

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'B' KOLKATA**

[Before Shri J. Sudhakar Reddy, AM & Shri S.S. Viswanethra Ravi, JM]

**I.T.A. No. 746/Kol/2013
Assessment Year: 2009-10**

The West Bengal State Co-operative Bank Ltd.....Appellant
24A, Waterloo Street,
Kolkata - 700 069
[PAN: AAAAT7072N]

DCIT, Circle-56 Kolkata.....Respondent
3, Govt. Place (West),
Kolkata - 700001

Appearances by:

Shri N.C. Mondal, FCA appearing on behalf of the Assessee.

Shri David Z. Chowngthu, Alld. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : September 21, 2017

Date of pronouncing the order : November 30, 2017

ORDER

Per J. Sudhakar Reddy, AM

This is an appeal filed by the assessee directed against the order of CIT (Appeals) – 36, Kolkata dated 21.01.2013 for the assessment year 2009-10.

2. The assessee is a Co-operative Bank registered under the West Bengal Co-operative Societies Act, 1940 and is engaged in the business of banking. It filed its return of income for the assessment year 2009-10 on 23.09.2009 declaring a total income of Rs. 25,81,09,183/-. The Assessing Officer passed an order under section 143(3) on 23.11.2011 determining the total income of Rs. 29,70,86,510/- inter alia making additions on account of Bakshis & Tips, fraudulent withdrawals, provisions for gratuity, disallowance of

interest paid on securities purchased as investments etc. Dismiss the appeal of the assessee. Aggrieved, the assessee is before us on the following grounds:

1. For that on the facts of the case, the order passed by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, the Ld. CIT(A) was wrong in not considering the fact that Rs. 3,24,905/- as Baksis & Tips which is an allowable expenditure u/s 37 of the I.T. Act, therefore, the order passed by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the disallowance of expenditure amounting to Rs. 3,24,905/- on account of Baksis & Tips payment, although the said expenditure is made for carrying on day to day business and revenue in nature of the assessee bank, therefore, the order passed by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

4. For that on the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the disallowance of Rs. 3,35,526/- as provision for adjustment of amortisation which is an ascertained liability, therefore, the order passed by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

5. For that on the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition Rs. 22,00,000/- shown as liability made under the head 'fraudulent withdrawals' which is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, Ld. CIT(A) was wrong in not considering the fact that the liability of Rs. 22,00,000/- was shown from assessment year 2007-08 and was accepted in the assessment years 2007-08 & 2008-09 in assessments made u/s 143(3), therefore, the order passed by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

7. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the addition of the A.O. Rs. 22,00,000/- shown as liability created in assessment year 2007-08 and it has no impact in the present

year's profit & loss a/c, therefore, the order passed by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

8. For that on the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the disallowance as provision for gratuity amounting to Rs. 3,50,000/-, although the said amount has been paid before the date of filing of return u/s 139(1), therefore, the order passed by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

9. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the disallowance of the A.O. amounting to Rs. 3,57,66,893/- as interest paid on purchases of securities which is completely arbitrary, unjustified and illegal.

10. For that on the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the disallowance of interest on purchases of securities amounting to Rs. 3,57,66,893/-, although in all earlier years the interest on purchases of securities have been allowed in assessment completed u/s 143(3), therefore, the order passed by the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

11. For that on the facts of the case, the Ld. CIT(A) was wrong in not considering the fact that the assessee bank has also shown interest earned on sale of securities, therefore, double standard cannot be adopted by the A.O. and confirming by the Ld. CIT(A) which is completely arbitrary, unjustified and illegal.

12. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the order of the A.O. wherein the A.O. has charged interest u/s 234B & 234C amounting to Rs. 30,39,015/- & Rs. 2,22,774/- respectively which is completely arbitrary, unjustified and illegal.

3. We have heard Shri N.C. Mondal, learned counsel for the assessee and Shri D.Z. Chowngthu, Ld. CIT DR on behalf of the revenue.

