

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2732/Del/2016
(Assessment Year: 2006-07)

ACIT, Circle-20(1), New Delhi	Vs.	Punjab & Sind Bank, HO Accounts & Audit Department, Bank House 21, Rajendra Place, New Delhi PAN:AAACP1206G
(Appellant)		(Respondent)

Revenue by :	Shri Rajeev Kumar, Sr. DR
Assessee by:	Shri Vivek Gupta, CA
Date of Hearing	20/11/2017
Date of pronouncement	21/11/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the Revenue against the order of the LD CIT (A)-7, New Delhi dated 26.02.2016 for the Assessment Year 2006-07.
2. The Revenue has raised the following grounds of appeal:-
 - “1. On the facts & in the circumstances of the case, the Id CIT(A) has erred in law quashing reassessment order u/s 147/143(3) by not appreciating explanation 1 to Section 147 of the Income Tax Act, 1961.
 2. On the facts and in the circumstances of the case, the Id CIT (A) has erred in law in deleting the addition of Rs. 10.43 crores made by the AO on account of change in accounting policy failing to appreciating that the income of the assessee decreased by 10.43 crores which is in contradiction to section 145A Income Tax Act, 1961.”

3. The brief facts of the case are that the assessee is a public sector bank which filed its return of income on 30.09.2008 declared loss of Rs. 14.53 crores. It was assessed u/s 143(3) on 23.12.2010 at a loss of Rs. 10.12 lacs.
4. Later on it was observed by the AO that there is change in the accounting policy with respect to recovery of non performing advance where assessee has filled suits, decree or compromised accounts. Therefore, according to the LD AO it has resulted into escapement of income of Rs. 10.43 crores. Hence, notice u/s 148 was issued on 19.03.2013. Admittedly, the notice was issued beyond four years from the end of the assessment. Consequently, the Id AO passed an assessment order u/s 143(3) crores of Act read with section 147 wherein assessed income of Rs. 37.28 crores u/s 143(3)/ 154/ 250 dated 14.06.2013 and the addition of Rs. 10.43 crores on account of change in accounting policy and Rs. 2.22 crores on account of provision of fraud was made. Thus, total income was assessed at Rs. 49.94 cores vide order dated 13.03.2014 u/s 143(3) rws 147 of the act.
5. The assessee challenged the order before the LD CIT (A) on reopening as well as on the quantum of the addition. The Id CIT(A) quashed the reopening of the assessment relying on the decision of Hon'ble Supreme Court in case of CIT Vs. Kelvinator of India Ltd 288 CTR 488 holding that the additions were not made because of the failure on the part of the payment but due to change of opinion and there is no tangible material. The addition of Rs. 10.43 was deleted holding that change in accounting policy is bonafide and consistently followed. He further held that the AO has not given any reason that the above change in policy is incorrect or not permissible. The revenue aggrieved with the order of the LD CIT (A) has preferred appeal before us.

6. The LD DR relied upon the order of the LD AO on the issue of reopening as well as on the issue of merits of addition of Rs. 10.43 crores. The LD AR relied upon the order of the LD CIT (A).
7. We have carefully considered the rival contentions. The first ground of appeal of reopening is with respect to reappraisal of the 'notes on accounts' of the assessee which was there at the time of original assessment also. The bank has disclosed all material facts to the LD AO at the time of original assessment. There was no failure on the part of the assessee to disclose fully and truly material fact of the computation of total income. This stand of the assessee is also supported by the order of the Hon'ble Supreme Court in case of CIT Vs. Corporation Bank 254 ITR 791. The Hon Supreme court held that

“Turning attention to the first question as regards the provisions under section 147(a) be it noted and as the facts depict, there is no failure on the part of the assessee in furnishing the particulars pertaining to the above noted sum as not recoverable for the relevant accounting year and the statements filed along with the original return disclosed the full details of the aforesaid account. There is, therefore, no failure on the part of the assessee to disclose fully and truly the material facts necessary for the assessment years for the respective years and as such section 147(a) has no manner of application and is not attracted in the facts of the matter under consideration. The High Court on consideration of the facts came to the conclusion that the Tribunal was justified in coming

to the said finding and we also record our concurrence therewith.

Incidentally this issue came for consideration before this court in a batch of cases on more or less identical situations and this court while dealing with

Page No : 0794

this matter finally, recorded that the question as regards reopening of the assessment under section 147(a) of the Act would not arise further. The question in the facts of the matter under consideration is thus covered by the judgment of this court in *State Bank of Travancore v. CIT* [1986] [158 ITR 102](#). “

[Extracted from ITR online]

The facts of the case are almost similar to the issue before honourable Supreme Court. Therefore as in the present case also the assessee has not failed to disclose fully and truly the material facts we do not find any infirmity in the order of the LD CIT (A) in quashing the reopening made by the LD AO. In the result ground No. 1 of the appeal of the Revenue is dismissed.

8. Ground No. 2 of the appeal of the Revenue is against deletion of addition of Rs. 10.43 crores. It has been noted by the LD CIT (A) that the LD AO could not point out that how the change in the accounting policy is not permitted. It was however submitted that in earlier years the assessee was following the system of appropriating recovery towards principal in the case of non-performing assets such as suits filed and compromised accounts. Now in the case of the partial recovery also it was to be appropriated towards the principle. Therefore, it has brought uniformity in appropriation of recovery in all NPA accounts. Furthermore, the choice

of method of account always lies with the assessee and should be accepted by the revenue followed regularly by the assessee. No doubt the method of accounting adopted should be in consonance with the consign principle of accounting. In the present case the revenue has failed to establish that how the change in the method of accounting is not permissible. The finding of fact which was arrived at by the Commissioner (Appeals) was that the change in the method of accounting was bona fide and it has been followed regularly and consistently. The changed method has been held to be a better method for preparing and presenting financial statements of income of the assessee. The Ld DR could not show us any reason that the change in the method of accounting is detrimental to the interest of the Revenue. The Id DR also could not controvert that the change was bona fide and consistently followed after the year in which it was changed In view of this we do not find any infirmity in the order of the Id CIT (A) in deleting the addition of Rs. 10.43 crores on account of change in method appropriating partial recovery with respect to NPA account where suits filed or accounts are compromised. In the result ground No. 2 of the appeal is dismissed.

9. In the result the appeal of the revenue is dismissed.

Order pronounced in the open court on 21/11/2017.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:21/11/2017

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi