

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी' अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, AHMEDABAD

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. /ITA Nos. 2678/Ahd/2015, 786/Ahd/2014 & 186/Ahd/2016  
निर्धारण वर्ष/A.Y. 2008-09, 2010-11 & 2011-12 respectively

M/s. Charotar Nagrik Sahakari Bank Ltd, Chiman Sathi Bhavan, Subhash Road, Anand-388 001 PAN : AABFC 3231 A	Vs	Income Tax Officer, Ward-1, Anand
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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By Assessee(s) :	Ms. Arti N. Shah, CA
By Revenue :	Shri Prasoon Kabra, Sr DR

सुनवाई की तारीख/Date of Hearing : 14/11/2017  
घोषणा की तारीख/Date of Pronouncement: 28/11/2017

आदेश/ORDER

PER S.S. GODARA, JUDICIAL MEMBER :-

These three assessee's appeals for assessment years 2008-09, 2010-11 and 2011-12 arise against the CIT(A)-4, Vadodara's orders dated 18.06.2015, 21.01.2014 and 13.10.2015; respectively, in case Nos.CAB/4-276/2014-15, CAB/VI-262/2012-13 & CAB/4-274/2014-15, in proceedings under section 143(3) of the Income-tax Act, 1961; in short the "Act".

2. Heard both the parties. Case file perused.
3. It emerges from assessee's pleadings that it raises three substantive grievance(s) in principle. The first one is common wherein it seeks to challenge both the lower authorities' action treating its alleged business income of Rs.2,36,05,880/-, Rs.2,54,90,395/- and Rs.6,78,18,287/- for assessment years 2008-09, 2010-11 and 2011-12; respectively, as income from other sources than business income. We advert to the relevant facts qua the instant issue. There is no dispute that the Reserve Bank of India

(banking sector regulatory body) had suspended assessee's license on 30.07.2003. The assessee claimed to have derived the impugned income by recovering its old dues from its members/customers in the form of principal as well as interest. We notice from identical assessment findings that the Assessing Officer was of the view that the assessee was facing winding up proceedings through Official Liquidator. He therefore was of the opinion that it could not have been taken as engaged in banking business so as to be entitled for getting treated the above income as business. He therefore treated the same as income from other sources after concluding that the above receipts of interest on deposits and its own advances during liquidation period would not amount to business receipts.

4. The CIT(A) confirms the Assessing Officer's action as under:-

*"4.3 I have considered the facts of the case as well as the order of the AO and the submission of the appellant. During the appellate proceedings, vide order sheet noting dated 05.09.2013, the appellant's AR was requested to file copy of order appointing the liquidator. The same was filed on 05/12/2013. The appellant's main submission is that even after the cancellation of its banking license, it remains a Credit Co-operative Society and hence, is eligible for deduction u/s 80P(2)(a)(i) of the Act. It is also submitted that the liquidator has been appointed under section 107-108 of the Gujarat Co-operative Society Act, 1961 and accordingly, the reconstruction of the society can take place u/s 110(10) of the Act. In this regard, from the order dated 28.03.2007 of the Registrar of Co-operative Society, Gujarat State, it is seen that no such reconstruction as per section 19 of the Co-operative Society Act is mentioned in this order. For ready reference the order of the registrar is reproduced below:*

*"Preface:-*

*The Charotar Nagrik Sahakari Bank Ltd,, Anand Dist. Anand is a co-operative Bank, protected with Unsurance and registered under the clause - 1961 of Gujarat Co-operative Societies. It's Registration No. 4368, dated 30-11-1974. The said bank has doing the management as per co-operative rules, Sub-Clauses, Banking Regulating Act-1949 Provision and as per guidance and*

*instructions time to time given by Co-operative Department as well Reserve Bank of India as per fixed and changed.*

*Due to constructive Inspection of the Bank and slow recovery of outstanding dues of the Bank it is put in critical condition and there is no possibility to reinstall it and as per the order dated 2/1/2002 the administrator was deputed in the Bank. There are many attempts made for recoveries of the said bank eventhough there is no recoveries made satisfactory and so that in the reference of economical conition of the bank as per proper conclusion it is recommended to this office to put the bank in disposal condition, and in this reference the said office made proper conclusion and declare to put the bank in disposal condition by the letter dated 23/7/03 of the Indian Reserve Bank, Central Office, Mumbai and the order to put the bank in disposal condition for the public interest as well for the interest of depositors and share holders by granted the permission. It is hereby ordered as under:*

*; :*

*Order:-*

*I.A.S. Khandhar, Joint Registrar (Audit) Co-operative Societies, Gujarat State, Gandhinagar as per obtained an authority to me and I order to upt the Charotar Nagrik Sahakari Bank Ltd., Anand, Dist. Anand as per clause - 1961 provisions. And hereby depute to Shri C.B. Kotecha as a disposal officer, District Registrar Co-op. Societies, Anand and present Administrator of The Charotar Nagrik Sahakari Bank Ltd., Anand, Dist. Anand.*

*(2) The deputed Disposal Officer must to complete the activity of closing bank within a three years according to the Co-operative Rules code-114 (1) of Registrar, Co-operative Societies Anand as per instructions given by time to time.*

*(3) The Official Liquidator must to take charge immediately of Distposal condition. And the Official Liquidator shall produce three months Report of his activities to the Registrar, Co-operative Societies, Gujarat State, Gandhinagar upto 15th before completion of three months."*

*4.3.1. From the above order, it is evident that the bank was in critical condition and there was no possibility to reinstall it and accordingly, it was put in disposal condition for the public interest as well as for the interest of the depositors. As per this order only, an official liquidator was appointed.*

4.3.2. Thus, this order for appointing of liquidator u/s 115(1)(2) of the Gujarat Co-operative Society Act, 1961 is for the purpose of liquidation of the Co-operative Bank. The provisions of section 19 of the GCSA, 1961 are as follows:

Section 19

Reconstruction of societies. -Where a compromise or arrangement is proposed

(a) between a society and its creditors, or

(b) between a society and Its members

the Registrar may, on the application of the society or of any member or of any creditor of the society, or in the case of a society which is being wound up of the liquidator, order reconstruction in the prescribed manner, of the society.

4.3.3. Thus, from this provision, it is evident that for the purpose of reconstruction, a separate order has to be passed by the registrar. The appellant has no where submitted that such an order has been passed. Hence, during the FY 2009-10, the appellant society was under liquidation only and hence, the decisions relied upon by the AO in the cases of Indraprasth Steel Industry Ltd. (Supra), Morbi Mercantile Bank Ltd. (Supra) and Vijaylakshmi Sugar Mills Ltd. (supra) are squarely applicable to this case. Since, no business has been carried out during this year, hence, the appellant's claim that it continued to be Co-operative Credit Society is not acceptable. Besides, the AO's conclusion that once the banking license have been cancelled and the liquidator has been appointed , for winding up the appellant society, it does not remain a credit co-operative society is also correct.

4.4. Hence, on the basis of these discussions, the action of the AO of taxing the interest income earned by the appellant as income from other sources and not allowing deduction u/s 80P at this income of the appellant is upheld."

There is no dispute that the above findings pertaining to former assessment year 2012-13 have been followed in later two assessment years as well.

5. Learned counsel representing assessee vehemently contends that both the lower authorities ought to have treated assessee's above income derived from its members qua past dues under the head business income

than the one from other sources. Her further case is that it is only the management of the assessee bank which has gone in the hands of the Official Liquidator. She places on record the state government's declaration under clause 161 granting extension under Section 114 (1) of the Gujarat Co-operative Societies Act. Learned counsel thereafter places strong reliance on this tribunal's decision in the case of Anand Urban Co-Op. Bank Ltd Vs. ITO in ITA No.2731/Ahd/2013 decided on 29.05.2017 treating similar income under the head business. Next case law quoted is hon'ble Gujarat high court's decision in the case of Morvi Mercantile Bank Ltd vs. CIT, reported in [1976] 104 ITR 568 (Guj.).

