

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORESHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.379/Bang/2017
Assessment Year :2012-13

M/s. Suvarna Co-Operative Bank Ltd., # 62, Sanjeevappa Lane, Avenue Road Cross, Bangalore – 560 002. PAN: AAAAS 9084R	Vs.	The Assistant Commissioner of Income Tax, Circle – 2(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Lokesh Jain, CA
Revenue by	:	Shri M.K. Biju, JCIT (DR)

Date of hearing	:	19.10.2017
Date of Pronouncement	:	31.10.2017

ORDER

Per Shri A.K. Garodia, Accountant Member

This is an assessee's appeal directed against the order of CIT(A)-5, Bangalore dated 04.11.2016 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

"1. The Order of the learned CIT (A) is opposed to law, facts and circumstances of the case.

2. The Order is passed in haste, without providing sufficient and reasonable opportunity of being heard.

3. The Order is passed against the principle of natural justice and thus liable to be quashed.

4. The Order of the Ld. CIT(A) is without jurisdiction.

Amortization of premium paid on investment

5. The Ld. CIT(A) erred in law and on fact by confirming the disallowance of Rs. 28,35,638/- being amortization of premium paid on investments held by the Appellant under the head "Held to Maturity".

6. The Ld. CIT(A) ought to have appreciated that the Appellant being a co-operative society engaged in the business of banking is bound by

the income recognition norms issued by the RBI.

7. The Ld. CIT(A) and the Ld. AO grossly erred in ignoring the relevant Circular and Instruction issued by the Central Board of Direct Taxes (the CBDT) as per which premium paid on investments under HTM category shall be amortized over the period remaining to maturity. Such premium would be allowable as revenue expenditure.

8. The Ld. CIT(A) and the Ld. AO ought to have appreciated that the impugned treatment of premium paid on investments categorized as 'Held to Maturity' have been consistently followed by the Appellant. Therefore, this ought not to have been disturbed.

Currency Fluctuation Fund

9. The Ld. AO erred in disallowing the provision amounting to Rs. 4,61,150/- claimed by the Appellant towards the currency fluctuation fund.

10. The Ld. CIT(A) ought to have appreciated that the Appellant being a co-operative society engaged in the business of banking is bound by the guidelines issued by the RBI.

11. The Ld. CIT(A) and the Ld. AO erred in disregarding the relevant Circular and the Instruction issued by the CBDT in this regard.

Provision for standard assets

12. The Ld. CIT(A) has erred in law and on fact by confirming the disallowance of Rs. 5,67,012/- made by the Ld. AO on account of provision for standard assets.

13. The Ld. CIT(A) ought to have appreciated that the Appellant being a co-operative society engaged in the business of banking is bound by the norms issued by the RBI for creation of provision for standard assets.

14. The Ld. CIT(A) and the Ld. AO erred in disregarding the relevant Circular and the Instruction issued by the CBDT in this regard.

15. The Ld. CIT(A) erred in relying on the decisions of the Hon'ble Supreme Court in the case of Pune Electric Supply Ltd. vs CIT and in the case of Vijaya Bank vs. CIT as they are distinguishable from the facts of the present case.

The Appellant seeks your leave to add, alter, amend or delete any of the grounds urged at the time of hearing."

3. It was submitted by Id. AR of assessee that ground nos. 1 to 4 are general and hence, no separate adjudication is called for in respect of these grounds.

4. Regarding ground nos. 5 to 8, it was submitted that only one issue is involved in these grounds and that is regarding allowability of Rs. 28,35,638/- being amortization of premium paid on investment held by the assessee under the head "Held to Maturity". He submitted written submissions in respect of all the issues raised before the tribunal and as per the same, in respect of this issue, the assessee is relying on instruction no. 17/2008 dated 26.11.2008 and relevant portion of which has been produced in written submissions. Reliance has also been placed on following judicial pronouncements.

- a) ACIT Vs. M/s. TumkurVeerashiva Co-operative Bank Ltd. in ITA No. 1174/Bang/2014 dated 16.10.2015 copy of this tribunal order has been enclosed with written submissions as per annexure – 2.
- b) M/s. National Co-operative Bank Ltd. Vs. JCIT in ITA Nos. 1090(Bang.)/2010 & 7(Bang.)/2011 dated 11.05.2012, copy enclosed as per annexure – 3.
- c) The S.K. Dist. Central Vs. ACIT in ITA Nos. 3268-3269/Ahd/2015 dated 26.02.2016, copy enclosed as per annexure – 4.
- d) Catholic Syrian Bank Ltd. Vs. ACIT in 38 SOT 553 (Cochin)
- e) The Khanapur Co-op Bank Ltd. Vs. ITO in ITA No. 141/PNJ/2011 dated 08.09.2011, copy not enclosed.
- f) Corporation Bank Vs. ACIT in ITA No. 112/Bang/2008(Bang), copy not enclosed.

The Id. DR of revenue supported the order of authorities below.

5. We have considered the rival submissions. We find that the AO has followed the judgment of Hon'ble Madras High Court rendered in the case of TN Power Finance and infrastructure Development Corporation Ltd. Vs. JCIT as reported in 280 ITR 491(MAD) and therefore, first we consider the applicability of this judgment before examining the applicability of various tribunal orders cited by the Id. AR of assessee before us. In this case, the issue involved before the Hon'ble Madras High Court was this as to whether the tribunal is correct in upholding the order of CIT(A) allowing for provisions for Non Performing Assets which were debited to P & L account and regarding this issue, it was held by Hon'ble Madras High Court that RBI directions cannot override mandatory provisions of Act contained in section 36(1)(viiia) of IT Act. Hence, it is seen that

in this case, the issue before Hon'ble Madras High Court was not regarding amortization of premium paid on investment. Hence, in our considered opinion this judgment of Hon'ble Madras High Court is not applicable in the present case particularly in view of this fact that the claim of the assessee for deduction is not as per RBI guidelines but as per the CBDT Circular No. 17/2008 dated 26.11.2008. and therefore, we proceed to examine the applicability of various tribunal orders on which reliance has been placed by Id. AR of assessee.

6. The first tribunal order on which reliance has been placed is the tribunal order rendered in the case of ACIT Vs. M/s. TumkurVeerashiva Co-operative Bank Ltd.(supra). In this case, it was noted by tribunal in para no. 12 of the tribunal order that to comply with the statutory requirements of investing certain portion of assessee's funds in SLR securities, the assessee has purchased government securities from open market by paying premium on face value of the securities which was amortised over the period of security as per the circular issued by RBI on 12.02.2005. The tribunal in this case has followed various other tribunal orders which are cited before us i.e. the tribunal order rendered in the case of Sir. M. Visweswaraya Co-op Bank Ltd. Vs. JCIT in ITA No. 1122/Bang/2010, Catholic Syrian Bank Ltd. Vs. ACIT (supra), The Khanapur Co-op Bank Ltd. Vs. ITO(supra), Corporation Bank Vs. ACIT (supra) and thereafter decided the issue in favour of the assessee by following these tribunal orders of coordinate bench. In the present case, this evidence is not brought on record by the learned AR of the assessee that the investments were purchases to comply with the statutory requirements to invest certain portion of its funds in SLR securities. In the absence of this, merely on the basis of this Tribunal order, it cannot be held that the deduction is allowable.
7. Now we examine the applicability of the second tribunal order cited before us having been rendered in the case of M/s. National Co-operative Bank Ltd. Vs. JCIT(supra). In this case also, this was noted that the investment was made as per the prudential norms of the RBI. Hence, as per this tribunal order also, this is necessary to find out this factual aspect that whether the investment is to comply with prudential norms of RBI and the matter is required to be restored back to the file of CIT(A) for fresh decision after examining this factual aspect.