4. On a careful consideration of the facts and circumstances of the case and a perusal of the paper on record and the orders of the authorities below as well as the case law cited, we hold as follows.

5. Ground no 1 is general in nature.

6. Ground no 2 and 3 is against the disallowance of expenditure of an amount paid as Tips & Baksis by the bank to casual workers on festive occasion. The assessee submits that these payments were made to casual workers like water boys, canteen boys, security staffs etc. during annual festivals like Durga Puja and Eid. It was submitted that the payment is in the nature of ex-gratia/bonus. The break-up of these payments, as made by different branches of the bank was given. These payments were authorised by appropriate resolutions of the Board of Director of the bank. The Assessing officer as well as the Ld. CIT (A) did not allow this expenditure on the ground that there was no commercial expediency behind incurring this expenditure and that the explanation is not satisfactory. The Id. Counsel for the assessee the disallowance is bad in law the assessee has produced sufficient evidence in the form of vouchers and receipts in evidence of any payment of Tips & Baksis. Payments were made by the Head Office, Regional Offices as well as 44 branches situated in different parts of West Bengal. Such payments are made after due authorization from the management. The revenue authorities were wrong in coming to a conclusion that there is no commercial expediency in making these payments. The disallowance arbitrarily unjustified. Hence we allow this ground of the assessee.

7. Ground no 4 is against the addition of a provision for amortisation.

8. Brief facts of these issue is that the assessee purchased 8.24% GOI 2027 securities of face value of Rs. 5 crore at a total price of Rs. 5,63,75,000/- @ Rs. 112.75 per script of face value of Rs. 100/- each.

9. The excess amount of Rs. 63,75,000/- paid by the assessee over and above the face value included, Rs. 16,48,000/- pre-acquisition interest for broken period. The balance amount of Rs. 42,27,000/- was paid as premium.

10. The pre-acquisition broken period interest of Rs. 16,48,000/- was charged to profit & loss account during the year. The assessee submits that this has been done as per the guidelines and instructions issued by the Reserve Bank of India and mandatory Accounting Standard (AS-13) by ICAI.

11. The premium amount of 42,27,000/- was amortised over the remaining period for which the security was held, as this was acquisition as 'Held to Maturity' (HTM). The Ld. A.O. disallowed this amortisation of the premium on the ground that the liability has not crystallised during the year. This was upheld by the ld. CIT(A). This also demonstrates that the Ld. CIT(A) as well as the A.O. could not understand the facts of this issue and nature of the claim of the assessee.

12. On a careful consideration of the arguments, we find that the CBDT vide its instruction no 17/2008 dated 26.11.2008 has stated as follows:

“As per RBI guidelines dated 16th October 2000, the investment portfolio of the banks is required to be classified under three categories viz Held to Maturity (HTM), Held for Trading (HFT) and Available for Sale (AFS). Investments classified under HTM category need not be marked to market and are carried at acquisition cost unless these are more than the fact value, in which case the premium should be amortised over the period remaining to maturity. In the case of HFT and AFS securities forming stock in trade of the bank, the depreciation / appreciation is to be aggregated scrip wise and only net depreciation, if any, is required to be provided for in the accounts. The latest guidelines of the RBI may be referred to for allowing any such claims.”

13. Applying this circular of the CBDT, a similar claim was allowed by Cochin Bench of the Tribunal in the case of Catholic Syrian Bank Ltd. vs ACIT (2010) 38 SOT 553. Similar order passed by Panaji Bench of the Tribunal in the case of The Khanapur Co-op Bank Ltd. vs. ITO, ITA No. 141/PNJ/2011, dated 08.09.2011 allowing amortisation of the premium paid on acquisition of HTM bonds.