6. The Revenue at this stage strongly supports both the lower authorities' action treating assessee's above income not under the head business but as income from other sources. Mr. Kabra refers to the CIT(A)'s findings that the assessee has in fact deposited its above receipts from members in the bank and thereafter derived the impugned income as against the facts of the above hon'ble Gujarat high court decision. He further clarifies that the assessee has not been able to provide a detailed bifurcation of above income derived from members vis-à-vis interest arising out of its deposits made in the bank in question. Learned counsel representing assessee fails to rebut this factual position. The fact however remains that the above bifurcation of assessee's income is very much necessary for adjudicating the instant issue. The above co-ordinate bench decision has already held a similar co-operative bank to be entitled for its income received from members during the suspension of license as business income. We therefore are of the opinion that larger interest of justice would be served in case the Assessing Officer once again re-adjudicates the entire issue afresh as per law. It shall be assessee's duty and responsibility to furnish all particulars of its impugned bifurcation of

income under the above two heads. This first substantive ground is taken as accepted for statistical purposes in all three assessment years.

7. The assessee's appeal ITA No.2678/Ahd/2015 for AY 2008-09 raising this sole issue is accepted for statistical purposes.

8. The assessee's next substantive ground in latter two assessment years seeking adjustment of above business income against carried forward business losses is treated as consequential in nature as pointed out at both the parties behest. The Assessing Officer shall adjudicate the same after finalizing the above first issue. This plea in later two assessment years is also accepted for statistical purposes.

9. The assessee's next substantive ground in assessment years 2010-11 and 2011-12 pleads that both the lower authorities have erred in not allowing its depreciation claim of Rs.16,86,457/- and Rs.14,90,568/- as deduction in assessment as affirmed in the lower appellate proceedings. Both the learned representatives are *ad idem* that this issue is also consequential to our adjudication hereinabove qua first issue. We therefore direct the Assessing Officer to finalize the consequential computation after detailed adjudication on the first issue of business income in preceding paragraph. This substantive ground is also taken as accepted for statistical purposes.

10. The assessee's third substantive ground in assessment year 2010-11 avers that that both the lower authorities have erred in law as well as on facts in treating closing balance difference of Oriental Bank account as unexplained thereby making addition of Rs.16,86,457/-. Learned counsel first of all states that the correct figure herein is Rs.12,26,300/- than the above one. She thereafter takes us to the relevant assessment findings

wherein the Assessing Officer quoted its failure in reconciling the corresponding bank account despite numerous opportunities afforded. We find that the assessee thereafter filed its reconciliation as additional evidence in the lower appellate proceedings. Page 19 of the CIT(A)'s order in assessment year 2010-11 reveals that the assessee sought to reconcile the difference in bank account vis-à-vis balance from assessment years 2006-07 onwards till 2012-13. It thereafter pleaded that the amount received from Deposit Insurance and Credit Guarantee Corporation ('DICGC' in short) stood deposited in the above Oriental Bank account followed by the necessary cheques being issued to the depositors in Gujarat as well as outside the state. Its case thereafter was that the above said corporation's letter dated 09.08.2004 had made it clear that the corresponding amount lying undisbursed would be refunded back. The CIT(A) however rejects all the said additional evidence after concluding that the Assessing Officer had granted sufficient opportunities and therefore there is no case made out for entertaining the above additional evidence.

11. We have given our thoughtful consideration to the rival pleadings reiterating respective stands of the assessee as well as the Revenue. It has come on record that the assessee's banking license stands suspended. It is right now being managed by an Official Liquidator. We therefore observe that there has been a lack of cohesion in its working so far as filing of the relevant details pertaining to the instant issue is concerned. The fact however remains that the instant issue is more a reconciliation failure on assessee's part to tally the relevant bank account with its balance-sheet vis-à-vis the amounts received/refunded as per the above DICGC directives. We reiterate that we have already remitted all remaining issues including the main one (supra) back to the Assessing Officer. Suffice to say, it would be in the larger interest of justice if the learned Assessing Officer finalizes

the instant reconciliation as per law. We cast the entire duty on the assessee to place on record all the relevant details in consequential proceedings. These three assessee's appeals ITA Nos.2678/Ahd/2015, 786/Ahd/2014 & 186/Ahd/2016 are accepted for statistical purposes.

**Order pronounced in the Court on 28<sup>th</sup> November, 2017 at Ahmedabad**

Sd/-

**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 28/11/2017

*Dr*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

TRUE COPY

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad**