Tax initiated 263 proceedings solely on the basis of communication by the AO and it was on the basis of this letter referred to above that 263 proceedings were initiated, which was

impermissible in law. We have considered the objection to 263 initiation pressed by the counsel for the assessee. However, we note from the 263 order that Ld. Pr. CIT has passed the order after due application of mind to the facts of the case, analysis of the original assessment order, specific observations that the claim of the assessee was allowed without analysis of facts of the case/incorrect application of law by the AO and after giving due opportunity of hearing to the assessee to present his case. The Delhi ITAT in the case of **MannesmannDemag A.G. v. DCIT [1995] 53 ITD 533 (Delhi)[20-03-1995]** held that Commissioner can exercise jurisdiction under section 263 on basis of audit objection provided he applies his own mind before deciding whether any action is warranted under section 263 of the Act. In the instant facts, since Ld. Pr. CIT has duly applied his mind on various issues, therefore, on jurisdiction, we find no infirmity in the order passed by the Ld. Pr. CIT.

6. Now on the merits of the 263 order passed by Ld. Pr. Ld. CIT(A), the counsel for the assessee submitted that the exemption under section 80P of the Act was correctly claimed since the funds were kept in GSFC (Gujarat State Finance services Ltd.) on the specific directions by the Government of Gujarat, and therefore the assessee had no discretion to deposit the funds with cooperative credit societies/cooperative banks. Accordingly, Ld. Pr. CIT has erred in holding that in the instant set of facts, claim of deduction under section 80P of the Act was incorrectly allowed by the AO in the original assessment order without examining the facts/incorrectly applying the law. He drew attention to Pages 8 of the Paper Book to point out that the AO had examined the facts during the course of assessment proceedings.

However, on analysis of the original assessment order and perusal of the order passed by the Ld. Pr. CIT, we note that during the course of assessment proceedings, the AO did not make any enquiry/did not apply his mind on the applicability of section 80P of the Act on interest earned on deposits kept with GSFC/nationalized banks. In fact, the learned counsel for the assessee has not been able to point out any specific instances where the AO in the original assessment order had carried out detailed enquiries/applied his mind with respect to the various issues pointed out by the Ld. Pr. CIT while passing the 263 order. From the facts on record, we find that there is an evident lack of enquiry by the assessing officer while passing the original assessment order. It was on this basis that Ld. Pr. CIT passed the 263 order after giving due opportunity to the assessee and after taking into consideration the replies filed by the assessee and held that the original assessment order is erroneous and prejudicial to the interests of the Revenue. Accordingly, in view of the above observations, we are of the considered view that there is no infirmity in the order passed by the Ld. Pr. CIT under section 263 of the Act.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 15-06-2022

Sd/-

(P.M. JAGTAP)
VICE PRESIDENT

Ahmedabad : Dated 15/06/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलिय अधिकरण,
अहमदाबाद

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