14. Respectfully following the same, we allow this claim of the assessee and delete the disallowance.

15. In the result ground no 4 is allowed.

16. Ground no 5, 6 and 7 are directed against the addition of Rs. 22,00,000/-. Fraudulent withdrawals were committed by one of the

employees of the bank in the earlier years. There was no debit to the profit and loss account during the year on this issue. The provision was made in the books of account in the earlier assessment years and no provision was made in this year. Under these circumstances we failed to understand as to how an addition can be made during the year. The A.O. on the one hand observes that the said amount is debited to the profit and loss account in the impugned assessment year 2009-10 and on the other hand makes an addition of a provision made for fraudulent withdrawals in the earlier year without any change in the facts and circumstances of the case. Such addition cannot be sustained. Hence we delete the said addition and allow ground no 5, 6 and 7 of the assessee.

17. Ground no 8 is against the disallowance of Rs. 3,50,000/- on the ground that the assessee has made a provision for gratuity. The assessee submits that no provision whatsoever was made for gratuity as alleged by the A.O. It is submitted that the payment was made to a retired employee Mr. Bhawani Adhikary and the amount was debited to the profit and loss account.

18. If there is no provision in the account, Section 40A(7) of the Act has no application. Hence this addition is hereby deleted.

19. Ground no 9, 10 and 11 are on the disallowance of interest payable on deposits borrowings etc. amounting to Rs. 3,57,66,893/-.

20. The facts relating to this ground are as follows:

The assessee had entered into transactions of borrowing in Govt. Securities. The Govt. securities are fixed interest securities and interest accrues on a day to day basis and is not subject to market fluctuation. The assessee submits that securities were purchased cum interest i.e. interest accrued during the period between the date of purchase and the last due date of the interest and securities were similarly sold cum interest i.e. broken period interest from the said due date of interest to the date of sale. The assessee claims that this broken period interest which had accrued was included in the total interest paid and debited the profit and loss account for the year. It was also submitted that this method of accounting was regularly followed by the assessee. The script-wise details of purchase and sale of Govt. Securities was filed before us. The Assessing Officer was of the view that purchase of Govt. Securities is not the business of this bank and that surplus fund are parked in Govt. Securities as investments. He was of the view that the interest in question should be capitalised and the purchase and sale of these securities would result in short term and long term capital gains. In other words, the pre acquisition interest as per the Ld. A.O. is cost effect position of the security and cannot be allowed as revenue expenditure.

21. The Assessing Officer took a contrary view on pre-acquisition interest received on sale of securities. He did not disturb the accounting of the assessee, wherein pre acquisition interest received on sale securities was disclosed as income being revenue in nature.

22. This action of the A.O. is contradictory and hence is not correct. If pre acquisition interest on purchase of a Govt. Security is the cost of purchase of such security, then pre acquisition interest on sale of the same security should be treated as sale price of security. Otherwise in both cases the pre acquisition interest should be treated as revenue transactions. The assessee is consistently follow the method of accounting wherein, pre-acquisition interest of security is treated as revenue expenditure and pre-acquisition interest on sale of a Govt. security is taken as income. The Central Board of direct taxes in circular no 559 dated 24.04.1999 189 ITR (ST) 126 has clarified that securities held by bank must be regarded as stock in trade and that interest payments and receipts from broken period on purchase of securities must be regarded as stock in trade and that only the net interest on securities should be brought to tax as business income. This circular was later withdrawn by CBDT and it was clarified that the issue whether a particular investment in security would constitute stock in trade or not is a question of fact. All these issues have not been properly considered by the A.O. or the Ld. CIT(A). The addition under such circumstances cannot be sustained.

23. On these facts and circumstances of the case, we are of considered opinion that all these issues have to be examined in details by the A.O. and a fresh decision taken denovo, in accordance with law. Hence we set aside this issue to the file of the A.O.

24. In the result, these grounds of the assessee are allowed for statistical purposes.

25. In the result, the appeal of the Assessee is allowed in part.

Order Pronounced in the Open Court on 30th November, 2017.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 30/11/2017

Biswajit, Sr. PS

Copy of order forwarded to:

1. The West Bengal State Co-operative Bank Ltd., 24A, Waterloo Street, Kolkata – 700 069.
2. DCIT, Circle – 56, 3, Govt. Place (West), Kolkata – 700 001.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata