

Act”) dated 31.12.2010 for the Assessment Year 2008-09. Since identical facts are involved in both the appeals, they are taken up together and disposed off by this common order for the sake of convenience.

ITA No. 1936/Kol/2013 – Assessee Appeal

2. The first issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance of loss of Rs 5,22,250/- in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee is a co-operative bank constituted under the West Bengal Cooperative Societies Act. It is governed by the regulations of the said statute with regard to banking societies and as a bank is further governed by the Banking Regulation Act, 1949 and the Reserve Bank of India Act. Besides its commitment to the rules framed under the Cooperative Societies Act to conduct itself and its business the way said rules require, it has also to obey every direction that the Reserve Bank thinks fit to issue for prudential banking operations without jeopardy of the public transacting with it. It has to exhibit its affairs of business in its account as per the Reserve Bank commands. The accounts are prepared in accordance with the format prescribed by the Reserve Bank of India and its accounts and decisions are duly subjected to inspection by RBI. The assessee is mandated to give effect to the impact in its accounts based on the outcome of the Inspection Report of RBI .

2.2. The assessee held certain investments in Government Securities in order to maintain the mandatory statutory cash reserve ratio under the Banking Regulation Act, 1949. The assessee has to set apart a specific part of its fund by way of deposits from its clients and conserved in acquisition of the approved securities for the protection of the interest of the depositors. The business of the bank consists essentially in money

lending . It accepts deposits on interest from the members of the public reposing faith in the sound banking policy being pursued by the bank and the bank in turn lends out of accumulation of deposits to other parties, the remainder after investments in securities with all caution at higher rate of interest, i.e higher than the interest rate paid by the bank for the deposits. Therefore, the moneys set apart in the form of approved securities, invariably required for carrying on the business under the regulatory statutes is its trading assets. The assessee exhibited in its investment in Government securities and other securities acquired by it on premium , the face value as well as the premium in the thinking that the face value and the premium combined would reflect the real value of securities. The RBI objected to this as, according to it, the premium shall not form part of the investment. Accordingly, in the RBI Inspection Report, it was reported that the value of investment should be lesser sum than what has been figured out by the assessee in the accounts. Thus the RBI required the investment value to decrease by the premium. It was pleaded that the RBI in its Inspection Report had suggested the following accounting entry to be passed in the accounts of the assessee:-

P/L A/c	Dr 5,22,250
To Diff. in Investment in Govt Sec.	Cr 5,22,250

The assessee after passing the aforesaid entry in its books claimed a sum of Rs 5,22,250/- as deduction in its return of income. The Id AO held that the same is only provision made and hence not allowable as deduction. Accordingly, he disallowed the same in the assessment, which was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

- 1. For that the Ld. CIT(A) erred in confirming the addition of Rs. 522250/- failing to appreciate that the said sum represented allowable business loss under section 28, though shown in the accounts under the wrong nomenclature as provision for difference in Investment.*

2.3. We have heard the rival submissions. The Id AR argued that the provision has been made by the assessee pursuant to the suggestion made in the RBI Inspection Report. The Id AR stated that since the accounts of the assessee are prescribed as per the format given in the Banking Regulation Act, 1949, and that the rules framed thereon would be governing the assessee also, and hence the assessee is duty bound to follow the norms prescribed by the RBI in its Inspection Report. He stated that this sum of Rs 5,22,250/- represents investments held by the assessee as stock in trade with RBI and that certain balance to the tune of Rs 5,22,250/- was not reflected in physical form in the records of RBI, and accordingly RBI had suggested to pass the aforesaid entry in the books of assessee till the difference is sought to be found out by the RBI. He further stated that the assessee had effectively written off the portion of investments to the tune of Rs 5,22,250/- in its books. He also placed reliance on the decision of Hon'ble Bombay High Court in the case of HDFC Bank Ltd reported in 366 ITR 505 (Bom). We find that the assessee had furnished only the journal entry stated to be suggested by the RBI and had promised to submit the Inspection Report after the hearing. We find that the said RBI Inspection Report was not furnished to us to understand the real intent behind RBI suggesting the provision to be made in the sum of Rs 5,22,250/-. In these facts and circumstances, we deem it fit and appropriate, in the interest of justice and fairplay, to remand this issue to the file of the Id AO to decide this issue afresh in the light of RBI Inspection Report. If it is found that the RBI Inspection Report had suggested the assessee to remove this portion of investment of Rs 5,22,250/- either in the form of provision / write off, then the same becomes a trading loss as the investments were held as stock in trade by the assessee. Hence the decision is to be taken based on the findings given in the RBI Inspection Report. **Accordingly, the Ground No. 1 raised by the assessee is allowed for statistical purposes.**

3. The next ground to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance of Rs 7,53,998/- in respect of investments lost in Treasury Office in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the assessee had maintained certain investments with West Bengal Treasury office as assessee being a State Co-operative Bank. Certain investments to the tune of Rs 7,53,998/- were not traceable in the records of WB Treasury Office. The RBI had suggested in its report that this difference of Rs 7.54 lacs was not traceable by the treasury officials and accordingly had suggested to make a provision in its books by passing the following entry:-

P/L A/c	Dr 7,53,997.80
To Provision for Deposit with Treasury Office	Cr 7,53,997.80

The assessee after passing the aforesaid entry in its books claimed a sum of Rs 7,53,998/- as deduction in its return of income. The Id AO held that the same is only provision made and hence not allowable as deduction. Accordingly, he disallowed the same in the assessment, which was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

- 2. For that the Ld. CIT(Appeals) erred in confirming the addition of Rs. 753998/- failing to appreciate that the said sum represented allowable business loss under section 28, though shown in the accounts under the wrong nomenclature as provision for deposit with Treasury Office.*

3.2. We have heard the rival submissions. The Id AR argued that the provision has been made by the assessee pursuant to the suggestion made in the RBI Inspection Report. The Id AR stated that the deposits were also by way of funds set apart as a security for providential measure requisite under the statutory regulation for protection of the

interest of its depositors. But when eventually the assessee recalled the deposits on maturity, the treasury declined to meet its commitment as the deposits were reportedly not traceable at its end. There has been protracted correspondence with the treasury for restitution of the deposits but without avail. On these facts, the RBI in its Inspection Report required the assessee to write off the deposit for a true reflection of its income and net worth as 'Shortfall in Provision'. The Id AR argued that there was no choice for the assessee in not writing off the deposit by debit to profit and loss account. He stated that this deposit is also part of the assessee's circulating capital and the loss is revenue loss and hence allowable u/s 28 of the Act. The Id AR also stated that the assessee bank shifted its accounting software to Core Banking Solution (CBS) which is the regular software maintained for all banks in India. In CBS, unless the assessee is having distinctive numbers of deposit certificates, folio numbers of investment certificates etc, the same cannot be entered into CBS at the time of migration from existing software to CBS. He also stated that during the Asst Year 2017-18, WB Treasury was able to trace the said investments and repaid to assessee with interest which was offered to tax by the assessee in Asst Year 2017-18, which may be directed to be verified by the Id AO. We find that the assessee has been offering the interest income on these investments as income under the head 'income from business' in the past. These investments were maintained by the assessee in the regular course of its business and more so the assessee being a state co-operative bank is required to maintain certain mandatory deposits with WB Treasury Office. The assessee based on the suggestion given in the RBI Inspection Report and in view of the fact that WB Treasury Office was not able to trace certain investments held by the assessee with them, decided to write off the same to the tune of Rs 7,53,998/- in its books of accounts and claimed the same as deduction. This loss would be regular business loss allowable u/s 28 of the Act. We find that the *Hon'ble Bombay High Court in the case of CIT vs Shreyas S Morakhia reported in 342 ITR 285 (Bom)* had held as under:-

14. The value of the shares transacted by the assessee as a stock broker on behalf of its client is as much a part of the debt as is the brokerage which is charged by the assessee

on the transaction. The brokerage having been credited to the profit and loss account of the assessee, it is evident that a part of the debt is taken into account in computing the income of the assessee. The fact that the liability to pay the brokerage may arise, as contended by the Revenue, at a point in time anterior to the liability to pay the value of the shares transacted would not make any material difference to the position. Both constitute a part of the debt which arises from the very same transaction involving the sale or as the case may be purchase of shares. Since both form a component part of the debt, the requirements of Section 36(2)(i) are fulfilled where a part thereof is taken into account in computing the income of the assessee. Before concluding, we again take note of the fact that in paragraph 31 of its impugned decision the Tribunal has left the issue as regards the value of the shares which remain in the hands of the assessee which has to be adjusted against the amount receivable from the client to be determined before the regular Bench of the Tribunal following the view of the Special Bench. The view which has been taken by the Special Bench is, with respect, in accordance with law. We accordingly dispose of the appeal by answering the question of law as formulated in the affirmative and in favour of the assessee. There shall be no order as to costs.

3.2.1. We find that a similar view has been taken by the *Hon'ble Delhi High Court in the case of CIT vs Bonanza Portfolio Ltd reported in 320 ITR 178 (Del)*, wherein the monies receivable from the client was treated as a debt and hence irrecoverability of the same is liable to be treated as a bad debt and write off of such bad debt would be squarely allowable as deduction. The similar is the situation in the facts of the present case. It is not in dispute that the WB Treasury was not able to trace the investments for quite a long time since 2001 and RBI accordingly having waited for considerable period of time had suggested the assessee to write off the same in its books, which in our considered opinion, would be a regular business loss in the light of aforesaid decisions of Hon'ble Bombay and Delhi High Court. **Accordingly, the Ground No. 2 raised by the assessee is allowed.**

4. The next issue to be decided in this appeal is as to whether the ld CITA was justified in upholding the disallowance of Rs 51,06,472/- being the difference in value of deposits between Party Ledgers and the General Ledger , in the facts and circumstances of the case.

The assessee after passing the aforesaid entry in its books claimed a sum of Rs 51,06,472/- as deduction in its return of income. The Id AO held that the same is only provision made and hence not allowable as deduction. Accordingly, he disallowed the same in the assessment, which was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

3. *For that the Ld. CIT(Appeals) erred in confirming the addition of Rs. 51,06,472/- failing to appreciate that the said sum represented allowable business loss under section 28 read with section 29, though shown in the accounts under the wrong nomenclature as provision for difference with GL & PL (General Ledger & Personal Ledger).*

4.2. We have heard the rival submissions. The Id AR argued that though it is categorized as provision made by the assessee pursuant to the suggestion made in the RBI Inspection Report , it is effectively a write off of the circulating assets as revenue loss , in as much as, the personal ledgers of various depositors which contains the name and addresses of depositors thereon are duly identifiable and that it is showing excess balance of value of deposits when compared to that reflected in the general ledger account. Hence this shortfall in liability of amounts payable to depositors need to be provided in the books of assessee bank as admittedly the personal ledger balances were found to be correct as they are supported by proper names and addresses. Accordingly, the RBI in its Inspection Report had suggested to create this liability by increasing the balance of deposits in the General ledger by corresponding debit to the profit and loss account. The logic for debiting the profit and loss account is well explained in as much as General ledger balance was short , meaning thereby, in the past when manual accounts were maintained, the assessee had omitted to provide for certain interest on deposits in its general ledger, thereby reporting more profit in earlier years. During this year, pursuant to the suggestion made by the RBI in its Inspection Report and in order to bring the General ledger balance at par with the personal ledgers of depositors , the assessee had further provided for the difference in liability of deposits payable by

debiting its profit and loss account. This, in our considered opinion, is squarely allowable as deduction under the head 'income from business'. We hold that they are not adhoc provisions made without any basis. Admittedly, the personal ledgers of depositors contained names and addresses of various depositors to whom the assessee is obligated to repay the deposits with interest on the date of maturity. Hence there is going to be physical outflow of money by the assessee in future. Hence it becomes an ascertained liability and is supported by proper scientific basis. In view of these observations, we hold that the assessee is indeed entitled for claim of deduction of Rs 51,06,472/- in the assessment. **Accordingly, the Ground No. 3 raised by the assessee is allowed.**

ITA No. 2153/Kol/2013 – Revenue Appeal

5. The only issue to be decided in the revenue's appeal is as to whether the Id CITA was justified in addition made in the sum of Rs 1,00,00,000/- towards excess provision written back under the head ' Reserve for NPA Account' in the facts and circumstances of the case.

5.1. The brief facts of the case is that the assessee transferred from the reserve created out of profit in the past years to its profit and loss account for the year to the tune of Rs 1,00,00,000/- . This resulted in reflection of higher profit for the year under appeal. The assessee showed it as excess provision written back in its profit and loss account. The assessee offered the same as income in the return of income and did not object to the same at the time of assessment proceedings and hence there was no occasion for the Id AO to discuss about the same in the assessment order. The RBI objected to this accounting treatment and stated it is wrong accounting and distorts truth by presenting a wrong picture of profit. It was stated that the reserve being accumulated past profit, can be turned into share capital by issuing bonus shares or can be used for distribution as

dividend. To treat the past profit transferred to reserve as current profit is wrong accounting. The fact of wrong accounting by the assessee was accepted before the RBI by the assessee and also before the Id CITA. Accordingly, it was pleaded that the Id AO ought to have eliminated it from the profit and loss account at the very outset of the computation as no assessment can be based on unreal income. The fact that the RBI specifies a particular item in the profit and loss account to be incorrect means that the same is liable to be corrected for proper income and asset-liability recognition.

5.2. The Id CITA gave relief to the assessee by observing as under:-

“1.2. The submissions of the Appellant and the case laws relied upon in support of the same have been considered. In respect of the above grounds taken by the Appellant it is seen that the amount of Rs. 1,00,00,000/- has been written back on account of excess provisions made under the head “NPA Reserve Account” in the earlier year. It is seen that although the claim for allowing this amount has been made for the first time in appeal, the Appellant has given justification for making the claim in Appeal. In view of the decisions in Goetze (India) Ltd. vs. CIT, 284 ITR 323 and NTPC Ltd. vs. CIT of the Hon'ble Supreme Court it is clear that the Appellate authority can consider the claim not made in Assessment proceedings, and raised only in Appeal can be considered. Therefore, the claim which has been made subsequent to the Assessment proceedings, on the grounds that the Reserve and subsequently credited in the profit and loss account was not income of the current year is being considered on merit. It is seen that though the amount in question has been taken and shown as income in profit and loss account of the current year it was an amount transferred out of Reserve of Profit of earlier year. This transfer of the amount from Reserve and shown as current profit therefore cannot be considered as income even though the same had been reflected in the profit and loss account by the Appellant. An amount cannot be considered as income merely because the same is being treated as profit merely because an entry had been made in the Accounts of an assessee. It is clear from the narrative of the profit and loss account that an amount had been credited in the profit and loss account out of the Reserve for NPA Account i.e. provision written back. The amount was therefore not in the nature of current profit but taken from the Reserve for NPA which had been credited in the earlier year. Therefore, any amount transferred to the Reserve Account in earlier years cannot be taken as current year's profit. Further that if any income does not result at all, there cannot be any tax and that if an income has not materialized, then merely an entry made about of hypothetical income by following Book-keeping method, the liability to tax cannot be attracted. This view has been upheld in the case of CIT vs. Godhra Electricity Co. 225 ITR 746 (S C). Therefore, it is held that this amount cannot be considered as income in the current year merely because such an entry had been made in the Account. The taxability of such an amount is determined by its basic nature which is to be seen and not how the amount has been treated in the Accounts. It is clear from the facts that the amount was only transferred from NPA Reserve Account in the current year and was not in any way in the

nature of income of the Appellant in the current year. Therefore, the AO is directed to allow this claim of the Appellant, these Grounds of appeal are accordingly allowed.”

5.3. Aggrieved, the revenue is in appeal before us on the following grounds:-

1. *That on the facts and circumstances of the case the Ld. CIT(A)-XXX, Kolkata erred in directing not to treat the excess provision written back amounting to Rs. 1,00,00,000/- under the head ‘Reserve for NPA Account’ as income.*
2. *That without taking into account the details of creation of ‘Reserve for NPA Account’ the Ld. CIT(A)-XXX, Kolkata erred in directing not to treat the excess provision written back amounting to Rs. 1,00,00,000/- under the head ‘Reserve for NPA Account’ as income.*
3. *That the order of Ld. CIT(A)-XXX, Kolkata is contrary to law and facts of the case.*
4. *That the appellant craves leave to add, alter and/or amend, modify, substitute, all or any of the grounds of appeal during the course of hearing.*

5.4. We have heard the rival submissions. We find that the assessee had created ‘Reserve for NPA’ out of its profit and loss appropriation account (i.e below the line item) in the past upto 31.3.2001 and had subsequently written back the same into profit and loss account as excess provision written back commencing from 31.3.2003 to 31.3.2008 as under:-

Opening Credit Balance in Provision for NPA A/c as on 1.4.99	59500893
Add: Provision for NPA created in FY 99-00 by debit to profit and loss account but no deduction claimed & allowed in AY 2000-01	<u>64918588</u>
Balance as on 31.3.2000	124419481
Add: Provision for NPA created in FY 00-01 by debit to profit and Loss account but no deduction claimed & allowed in AY 2001-02	<u>1200000</u>

Balance as on 31.3.2001	125619481
Add: Provision for NPA in FY 01-02	0
Balance as on 31.3.2002	<u>125619481</u>
Less: Provision for NPA written back in P&L A/c for FY 2002-03	83315118
Balance as on 31.3.2003	<u>42304363</u>
Less: Provision for NPA written back in P&L A/c for FY 2003-04	2481302
Balance as on 31.3.2004	<u>39823061</u>
Less: Provision for NPA written back in P&L A/c for FY 2004-05	6200387
Balance as on 31.3.2005	<u>33622674</u>
Less: Provision for NPA written back in P&L A/c for FY 2005-06	0
Balance as on 31.3.2006	<u>33622674</u>
Less: Provision for NPA written back in P&L A/c for FY 2006-07	8004000
Balance as on 31.3.2007	<u>25618674</u>
Less: Provision for NPA written back in P&L A/c for FY 2007-08	10000000
Balance as on 31.3.2008	<u>15618674</u>

From the above table, it is evident that when the reserve for NPA is created out of profit and loss appropriation account in the past, the assessee had not claimed the same as deduction in the past i.e Asst Years 2000-01 & 2001-02. When the said reserve for NPA is withdrawn as no longer required and credited to profit and loss account, the same would not take the character of income as it would also be credited only in profit and loss appropriation account. We find that the RBI had considered the accounting error committed by the assessee in as much as the assessee had credited the amount

withdrawn from 'Reserve for NPA' to profit and loss account (i.e above the line) instead of profit and loss appropriation account. It was stated that similar write back of 'reserve for NPA' to profit and loss account had not been treated as income in the hands of the assessee in Asst Years 2003-04, 2004-05, 2005-06 and 2006-07. We hold that merely because the assessee erroneously had credited this sum of Rs 1,00,00,000/- in its profit and loss account, the same would not assume the character of income u/s 4 of the Act for consequential taxation thereon. In any case, the same is not emanating out of current year profit . It only represents accumulated profits of the past written back to profit and loss account of the year. We hold that these facts had been duly appreciated by the Id CITA in making the aforesaid observations and accordingly do not find any infirmity in his order. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, the appeal of the assessee is allowed for statistical purposes and appeal of the revenue is dismissed.

Order pronounced in the Court on 28.03.2018

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 28.03.2018

SB, Sr. PS

