

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri J.Sudhakar Reddy, AM & Hon’ble Shri A.T. Varkey, JM ]

I.T.A No. 8/Kol/2015

Assessment Year : 2010-11

ACIT, Circle-48, Kolkata

-vs-

Paschim Banga Gramin Bank

[PAN: AAAJP 0923 H]

(Appellant)

(Respondent)

For the Appellant : Shri G.Mallikarjuna, CIT DR

For the Revenue : None

Date of Hearing : 04.12.2017

Date of Pronouncement : 05.01.2018

**ORDER**

**Per J.Sudhakar Reddy, AM**

This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-XXX, Kolkata [in short the Id CITA] dated 27.10.2014 against the order passed by the ACIT, Circle-48, Kolkata [ in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 30.03.2013 for the Assessment Year 2010-11 on the following grounds:

- 1. Whether on the facts and circumstances of the case, Ld. CIT(A) was justified in allowing deduction on account of ‘provision for bad debt & doubtful debt’ u/s 36(1)(viiia) of the Act, without giving a finding as to the status of the assessee, i.e. Whether it is scheduled Bank to which the provisions of section 36(1)(viiia) applies or it is a co-operative society which is excluded from the purview of section 36(1)(viiia).*
- 2. Whether on the facts and circumstances of the case, Ld. CIT(A) was justified in allowing deduction on account of ‘Provision for bad debt & doubtful debt’ u/s 36(1)(viiia) of the Act, on the premise that ‘the claim of the appellant*

*under sec 36(1)(viiia) has not been rejected by the AO in other years', whereas the fact is that the revenue had taken the same stand on this issue in assessment year 2009-10 also and without prejudice to that fact, he also failed to consider that 'principal of Res-judicate' does not apply to income tax proceedings.*

3. *Whether on the facts and circumstances of the case, Ld. CIT(A) was justified in allowing deduction of Rs. 1,39,25,142/- claimed by the assessee towards 'Amortization of premium on investment'.*
4. *The Department craves the leave to add, alter and modify the grounds of appeal.*

2. None appeared on behalf of the assessee despite notice issued by the RPAD. There is no petition for adjournment either. Under the circumstances, we dispose off the case, ex parte, qua the assessee, after hearing the Ld. DR.

3. Heard the Ld. DR. Ground nos. 1 and 2 is on the issue as to whether the assessee is a scheduled bank or not. The Ld. CIT(A) held that the assessee is a scheduled bank and consequently it is entitled for deduction of "provision for bad and doubtful debt" u/s 36(1)(viiia) of the Act. The AO states that the similar grounds was taken by the revenue in the earlier assessment year 2009-10 and hence this appeal is filed.

4. The Ld. CIT(A) held as follows:

*"It is seen that the AO holds the Assessee as a cooperative society without assigning any reason as to why he holds so. As noted above, the Appellant is claimed as an entity owned by the Central Government, UCO Bank and the State Government. The AO has not shown how the Appellant can be treated as cooperative society. From the papers submitted it is apparent that the Assessee is a bank, or a scheduled bank and not even a cooperative bank. Provision of section 36(1)(viiia) applies to scheduled bank or a cooperative bank the relevant portion of 36(1)(viiia) is reproduced as under:*

*(viiia) [in respect of any provision for bad and doubtful debts made by-*  
 (a) *A scheduled bank [not being a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank [or a cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and*

*rural development bank], and amount [not exceeding seven and one half per cent] of the total income (computed before.....”*

*Thus, the Appellant is entitled to deduction u/s 36(1)(viiia). The claim of the Appellant under 36(1)(viiia) has not been rejected by the AO in other years as claimed by the Appellant. Therefore, the AO is held not correct in holding that the deduction u/s 36(1)(viiia) is not applicable to the Appellant. As regards the quantum of deduction claimed of Rs. 6,61,30,000/-, the AO has not gone into the allowability of the amount of the said provision. The AO is therefore, directed to restrict the provision to seven and one half per cent of the total income or 10% of the aggregate advances made by the rural branches in the prescribed manner, as the case may be. This part of the ground is treated as allowed.”*

We find no infirmity in this order. The Ld. DR could not controvert the finding of the Ld. CIT(A) that the assessee is a bank and not a co-operative society. Hence, we uphold the findings of the Ld. CIT(A) and dismiss this grounds no. 1 and 2 of revenue.

5. Ground no. 3 is in the issue of allowability of deduction, of a claim of deduction of “Amortization of Premium on Investment”.

6. The Ld. CIT(A) held as follows:

*“3.1. The Appellant claimed Rs. 1,39,23,142/- of deduction on amortization of premium on investment. It appears that excess of investment cost over the face value [premium amount] has been amortized over the remaining period to maturity. The AO has treated the claim as capital loss or capital expenditure and disallowed the claim of deduction. The AO seems to have relied on the Revenue’s Appeal in the Appellant’s case for A.Y. 2009-10, which is noted by the AO as pending before the Hon’ble ITAT, Kolkata. The Appellant has relied on Instruction No. 17/2008 dated 26.11.2008 of CBDT before the AO. Before the AO the Appellant also relied on Circular No. RRB BC No. 87.03.05.34/2006-07 dated 08.05.2007 of RBI, wherein it has been pointed out that RRB must consider “SLR Security as held to maturity”. In the submission dated 30.06.2014, the nature of the premium has been explained. The submission notes that the premium paid in excess of the face value of the investment is amortized in books between the maturity period of each of those investments. The AR further claims that the Ld. CIT(A) has allowed the assessee’s claim in this respect in A.Y. 2008-09 and 2009-10. Relevant clause (vii) of CBDT of Instruction No. 17/2008 is reproduced as under:*

*“(vii) As per RBI guidelines dated 16<sup>th</sup> 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 face value, in which case the premium should be amortized over the period remaining to maturity. In the case of HFT and AFS securities forming stock-in-trade of the bank, the 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.”*

*From the said clause, it is apparent that the acquisition cost over the face value termed as premium is required to be amortized over the period remaining to maturity. It is observed that securities termed as HTM may be brought for at cost in excess of face value. The interests are accounted for as it arises. The cost remains unaccounted for in the profit/expenses calculations till maturity when only the face value is realized by the investor bank if amortization is not allowed. Thus, the premium which is incremental cost to the investor bank over the face value has to be taken care of through amortization which in fact spreads the cost of acquisition in excess of face value over a period of time remaining up to the maturity. As the excess cost which is termed as premium is a cost or expenditure considering this in profit estimation through amortization is most scientific and is in the interest of Revenue as it postpones the impact of cost over several years. In view of the CBDT Circular and RBI guidelines, the claim of the Appellant is proper and just and therefore this addition is deleted.”*

7. The decision of ITAT, Kolkata Bench in the case of The West Bengal State Co-operative Bank Ltd. vs. DCIT is an identical issue held as follows:

“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 16<sup>th</sup> 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.”*

Respectfully following the proposition of laws laid down in the Co-ordinate Bench on the same issue we uphold the order of First Appellate Authority and dismiss the ground of the revenue.

8. In the result, the appeal of the revenue is dismissed.

**Order pronounced in the Court on 05.01.2018**

Sd/-  
[A.T.Varkey]  
Judicial Member

Sd/-  
[ J.Sudhakar Reddy]  
Accountant Member

Dated : 05.01.2018

SB, Sr. PS

Copy of the order forwarded to:

1. ACIT, Circle-48, Kolkata, 3, Government Place (West), Kolkata-700001.
2. Paschim Banga Gramin Bank, Natabar Paul Road, Chatterjee Para, More, Tikiapara, Howrah-711101.
- 3..C.I.T.(A)- , Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches