

**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. 411/CTK/2015**  
Assessment Year : 2011-12

ACIT, Balasore Circle, Balasore	Vs.	The Balasore Bhadrak Central Co.Op. Bank Ltd., O.T Road, Baleswar.
PAN/GIR No.AAAAT 2620 G		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**ITA No.422/CTK/2015**  
Assessment Year : 2011-12

The Balasore Bhadrak Central Co.Op. Bank Ltd., O.T Road, Baleswar	Vs.	ACIT, Balasore Circle, Balasore
PAN/GIR No.AAAAT 2620 G		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Nihar Ranjan Biswal,  
Revenue by : Shri D.K.Pradhan DR

**Date of Hearing : 09/08/ 2017**  
**Date of Pronouncement : 11 /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 20.7.2015 for the assessment year 2011-12.

2. In the revenue's appeal, the grievance of the revenue is that the CIT(A) was not justified in deleting the provisions for standard assets to

the tune of Rs.35,18,790/- and provisions of NPA of Rs.2,38,93,834/- 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.35,18,790/- and provisions of NPA of Rs.2,38,93,834/- 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 RBI for the assessee bank and qualifies as a part of provision for bad and doubtful debts. The assessee further submitted that in the case of Mayurbhanj Central Co-operative Bank Limited 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 the case of Mayurbhanj Central Co-operative Bank for the assessment year 2008-09 (supra). 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, the grievance of the assessee is that the CIT(A) erred in adding Rs.7,11,462/- under section 14A r.w. 8D of the Act being expenses incurred for earning tax free dividend income of Rs.19,92,088/-.

10. The Assessing Officer observed that the assessee has claimed exemption of dividend income of Rs.19,92,088/-. The assessee has not determined expenses incurred towards such earning of dividend. The Assessing Officer further observed that this is a recurring issue and for

the assessment year 2009-2010, addition made by the Assessing Officer u/s14A of the Act was confirmed by the CIT(A), Cuttack. Therefore, the Assessing Officer calculated the disallowable expenditure for earning the above exempted income as per Rule 8D sub rule 2(iii) and disallowed Rs.7,11,462/- u/s.14A of the Act.

11. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

12. Before us, the only argument of the Id A.R. of the assessee is that the Assessing Officer has calculated half percent of the value of investment of Rs.7,11,46,000/- as on 1.4.2010 while working out the disallowance u/s.14A of the Act. He submitted that the Assessing Officer could have taken one-half percent of the average value of investment of the assessee to arrive at the disallowance to be made u/s.14A of the Act.

13. Ld D.R. on the other hand relied on the orders of the lower authorities.

14. After hearing the rival submission and perusing the orders of lower authorities, we find that Rule 8D (2)(iii) provides that the expenditures in relation to income which does not form part of the total income shall be the aggregating of the following amounts namely;

i) .....

ii) ....

iii) an amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."

A bare perusal of the above provision shows that as per Rule 8D(2)(iii) one and half percent of the average value of investment has to be taken for working out the disallowance u/s.14A of the Act. Hence, we find force in the submission of Id A.R. of the assessee and, accordingly, set aside the orders of lower authorities and direct the Assessing Officer to work out the disallowance under Rule 8D r.w. 14A by taking one - half percent of the average value of investment and allow the ground of appeal of the assessee.

15. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 11 /08/2017.

Sd/-

sd/-

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

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

Cuttack; Dated 11/08/2017  
 B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : /Assessee: The Balasore Bhadrak Central Co.Op. Bank Ltd., O.T Road, Baleswar
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**