

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER
AND
SHRI NARENDRA KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA Nos.713 & 714(Bang) 2013
(Assessment years : 2008-09 & 2009-10)**

The Karnataka State Co-operative Apex Bank Limited,
'Uthunga',. No.1, PMK Road,
Chamarajpet,
Bangalore-560 018
PAN No.AABAT0269J

Appellant

Vs

The Joint Commissioner of Income-tax,
Range-3,
Bangalore

Respondent

**Assessee represented by : Shri L.Bharath, CA
Revenue represented by : Smt Neera Malhotra, CIT-II**

**Date of hearing : 09-03-2016
Date of pronouncement : 18-03-2016**

ORDER

PER SHRI NARENDRA KUMAR CHOUDHRY, JM:

These are appeals filed by the assessee directed against the orders passed by the CIT(A)-II, Bangalore dated 27-03-2013 for the assessment years : 2008-09 & 2009-10 respectively.

2. In ITA No.713-2013, the assessee raised the following grounds ;

- "1. The order of the learned appellate authority is bad in law.*
- 2. The ld. appellate authority erred in conforming the action of the learned AO in not considering the assessee's claim towards contributions/*

assistance/ grants given to PACS and DCCB Development Bank amounting to Rs.6,13,74,622/-.

- 3. The ld. appellate authority erred in confirming the action of the ld.AO in not considering the assessee's claim for payment towards farmers welfare fund amounting to Rs.56,29,564/-.*
- 4. The ld.appellate authority erred in confirming action of ld.AO in not considering the assessee's claim for payment towards rural farmers socio-economic development fund amounting toRs.20,54,564/-.*
- 5. The LAA erred in not following the directions issued by the Hon'ble ITAT vide its order dated ITA No.264/Bang/2012 dated 28-02-2013.*

In ITA No.714(B)/2013 the assessee has raised the following grounds;

- "1. The order of the learned appellate authority is bad in law.*
- 2. The ld. appellate authority erred in confirming the action of the learned AO in not considering the assessee's claim towards the payment made to common good fund amounting to Rs.10,00,000/-.*
- 3. The ld. appellate authority erred in confirming the action of the ld.AO in not considering the assessee's claim towards farmers welfare fund amounting to Rs.39,63,000/-*

4. *The ld.appellate authority erred in confirming action of ld.AO in not considering the assessee's claim towards rural farmers socio-economic development fund amounting to Rs.11.10,000/-.*
5. *The LAA erred in not confirming the action of the LAO in not considering the assessee's claim towards club subscription amounting to Rs.6,00,000/- as prior period subscription.*
6. *The ld. appellate authority erred in confirming the action of the LAO in not considering the assessee's claim towards MT schematic govt. guarantee Commission. Amounting to Rs.5,70,00,000/- as prior period subscription.*

3. Briefly the facts of the case are as under;

In ITA No.713-2013

The assessee is a co-operative society engaged in banking activity filed its return of income for the assessment year 2008-09 on 30-09-2008, declaring total income of Rs.26,83,47,360/- and on 10-03-2010 it filed revised return of income declaring a total income of Rs.27,60,63,810/- The case was selected for scrutiny and the assessment was completed u/s143(3) of the IT Act, by determining the total income at Rs.35,32,83,640/-.

Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A), who dismissed the assessee's appeal.

The assessee contested the dismissal of its appeal before the Hon'ble ITAT, Bangalore vide its order in ITA

No.264/Bang/2012 dated 28-02-2013, the Hon'ble ITAT, allowed the claim of assessee for deduction of its contribution to the Co-operative Education Fund. Further, Hon'ble ITAT in the same order directed the learned CIT(A) to restore the matter for adjudication afresh assessee's claim for deduction of its contributions qua

- (i) PACS/DCCB development/common good fund
- (ii) farmers welfare fund and
- (iii) rural farmers socio-economic development fund.

The learned CIT(A) relying upon the order passed by her predecessor learned (CIT(A)) as well as giving her own reasons, disallowed the aforesaid deductions mainly on the grounds that there has been no scientific application of the relevant clauses of the bye laws as a result, the net profit has got distorted and even otherwise any expenditure borne on such application may be allowable as expenditure but not the application of income itself.

In ITA No.714(B)/2013

In this case, the grounds no.1 to 4 before the learned CIT(A) were almost similar to the appeal no.713(B)/2013. However, two grounds were separate which are reproduced herein below;

1.....

2.....

3.....

4.....

5. The appellant's claim towards club subscription amounting to Rs.6.00 lakhs as prior period subscription

6 Appellant's claim towards MT Schematic Govt. guarantee commission amounting to Rs.5,70,00,000/- as prior period subscription

The learned CIT(A) partly allowed the Appeal however, disallowed the grounds qua

i. PACS/DCCB development/common good fund.

ii. farmers welfare fund and

iii. rural farmers socio-economic development fund

iv. The appellant's claim towards club subscription amounting to Rs.6.00 lakhs as prior period subscription

v. Appellant's claim towards MT Schematic Govt. guarantee commission amounting to Rs.5,70,00,000/- as prior period subscription.

4. Feeling aggrieved by the orders of the learned CIT(A), the appellant preferred the instant appeals on the grounds mentioned above.

5. Before us, **the learned AR** submitted that the said amounts claimed have been spent out of reserves created as authorized by its bye laws and to meet the statutory liabilities of the assessee and therefore, the same are towards the business, statutory and social objectives of the assessee. The AR also

submitted that the assessee's bye laws are permitting the aforesaid contributions and the distribution of profits provided in the bye laws envisages setting apart 25% of the net profit to be carried forward to the reserve fund, contribution of 15% to the agricultural credit stabilization fund, contribution of 15% towards bad and doubtful debts reserve fund, 2% to the investment fluctuation fund and contribution of 10% out of the remaining amount towards building fund, 15% to the special assistance fund to the member banks, and 5% to the farmer welfare fund.

The learned DR drawn our attention to the order passed by the learned CIT(A) and argued that the said amounts as claimed by the assessee may be allowed to be deducted as per bye laws of the assessee , but not according to the Income-tax Act and even otherwise bye laws having no binding effect and therefore, disallowance made by the AO are in order and are to be upheld.

Even otherwise, **the learned AR submitted** that Hon'ble ITAT, Bangalore itself in its own case titled as **The Karnataka State Co-operative Apex Bank Limited Vs The Joint Commissioner of Income-tax, Range-3, Bangalore,** ITA No.1372/Bang/2014 in respect of assessment year 2007-08 vide order dated 29-02-2016 decided the issues pertaining to

common good fund, special assistance fund and payments to PACS/ DCCB fund in favour of the assessee allowed as deductions meaning thereby, the common grounds in both the appeals such as ;

- i. PACS/DCCB development/common good fund.
- ii.
- iii. rural farmers socio-economic development fund

are common, respectfully following the aforesaid judgment rendered by co-ordinate bench, the said grounds stands allowed in favour of the assessee

Now coming to the

farmers welfare fund

it is submitted by the learned AR that according to the Rules, governing the rural farmers developing fund, farmer welfare fund is identified in a fund called rural farmer's socio-economic development fund and the same is also similar to the common fund and rural farmers socio-economic development fund.

We have given our thoughtful consideration to the arguments advanced by both the parties and orders, documents on record and the facts and circumstances of the case and we are of the considered opinion, that nomenclature does not affect the substance of the head under which the matter falls, therefore, we do not have any hesitation to hold that Farmer Welfare Fund and Rural Farmers Socio-Economic Development

Fund are alike same. Hence, the addition claimed by the appellant under the head of farmer welfare fund in both the appeals are allowed to be deducted.

- 6.** With regard to the Appellant's claim towards club subscription amounting to Rs.6.00 lakhs as prior period subscription, the appellant submitted that it has paid Rs.6.00 lakh in advance to the Century club towards institution membership on the request of the club to renew the club membership fees and the advance paid as current assets reflected in the balance sheet. It is the policy of the club after receiving the institution membership fees, has to pass a resolution and approve the institution of membership fees and after approval of the club which got crystallized during the year, the appellant debited institution membership fees to the P&L account which is allowable u/s 37 of the IT Act, 1961. It is further submitted that the learned CIT(A) wrongly disallowed the said amount on the ground that it is a clear prior period expenditure relates to the year ended 31st March, 2008 as has been paid on 26th May, 2006 and further held that it is a moot question as to whether this contribution has anything to do with the appellant's objects or business or whether the appellant belongs to the comity of the members of the Century Club.

The appellant also relied upon following judgments in its favour:

- a. CIT Vs Nagri Mills
- b. ACIT Vs Indian Farmer Fertilizer
- c. Urban Improvement Co.(P) Ltd.Vs ACIT

We have given our thoughtful consideration to the submissions of the parties, as the amount as paid on 26-05-2016, but claimed as deduction in the financial year 2009-10.

During the course of hearing, we have specifically asked whether any evidence was furnished to establish that the expenditure was crystallized during the year. Learned counsel agreed to furnish the same to the AO. Consequently, the issue of verification of expenditure having been crystallized during the year is sent to the learned AO to examine and determine whether the expenditure can be allowed during this year.

- 7.** With regard to the appellant's claim towards MT Schematic Govt. guarantee commission amounting to Rs.5,70,00,000/- as prior period subscription, it is submitted by the learned AR according to the Karnataka ceiling on government guarantee at 1999, an amount equal to 1% of the guarantee amount is liable to be paid as guarantee commission to the State Government and appellant had applied for waiver of commission and in anticipation of the same that the government will waive the commission on account of the reason that the appellant bank had been working with the backward section of the society, the appellant has not made any provision in the books of account for the period 2002-03 to 2005-06 and 2006-07. However, the appellant claim was rejected and the guarantee commission payable to the government got crystallized during the financial year 2008-09 and the bank provided the guarantee commission after application was rejected. Since the amount of guarantee commission payable to the government was under negotiation and not yet crystallized in the earlier year, the same cannot be treated as prior period item. Therefore, guarantee commission payable has to be allowed as deduction.

The learned DR relied upon the orders passed by the authorities below.

We have given thoughtful consideration to the rival submissions of the parties as it was held by the learned CIT(A) that the appellant reasons best known to them had neither paid the guarantee amount nor made provision for the same and failed to do its duty to follow the established government rules and claiming this expenditure now the year ended 31st March, 2009 when their petition had been rejected and they have been asked to pay the amount. It was further held that since the appellant has not followed the specified rules and wanted special concession from the government therefore, the expenses cannot be allowed in this particular year as it belongs to the prior period.

There are two issues to be examined;

Whether the guarantee commission accrued in the respective year or accrued during the year after rejection of the claim by the government. The Hon'ble Supreme Court has laid down certain principles in the case of CIT Vs Sarabhai Pvt. Ltd 307 ITR 89(SC), which are required to be examined in addition to the other principles on the issue of the accrual of income/waiver of claim, not only if the amount is statutorily payable, provision of Sec.43B of the IT Act, may also be applicable which makes the claim in earlier years not allowable, but allowable only in the year of payment. These aspects have not been examined by the AO at all.

Thus, the appellant's claim towards club subscription amounting to Rs.6.00 lakhs as prior period subscription and Appellant's claim towards MT Schematic Govt. guarantee commission amounting to Rs.5,70,00,000/- as prior period subscription are remitted to the file of the learned AO for to examination afresh.

In the result, the assessee's appeal in ITA No.713(Bang) 2013 is allowed and appeal in ITA No.714(B)/2013 is partly allowed for statistical purposes.

Order pronounced in the open court on 18-03-2016

Sd/-
(BOMMARAJU RAMAKOTAIAH)
ACCOUNTANT MEMBER

Sd/-
(NARENDRA KUMAR CHOUDHURY)
JUDICIAL MEMBER

Bangalore:

D a t e d : 18-03-2016

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order, AR, ITAT, Bangalore