8. The next tribunal order cited before us is tribunal order rendered in the case of The S.K. Dist. Central Vs. ACIT (supra). In this case, the tribunal has followed the judgement of Hon'ble Gujarat High Court rendered in the case of CIT Vs. Rajkot Dist. Central Co-operative Bank as reported in 222 Taxman 240 (Guj). In this case, it is noted by tribunal in para no. 6 of the judgment that the assessee as a co-operative bank was bound by the RBI directions and as per the directions, the assessee has to invest certain amounts in government securities and to hold the same till maturity and therefore, it was held that if in the process of acquisition, any premium was paid on the face value of the security, loss has to be amortized in view of para VII of CBDT Circular No. 17/2008 dated 26.11.2008. Hence, it is seen that as per the judgment of Hon'ble Gujarat High Court which was followed by the tribunal in this case, if the premium is paid in respect of investment for SLR securities then such premium paid has to be amortized. We have already noted that in the present case, this fact is not borne out from the records and therefore, the matter has to go back to the file of CIT(A) for fresh decision after finding out factual position in this aspect.
9. In view of the above discussion, we set aside the order of CIT(A) and restore the matter back to his file for fresh decision with the direction that he has to find out as to whether the investment in question was required to comply with statutory requirement of SLR securities and if that is so then the claim of the assessee should be allowed as per the judgment of Hon'ble Gujarat High Court rendered in the case of CIT Vs. Rajkot Dist. Central Co-operative Bank(supra). If the assessee fails to establish this then the issues should be decided afresh as per law. These grounds are allowed for statistical purposes.
10. Ground nos. 9 to 11 are in respect of one issue that is currency fluctuation fund. Regarding this issue, in written submissions filed by Id. AR of assessee, reliance has been placed on the CBDT Circular no. 17/2008 dated 26.11.2008. The relevant portion of this CBDT instruction is reproduced at page no. 10 of the written submissions as per which it is stated that section 37 of IT Act envisages that an amount debited to P & L account in respect of an accrued or

ascertained liability only is an admissible deduction. Hence, at this juncture, the bench asked the assessee to establish that this is a provision in respect of an accrual or ascertainable liability. The Id. AR of assessee could not bring any evidence on record in this regard. The Id. DR of revenue supported the orders of authorities below.

11. We have considered the rival submissions. We also find that on page no. 3 of the assessment order, it is noted by the AO that the assessee was asked to show cause as to how this expenditure is allowable because as per the AO, this is a appropriation of profit. The AO has noted that there was no reply from the assessee. In spite of this categorical finding of AO, nothing is placed before the CIT(A) or before us as to how this claim of the assessee is an allowable expenses. The CBDT Circular No. 17/2008 dated 26.11.2008 is on this aspect that the amount debited in P & L account in respect of an accrued or ascertained liability only is an admissible deduction. There is no quarrel on this aspect but the dispute is as to whether this amount debited in P & L account is in respect of an accrued or ascertained liability which is incurred for the purpose of business. Since no evidence has been placed on this factual aspect, we find no merit in the submissions of the learned AR of the assessee on this issue and therefore, we decline to interfere in the order of CIT(A) on this issue. Accordingly these grounds are rejected.
12. The remaining ground nos. 12 to 15 are in respect of one issue i.e. provision for standard assets. On this issue, this is the contention raised by the Id. AR of assessee in the written submissions filed before us that this issue is covered in favour of the assessee by the tribunal order rendered in the case of The Deputy Commissioner of Income Tax Vs. The Little Kancheepuram Co-operative Urban Bank Ltd. in ITA Nos. 23 & 24/Mds/2013, copy available in annexure-5 of written submissions. The Id. DR of revenue supported the order of authorities below.
13. We have considered the rival submissions. We find that as per the tribunal order cited by Id. AR of assessee before us, it was held that the deduction is allowable in respect of lower of provision for doubtful debts in their accounts or

the amount as per section 36(1)(vii)(a), whichever is less. Hence we examine the provisions of section 36(1)(vii)(a) of the I.T. Act, 1961. As per the provisions of section 36(1)(vii)(a) of the IT Act, deduction is allowable in respect of provisions of bad and doubtful debts made by a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank to the extent of an amount not exceeding 7 ½% of the total income computed before making any deduction under this clause and chapter VIA and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner. Hence as per the provision of this section, deduction is allowable to the extent of 10% of aggregate average advances made by the rural branches of such bank. The assessee has not shown that there was any advance made by the rural branches of the assessee bank, if any. In the tribunal order cited before us, it was noted by tribunal in para no. 3 that the claim was regarding 10% of the aggregate average advances given by the rural branches of that assessee u/s. 36(1)(vii)(a) of the IT Act. This is also noted by tribunal in same Para that the assessee bank was having two branches being one at Kancheepuram town and one at Ayyempetta and the second branch was a rural branch. On this basis, it was the claim of the assessee that the assessee is entitled for deduction u/s. 36(1)(vii)(a). Since in the present case, the assessee has not established that there are advances by a rural branch of the assessee bank, no deduction is allowable under this section. Hence this issue is decided against the assessee.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 31st October, 2017.
/MS/

Copy to:

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.