

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA Nos.1566 to 1567/Bang/2016
Assessment year : 2008-09 to 2009-10

Assistant Commissioner of Income Tax, Circle-2(1), Hubli.	Vs.	M/s. Karnataka Vikas Grameen Bank, P. B. No. 11, Belgaum Road, Dharwad. PAN : AAAAK6324Q
APPELLANTS		RESPONDENT

Revenue by	:	Shri. G. R. Reddy, CIT(DR)-I
Assessee by	:	Shri. V. Chandrashekar, Advocate

Date of hearing	:	30.05.2017
Date of Pronouncement	:	31.05.2017

ORDER

Per Vijay Pal Rao, JM

These two appeals by the revenue are directed against two separate orders of the CIT(A) both dated 29.02.2016 for the assessment years 2008-09 to 2009-10 respectively.

2. The revenue has raised the common grounds of appeal as under:

1. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the disallowance u/s 40(a)(ia) of Rs. 18,53,45,477/- without appreciating the fact that the decision of the Hon'ble ITAT setting aside the order u/s 263 has not been accepted by the department and further appeal u/s 260A has filed.
1. On the facts and circumstances of the case and in law, the Ld CIT(A) has erred by setting aside the A.O's order of 143 (3) r.w.s 263 relying on the Hon'ble ITAT's order without appreciating the fact that the matter is taken up in appeal before the High Court and still has not reached its finality.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred deleting the disallowance u/s 40(a)(ia) of Rs. 18,53,45,477/- without considering the decision of the jurisdictional High Court of Karnataka in the case of Ryatar Sahakari Sakkare Karkhane Niyamit, wherein it was held that non compliance to the provisions of sec 194C , 194I, 194J consequence that flows is to invoke the provisions u/s 40(a)(ia) of the Act.

3. We have heard the learned DR as well as the learned AR and considered the relevant material on record. At the outset it is noted that the impugned assessment has been framed by the AO in pursuant to the revision order dated 14.03.2013 passed under section 263 of the Act by the CIT. It was further pointed out that this Tribunal vide order dated 13.02.2015 in ITA No. 662/2013 for the assessment year 2008-09 and vide its order dated 16.10.2015 for assessment year 2009-10 in ITA No. 632/2014 has set aside the revision orders passed under section 263 of the Act. The learned AR has submitted that since the revisions itself have already been set aside by this Tribunal and the same are no more in existence, therefore the impugned

assessment orders passed in pursuance to the revision orders are not sustainable and liable to be set aside. On the other hand, the learned DR has contended that the issue on the merits regarding disallowance made under section 40(i)(a) is now covered in favour of the revenue by the decision of Hon'ble jurisdictional High Court in the case of Raytara Sahakari Niyamit reported in 383 ITR 561 which has been upheld by the Hon'ble Supreme Court in 81 Taxmann.com 43. Thus the learned DR has submitted that when the issue is covered in favour of the revenue then the disallowance made by the AO cannot be deleted.

4. Having considered the rival submissions and as well as relevant material on record, we find that the impugned assessments for both the assessment years has been framed in pursuant to the revision orders passed under section 263. The Tribunal vide orders dated 13.02.2015 and 16.10.2015 for the assessment year 2008-09 and 2009-10 respectively have already set aside the revision orders passed under section 263. Thus when the revision orders itself are no more in existence, then the assessment orders passed in pursuant to the revision order have no legs to stand. Though the revenue has challenged the orders passed by this Tribunal before the Hon'ble High Court. However, in the absence of any order of the Hon'ble High Court or stay of operations of the orders passed by this Tribunal, the assessment order passed in pursuance to the revision orders are not sustainable in law and accordingly liable to be set aside.

Hence, we do not find any error or irregularity in the impugned orders of the CIT(A).

5. In the result, the appeals of the revenue are dismissed.

Pronounced in the open court on this 31st day of May, 2017.

Sd/-
(JASON P. BOAZ)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore.
Dated: 31st May, 2017.
/ NShylu /*

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

By order

Assistant Registrar,
ITAT, Bangalore.