

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
 CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
 AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.387/CTK/2015**  
 Assessment Year : 2011-2012

The Mayurbhanj Central Co-operative Bank Limited, At/pi: Baripada, Mayurbhanj	Vs.	DCIT, Balsore Circle, Balasore.
PAN/GIR No.AAAAM 7185 K		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**ITA No.393/CTK/2015**  
 Assessment Year : 2011-2012

DCIT, Balsore Circle, Balasore.	Vs.	The Mayurbhanj Central Co-operative Bank Limited, At/pi: Baripada, Mayurbhanj
PAN/GIR No.AAAAM 7185 K		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Ambica Prasad Mohanty, AR  
 Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 09/08/ 2017**  
**Date of Pronouncement : 10 /08/ 2017**

**ORDER**

**Per N.S.Saini, AM**

These are cross appeals filed by the assessee and the revenue against the order of the CIT(A)-Cuttack dated 19.6.2015 for the assessment year 2011-12.

2. In the revenue's appeal, the grievance of the assessee is that the CIT(A) was not justified in deleting the provisions for standard assets to the tune of Rs.14,92,017/- ignoring the provisions of I.T.Act, 1961.

3. The brief facts of the case are that the Assessing Officer found that the assessee had deducted provision for standard assets amounting to Rs.14,92,017/- in its profit and loss account and claimed the same as expenses. The Assessing Officer observed that under the provision of section 36(1)(vii) of the Act, bad debt actually written off from the books of assessee is admissible for deduction. But the provision made for standard asset is not deductible in view of the decision of Hon'ble Supreme Court in the case of Southern Technology Ltd vs JCIT (2010) 320 ITR 577 (SC).

4. Before the CIT(A), the assessee submitted that the Assessing Officer is unlawful in disallowing provision for standard asset which has been credited in the books as per the mandatory guidelines of SBI for the assessee bank and qualifies as a part of provision for bad and doubtful debts. The assessee further submitted that in its own case for the assessment year 2008-09, the Cuttack Bench of the Tribunal in ITA No.383/CTK/2012 dated 30.10.2012 decided that the provision for standard asset for co-operative bank should be allowed. He placed reliance on the following part of the order of the Tribunal:

*" In the case, the Standard Assets, provision allowed to be created as a percentage of the outstanding Loans & Advances is much less compared*

*to that for the other types of Loans & Advances classified as substandard or loss Assets by the bank as per the guidelines of RBI. It is not a liability, much less a contingent or unaccrued one. It is only a provision for loss towards bad & doubtful debts, as per the prudential norms prescribed by RBI for the banks, which is mandatory in nature. In view thereof, the decision of Hon'ble Apex Court in the case of Indian Molasses & Co. V. CIT (Supra) which was on different set of facts is not applicable to the instant case of the assessee. We find that in the said case it has been held that provision for contingent or unaccrued liability is not allowable as deduction. The learned AR of the assessee relied on the decision of ITAT, Amristar Bench in the case of DCIT v. The Gurdaspur Central Co-op Circle Pathankot Bank Ltd. in ITA No.99/ASR/2011/ dt. 07.05.2012 ( copy placed in the paper book ), wherein the Tribunal has upheld the order of the CIT(A) in deleting disallowance under the head "Provisions on Standard Assets". The relevant portion of that order in paragraph 4 is quoted hereunder:*

*"4. Before the Ld. CIT(A), the assessee submitted written submissions which are reproduced in CIT(A)'s order in para 5 on pages 8 & 9. The Ld. CIT(A) vide para 7 of his order deleted the addition observing that the AO had given no reasons for the disallowance of expense. Thereafter, the Ld. CIT(A) on the basis of submissions made before him by the Ld. Counsel for the assessee that the expense is debited notionally @ 0.1 % to 0.4% of such assets to maintain and retain all standard assets, as per Master Circular on Income Recognition Asset Classification, Provisioning and other related matters issued by the Bank of India. He further mentioned that u/s. 35A of the Banking Regulation Act, 1949, the Reserve Bank of India has been empowered to issue directions to all the banks as to regulate the banking business in the public interest or in the interest of banking policy. After discussing what has been submitted by the assessee before him, the Ld. CIT(A) observed that the assessee had no option but to claim the same and the claim, even if notional, exclusively laid out for the purpose of smooth running of banking business and there is no reason not to allow the same to the assessee. It is a statutory claim to allow the same to the assessee. It is a statutory claim allowable on the analogy of 30% deduction allowed in respect of income under the head house property, without making it necessary to shown the evidence of such expense having been actually incurred. The AO had failed to appreciate that section 36(I)(vii) is amended by the Finance Act, 2007 to include co-operative banks for the purpose of deduction under this section retrospectively from 1<sup>st</sup> April, 2007 and subsequent years. This amendment was brought to give relief to the Co-operative banks which have been withdrawn as a deduction under section 80 P. Referring to the Rule 6ABA, it was observed that deduction under section 36(I)(vii) is a notional deduction, which is within the limits of the said section. Accordingly, the Ld. CIT(A) deleted the addition."*

*We find that the facts of the instant case being similar with that of The Gurdaspur Central Co-op Circle, Pathankot Bank Ltd. (Supra ) and following the decision of the IT AT, Amirtsar, it must be held that the learned CIT(A) is not justified in confirming the disallowance made under the head "Provisions on Standard Assets" and therefore, we direct the Assessing Officer to delete such disallowance and allow the claim of the assessee in this regard."*

5. The CIT(A) following the order of the Tribunal accepted the appeal of the assessee and deleted the addition.
6. Ld D.R relied on the order of the Assessing Officer.
7. In the above facts and circumstances of the case, we find that the order of the CIT(A) is in consonance with the order of the Tribunal in assessee's own case for the assessment year 2008-09. Ld D.R. could not point out any distinguishing features to not to follow the above quoted order of the Tribunal. Therefore, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.
8. In the result, appeal of the revenue is dismissed.
9. In assessee's appeal, Ground No.1 of the appeal is directed against the addition of Rs.1,24,912/-.
10. The brief facts of the case are that the Assessing Officer observed that the assessee had provision for bad and doubtful debts of Rs.1,24,912/-, which was not allowable deduction in the meaning of provision of sections 28 to 42 of the Act.
11. On appeal, the CIT(A) confirmed the action of the Assessing Officer.
12. Before us, Id A.R. of the assessee could not controvert the findings of the lower authorities by bringing any positive material on record. We,

therefore, find no good reason to interfere with the order of the CIT(A) and dismiss the ground of appeal of the assessee.

13. In Ground No.2 of the appeal, the grievance of the assessee is that the CIT(A) erred in sustaining the addition of Rs.6,40,042/-.

14. The brief facts of the case are that the Assessing Officer observed that the assessee has made provision for U/R account of Rs.6,40,042/- which is not allowable deduction according to the provisions of section 28 to 42 of the Act.

15. On appeal before the CIT(A), the assessee argued that an amount of Rs.9,78,102/- was reversal of last year's provision. This year's provision of Rs.6,40,042/- has been reversed in the subsequent year.

16. The CIT(A) confirmed the action of the Assessing Officer observing that there is no reason for allowance of this provision in the impugned year.

17. Before us Id A.R. reiterated the submissions made before the lower authorities.

18. Ld D.R. supported the orders of lower authorities.

19. We find that the contention of the assessee is that it had made provision of Rs.6,40,042/- during the year under consideration and in the earlier year, provision of Rs.9,78,102/- which is no longer required was reversed and shown as income of the assessee. The contention of the assessee is that as the assessee is not claiming any deduction on account

of provision keeping in view of the fact that the earlier year's provision of Rs.9,78,102/- has been credited as income in the profit and loss account by the assessee. Therefore, no addition of Rs.6,40,042/- was called for. We find that the assessee has reversed the provision of Rs.9,78,102/- which was claimed as deduction from the profit of the earlier year. Therefore, the said provision was rightly treated as income of the assessee which was wrongly allowed as deduction to the assessee in the earlier year. Hence, the assessee cannot be allowed set off of this income against the provision made for this year of Rs.6,40,042/-. Further, Id A.R. in respect of Rs.6,40,042/- could not controvert the findings of both lower authorities that the same was not allowable deduction u/s. 28 to 42 of the Act by bringing any positive material on record. Hence, we confirm the order of the CIT(A) and dismiss the ground of appeal of the assessee.

20. In Ground No.3 of the appeal, the grievance of the assessee is that the CIT(A) erred in not allowing claim of deduction for Rs.20,75,326/-.

21. The brief facts of the case are that the assessee had made a claim of Rs.20,75,326/- as commission in the impugned year. The Assessing Officer disallowed the commission of Rs.20,75,326/- as TDS was not deducted from such payments by the assessee. The Assessing Officer observed that TDS deducted was credited to the Central Government account only on 20.8.2010. Therefore, the assessee was eligible for claim

of deduction for the financial year 2010-2011 relevant to assessment year 2011-12. The Assessing Officer did not entertain the claim during the assessment proceedings as the same was not claimed by the assessee in his return of income.

22. On appeal, the CIT(A) confirmed the action of the Assessing Officer on the ground that the assessee did not claim deduction in the original return filed by it and neither claimed the same by filing revised return of income.

23. Ld A.R. of the assessee submitted that the assessee made the claim for deduction during the course of assessment proceedings before the Assessing Officer and, therefore, the Assessing Officer was not justified in not accepting the same and allowing deduction for the same. Further, the CIT(A) was also not justified in not allowing the claim of the assessee as the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd vs CIT, 284 ITR 323 (SC) was not applicable on appellate authorities. Hence, he submitted that deduction should be allowed to the assessee.

24. Ld D.R. relied on the orders of lower authorities.

25. After considering the rival submissions and perusing the materials on record, we find that the assessee had claimed deduction for commission payment of Rs.20,75,326/- for the assessment year 2007-

08, which was disallowed by him on the ground that the assessee has not deducted TDS from the payment. The Assessing Officer observed that the assessee had made payments of TDS to the Central Government on 20.8.2010 and, therefore, the assessee was eligible for deduction of commission payment in financial year 2010-2011 relevant to assessment year 2011-12. However, he disallowed the claim on the ground that the assessee has not made claim for deduction in the return of income filed.

26. On appeal before the CIT(A), the assessee relied on the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd (supra) and submitted that this decision is not applicable on appellate authorities and, therefore, any claim by the assessee during the appeal proceedings was to be allowed deduction to the assessee. The CIT(A) did not accept the explanation of the assessee and confirmed the order of the Assessing Officer.

27. Being aggrieved the order of the CIT(A), the assessee is in appeal before us.

28. We find that it is not in dispute that the assessee although not made claim for deduction on commission payment of Rs.20,75,326/- in the return of income filed by him, it had made claim during the course of assessment proceedings before the Assessing officer. On this background

of the case, we are of the considered view that the CIT(A) was not justified in not allowing the claim for deduction of the assessee as the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd (supra) was not applicable to appellate authority. In this view of the matter, we set aside the orders of lower authorities and remand back to the Assessing Officer to consider the claim of the assessee for commission payment of Rs.20,75,326/- and allow the same as per law after allowing reasonable opportunity of the assessee.

29. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 10 /08/2017.

Sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

sd/-

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 10 /08/2017  
 B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : /Assessee : The Mayurbhanj Central Co-operative Bank Limited, At/pi: Baripada, Mayurbhanj
2. The Respondent. /Revenue: ACIT, Balasore Circle, Balasore
3. The CIT(A)- Cuttack
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
 //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**