

आयकर, अपीलिय अधिकरण राजकोट न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT
BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER

Sr. No.	ITA No. & Asstt.Year	Appellant	Respondent
1-2	36/RJT/2014 With CO No.1/RJT/2014 Asstt.Year 2011-11	DCIT, Cir.1(2) Rajkot.	The Co-op. Bank of Rajkot Ltd. "Sahakar Sarita", Panchanath Road, Rajkot.
3-4	308/RJT/2014 With CO No.14/RJT/2014 Asstt.Years: 2009-10	ACIT, Cir.1 Rajkot.	The Co-op. Bank of Rajkot Ltd. "Sahakar Sarita", Panchanath Road, Rajkot. PAN : AAAAT 2423 R
5-6	436/RJT/2015 With CO No.59/RJT/2015 Asstt.Year 2012-13	DCIT, Cir.1(2) Rajkot.	The Co-op. Bank of Rajkot Ltd. "Sahakar Sarita", Panchanath Road, Rajkot.
7	543/RJT/2014 Asstt.Year 2011-12	DCIT, Cir.1(2) Rajkot.	The Co-op. Bank of Rajkot Ltd. "Sahakar Sarita", Panchanath Road, Rajkot.
8	404/RJT/2016 Asstt.Year 2013-14	DCIT, Cir.1(2) Rajkot.	The Co-op. Bank of Rajkot Ltd. "Sahakar Sarita", Panchanath Road, Rajkot.
9	415 /RJT/2015 Asstt.Year: 2007-08	DCIT, Cir.1(2) Rajkot.	Rajkot Peoples Co-op.Bank Ltd. "Sabhasad Bhavan", 1 Manhar Plot, Gondal Road Rajkot.

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Revenue by :	Shri Hargovind Singh, CIT-DR
Assessee by :	Shri D.M. Rindani, CA

सुनवाई की तारीख/Date of Hearing : 01/11/2017

घोषणा की तारीख /Date of Pronouncement: 19/01/2018

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

In this group of appeals, Revenue challenges orders of Id.CIT(A)-1, Rajkot passed in assessment years 2009-10 to 2013-14 respectively. On

receipt of notice in the Revenue's appeal, assessee has filed Cross Objection in the assessment years 2009-10, 2010-11 and 2012-13. Along with these appeals, we have heard appeal of Rajkot Peoples Co-op. Bank Ltd. i.e. ITA No.415/RJT/2015, which is directed at the instance of Revenue against the order of Id.CIT(A)-1, Rajkot dated 30.6.2015.

2. As far as appeals of the Revenue are concerned, we find that Revenue mainly challenges orders of the Id.CIT(A) on two counts, viz. (a) the Id.CIT(A) has erred in allowing amortization of premium paid on investment, and (b) treating the alleged accrual of interest on NPA as not taxable.

3. Facts on all vital points are common. For the facility of reference, we take up the facts mainly from the assessment year 2009-10. The assessee has amortized following amounts in different assessment years on account of premium paid on investments.

<i>Sr. No.</i>	<i>Asstt. Years</i>	<i>Amount of amortization (Rs.)</i>
1.	2007-08 (in the case of Rajkot Peoples Co-op Bank)	12,54,256/-
	<i>In the case of Co-op. Bank of Rajkot Ltd.:</i>	
2.	2009-10	80,75,000/-
3.	2010-11	1,04,61,642/-
4.	2011-12	1,11,46,927/-
5.	2012-13	1,09,71,040/-
6.	2013-14	6,51,72,778/-

4. Brief facts of the case are that the assessee has filed its return of income for the Asstt. Year 2009-10 on 8.9.2009. This return was revised on 22.3.2010

declaring total income at Rs.16,40,74,590/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued on 23.8.2010 which was served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee has debited a sum of Rs.80,75,000/- on account of amortization of premium on Government securities. The Id.AO issued a questionnaire vide show cause notice dated 11.7.2011 under section 142(1) of the Act and invited explanation of the assessee as to why the amount debited on account of amortization of premium on government securities should not be disallowed. In response to the show cause notice, the assessee has filed a detailed reply which has been reproduced by the AO on pages 3 to 7 of the assessment. Relevant part of the reply reads as under:

"Sub: Show cause u/s.142(1) of the Income-tax Act,1961 for A.Y.2009-10

With reference to the above, we are to state as under:-

1. The bank is registered with the Gujarat State Co-operative Societies Act. And a/so holding banking licence under Banking Regulation Act

2. Bank is also governed by the provisions of Reserve Bank of India Act, 1934 for their working of business and bank has to follow the regulations of Reserve Bank of India.

3. Bank has made invesments in securities as per the regulations of Reserve Bank of India and all the investments are treated as stock in trade. But classification and provisions are made as per the guideline of Reserve Bank of India.

4.

5.1 Securities held by the Bank for complying with the requirements of maintaining the SLR as required under the provisions of the Banking Regulations Act, 1949 should be considered as stock in trade/ current assets.

5.2 As per the provisions of S.6 r/w S. 5(b) and (c) of the Banking Regulation Act, transaction of securities forms part of banking business and bank can purchase and sell securities without affecting the statutory SLR. Therefore the securities purchased are actually stock in trade. Therefore the investment in securities are not in real sense capital assets. The same to be considered in the back ground of the provisions of Banking Regulations Act.

5.3 Section 6 of Banking Regulation Act, 1949, specifies the forms of business in which the banking companies may engage. It provides that in addition to the business of banking, a banking company may engage in any one or more businesses, namely:

5.4"6(a) : the borrowing, raising or taking up of money; lending or advancing of money either upon or without security; the drawing, making, accepting; discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debentures stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposits or for safe custody or otherwise; the providing of safe deposit vaults; the and transmitting of money and securities:

5.5 Section 24 of the Banking Regulation Act provides for maintenance of a percentage of assets and accordingly each bank has to invest in securities and to maintain such percentage.

5.6 Bank is not at all engaged in purchase and sale of securities and that bank had invested money in Government securities only for the purpose of complying with the provisions of the Banking Regulation Act for the maintaining the SLR.

5.7 Securities held under any categories even held to maturity by the bank are stock in trade and therefore any notional loss suffered on

securities at the closed of the year on the basis of guideline prescribed by Reserve Bank of India should be allowable as deduction.

5.8 Income from the securities is a part of the banking business and therefore the income from securities are shown under the under the head of business or profession. The same should be considered.

5.9 It is to be submitted that every year bank follows the accounting method as prescribed by Reserve Bank of India for valuation of investment/stock in trade consistently and income from investment/stock in trade treated as business income consistently.”

5. The Id.AO was not satisfied with the explanation of the assessee and he disallowed the claim made by the assessee. On identical principle, the disallowance has been made in other assessment years as well as in the case of Rajkot Peoples Co-op. Bank. On appeal, the Id.CIT(A) has deleted the disallowance.

6. Before us, the Id.counsel for the assessee contended that issue in dispute is squarely covered in favour of the assessee by order of the Tribunal in assessee's own case. He placed on record copy of the Tribunal order passed in ITA No.914/RJT/2010 in the Asstt.Year 2007-08. The Id.counsel for the assessee further contended that similar issue was raised in the Rajkot Dist. Co. Bank's case and the dispute travelled upto the Hon'ble Gujarat High Court in Tax Appeal No.56 of 2013. The Hon'ble High Court has considered the following questions:

(i) Whether in the facts and circumstances of the case and in law, the Appellate Tribunal is justified in holding that the A.O. and CIT(A) have erred in disallowing the amortization of security premium of Rs.40,30,000/- ?

(ii) Whether in the facts and circumstances of the case and in law, the Appellate Tribunal is justified in not considering that the securities held under "Held to maturity (HTM) category" as per RBI guidelines

are not meant to earn profit but are required to be kept as they are till maturity?

7. These questions have been decided in favour of the assessee, and it was held that if a bank has made investment and treated these securities under “held to maturity” category, then premium paid on acquisition of such securities would be amortized over the period remaining to maturity. The assessee has adopted similar exercise. The discussion made by the Hon’ble High Court reads as under:

“6. On the other hand, the learned counsel Shri Tushar Hemani for the respondent placed heavy reliance on the said CBDT Circular dated November 26, 2008 and contended that the benefit of amortisation had to be granted. The assessee as a cooperative was bound by the RBI directives. As per such directives, the assessee had to invest certain amounts in Government securities and to hold the same till maturity. In the process of acquisition, if there was any premium paid on the face value of the security, the loss had to be amortised. Paragraph (vii) of the Circular No. 17 of 2008 dated November 26, 2008 would apply. Such instruction reads

“(vii) 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 face value, in which case the premium should be amortised over the period remaining to maturity. In the case of HFT and AFT 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.

7. The instructions clearly provide for amortisation of premium paid on acquisition of securities when the same are acquired at the rate higher than the face value. Such amortisation would have to be for the remaining period of maturity. This precisely the Tribunal had directed in the impugned order. Though contended, no contrary instructions of CBDT are brought to our notice. The instruction in question having

been issued under section 119(2) of the Income-tax Act, 1961, / would bind the Revenue. No question of law, therefore, arises.

8. Respectfully following the decision of the Hon'ble High Court in the case of Rajkot District Co-op. Bank Ltd. we do not find any merit in this ground raised by the Revenue in all these assessment years. The Id.CIT(A) has rightly allowed amortization of premium paid on this investment. This ground of appeal of the Revenue is dismissed.

9. In the next fold of grievance the Revenue has pleaded that the Id.CIT(A) has erred in not upholding action of the AO of taxing interest income on NPA account on accrual basis.

10. It emerges out from the record that the Id.AO has worked interest income on accrual basis on the NPA account in different years as under:

<i>Sr. No.</i>	<i>Asstt. Years</i>	<i>Amount of amortization (Rs.)</i>
1.	<i>2007-08 (in the case of Rajkot Peoples Co-op Bank)</i>	<i>4,56,84,023/-</i>
	<i>In the case of Co-op. Bank of Rajkot Ltd.:</i>	
2.	<i>2009-10</i>	<i>58,31,100/-</i>
3.	<i>2010-11</i>	<i>50,70,382/-</i>
4.	<i>2011-12</i>	<i>1,91,35,903/-</i>
5.	<i>2012-13</i>	<i>7,79,96,240/-</i>
6.	<i>2013-14</i>	<i>6,51,72,778/-</i>

11. With the assistance of the Id.representatives, we have gone through the record carefully. We find that the issue in dispute is squarely covered in favour of the assessee by the decision of the Hon'ble Gujarat High Court

rendered in the case of Tax Appeal No. 324 of 2007 and others vide order dated 5.6.2017, Hon'ble High Court has held that interest on NPA is not taxable on accrual basis in view of guidelines of Reserve Bank of India. Similar view has been taken by the Hon'ble Bombay High Court in the case of CIT Vs.Deogiri Nagari Sahkari Bank Ltd. in Tax Appeal No.53 of 2014 and others. The Id.CIT(A) has made reference to RBI guidelines while holding that interest income on NPA are not to be recognised as taxable income on the basis of accrual system of accounting. Respectfully following decision of the Hon'ble Gujarat High Court in the case of Pr.CIT Vs. Shri Mahila Sewa Sahakari Bank Ltd. (2016) 72 taxann.com 117 (Guj), we do not find any merit in this ground of appeal. This ground is rejected.

12. CO No.14 and 1/RJT/2014.

13. In the Asstt.Year 2009-10 and 2010-1, the assessee has filed CO pleading therein that the Id.CIT(A) has erred in upholding disallowance made by the AO by 4/5th of expenditure claimed by the assessee as VRS salary expenditure.

14. Brief facts of the case in the Asstt.Year 2010-11 are that the assessee has debited VRS salary expenditure of Rs.10,37,157/- to the profit and loss account. The Id.AO has directed the AO to explain as to how total expenditure is admissible in view of section 35DDA of the Income Tax Act, 1961. The assessee failed to give any explanation. Accordingly, the Id.AO has allowed 1/5th of the expenditure and disallowed the rest. Similarly, in the Asstt.Year 2009-10, the assessee has debited a sum of Rs. 4,53,678/- out of Rs.3,62,942/- being 4/5th was disallowed by the AO.

15. With the assistance of the Id.representatives, we have gone through the record carefully. We find that section 35DDA authorises the assessee to

claim 1/5th of the expenditure incurred by way of payment to any employees on his voluntary retirement. The Id.AO has rightly restricted the allowance to 1/5th and amortized the total expenditure in five years.

16. No other ground was raised in this assessment year. Hence, CO i.e. 14/RJT/2014 and 1/RJT/2014 are dismissed.

17. CO No.59/RJT/2015:

18. In the Asstt.year 2012-12, the assessee has filed CO and raised two grounds of CO. In the first ground of CO, the assessee has pleaded that the Id.CIT(A) has erred in upholding addition of Rs.83,352/- made by the AO under section 14A of the Act.

19. Brief facts of the case are that on scrutiny of accounts it revealed to the AO that the assessee has claimed an amount of Rs.2,15,361/- as an exempt under section 10(34) of the Act. The Id.AO in a brief finding observed that the expenditure attributable to earning of this exempt income deserves to be disallowed under section 14A of the Act r.w.s Rule 8D of IT Rules. He worked out a sum of Rs.83,352/- for disallowance. On appeal, the Id.CIT(A) has confirmed disallowance.

20. Before us, the Id.counsel for the assessee contended that investment of Rs.1,66,70,477/- was made by the assessee in UTI mutual fund. This investment was same as on 31.3.2011. The assessee has interest free funds of more than Rs.185 crores. There is an increase in capital as well as reserves and surplus in this year from Rs.168 crores to Rs.185 crores. Therefore, no interest bearing fund were used by the assessee. On the other hand, the Id.DR pointed out that no such arguments were raised by the assessee before the

ld.Revenue authorities below. The assessee failed to impugn the disallowance worked out by the AO on the basis of average investment.

21. On due consideration of above facts and circumstances, we are of the view that these details have not been discussed either in the assessment order or before the ld.CIT(A). The ld.AO has made a rough estimated disallowance of Rs.83,352/-. After going through the orders of the revenue authorities below, we do not find any error because substantial investments have been made and someone must have looked after of these investments in the bank. Hence, this ground of CO is rejected.

22. In the next ground of CO, the assessee has pleaded that the ld.CIT(A) has failed to adjudicate the issue on merit in respect of allowability/set off of brought forward loss of amalgamated bank with the assessee.

23. Brief facts of the case are that the assessee has shown a sum of Rs.19,96,03,040/- as income from the profit and gains of business. Dakor Nagrik Sahakari Bank Ltd., and Yawal Peoples Co-op. Bank Ltd. have been amalgamated with the assessee in the Asstt.Year 2012-13. In other words, these two banks merged with the assessee. Dakor Nagrik Sahakari Bank Ltd. was having following brought forward business loss:

<i>A.Y.</i>	<i>Amount of B/F losses</i>
<i>2005-06</i>	<i>Rs.12,79,848</i>
<i>2006-07</i>	<i>Rs.27,89,275/-</i>
<i>2009-10</i>	<i>Rs.7,86,489/-</i>
<i>2011-12</i>	<i>Rs.26,65,435/-</i>
<i>Total</i>	<i>Rs.75,21,047/-</i>

24. The Id.AO has observed that since, Dakor Nagrik Sah. Bank Ltd. was a cooperative bank and it had filed its return of income in the capacity as cooperative society, it claimed exemption under section 80P(2)(a)(i) of the Income Tax Act. Section 72AA of the Act was not applicable to cooperative bank, and therefore, unabsorbed depreciation and accumulated loss were not admissible on amalgamation. This section was applicable to banking company in certain cases and not on cooperative bank. He further observed that w.e.f. 1.4.2008 section 72AB has been incorporated which allows brought forwarded business loss and depreciation of erstwhile cooperative bank against income of the amalgamated bank. In this way, the Id.AO has held that loss for the assessment years 2005-06 and 2006-07 totalling to Rs.40,69,123/- cannot be set off for brought forward business loss against the income of the assessee. Accordingly, he disallowed claim of the assessee to the extent of Rs.40,69,123/- as against Rs.1,33,14,268/-. On appeal, the Id.CIT(A) has not recorded any finding on this issue. The finding recorded by the Id.CIT(A) reads as under:

“6.3 So far as disallowance/addition of carried forward loss of Dakor Nagrik Sahakari Bank Ltd. (the amalgamated co-operative Bank) is concerned, I am inclined to agree with the appellant's contention that the accumulated or brought forward loss of A.Y.2005-06 & 2006-07 is very much allowable as per provisions of sec.72AB introduced w.e.f. 01-04-2008, because the merger/amalgamation has happened in F.Y. 2011-12 (after 1-4-2008). However, this is allowed to certain conditions enumerated in provisions of sec.72AB(2). The A.O. is directed to allow this loss if conditions are fulfilled.”

25. Grievance of the assessee is that the Id.CIT(A) has not decided the issue on merit after considering the relevant details. On due consideration of the above facts, we are of the view that the Id.CIT(A) has not dealt with the issue, rather rejected the contention of the assessee in cursory way. The unabsorbed depreciation and losses of Asstt.Years 2005-06 and 2006-07 would become the loss of Asstt.Year 2007-08 and thereafter will be carried

forward to other years. It has to be decided how it is not admissible. Therefore, we set aside the order of the Id.CIT(A) and restore this issue to the file of the Id.CIT(A) for re-adjudication. This ground of CO is allowed for statistical purpose.

26. In the Revenue's appeal for the Asstt.Year 2013-14 i.e. 404/RJT/2016, there is one more ground, whereby, Revenue has pleaded that the Id.CIT(A) has erred in deleting the addition of Rs.3,93,541/-.

27. Brief facts of the case are that the assessee has earned commission income from insurance business. The Id/AO found discrepancy in the details submitted in form no.26AS. The Id.AO has worked out all these discrepancy and held that a sum of Rs.3,93,541/- was not recognised by the assessee as commission income. He was of the opinion that the assessee has claimed TDS on entire commission income without accounting commission receipts. The Id.CIT(A) has observed that the assessee has been recognising the commission income on cash basis regularly. Thus, according to the Id.CIT(A) there is no need to tax this receipt on mercantile system or accountancy. Thus, after considering the finding of the Id.CIT(A) we do not find any error in the order of the Id.CIT(QA). This ground of appeal is rejected.

28. In the result appeals of the Revenue and Cross Objections of the assessee are dismissed except CO of the assessee in the Asstt.Year 2012-13, which is partly allowed.

Order pronounced in the Court on 19th January, 2018 at Ahmedabad.

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 19/01/2018