

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A.T. VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1642/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

ACIT, Circle-40, Kolkata	Vs.	The West Bengal State Co-operative Bank Ltd.
2 nd Floor, 3, Govt. Place(W), Kolkata – 1.		24A, Waterloo Street, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAAAT 7072 N		
(Appellant)	..	(Respondent)

Appellant by :Shri A. K. Tiwari, CIT-DR

Respondent by:Shri N. C. Mondal, FCA

सुनवाईकीतारीख/ **Date of Hearing** : **18/01/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **28/03/2018**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2011-12, is directed against an order passed by the Commissioner of Income Tax(Appeals)-12, Kolkata,in Appeal No.472/CIT(A)-12/Kol/Cir-40/2014-15, dated 16.05.2016, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 18.03.2014.

2. The grounds of appeal raised by the Revenue reads as under:

"1.On the facts and in circumstances of the case, the CIT(A) has erred in holding that the assessee was eligible for deduction under section 36(1)(viiia) of the Act, without proper appreciation of the facts of the case on this issue." "on the facts and in circumstances of the case, CIT(A) has erred in holding that the amount of deduction was within the limit prescribed u/s.36(1)(viiia) of the Act, 1961 without giving Assessing Officer an opportunity under remand, which is in contravention of the provisions of Rule 46A of the I.T. Rules, 1962."

3.The facts apropos this issue are that the assessee filed its return of income for assessment year 2011-12 on 23.09.2011 and filed revised return on 07.10.2011 declaring a total income of Rs.20,23,17,989/-. The assessee's case was selected for scrutiny and the Assessing Officer completed assessment u/s 143(3) after making addition on account of provisions for bad debts against Non-Performing Assets(NPA) at Rs.5,00,47,813/-. During assessment proceedings, the Assessing Officer observed that assessee bank has debited an amount of Rs.15,29,14,046/- in the Profit & Loss Account under the head 'other expenses'. Schedule 19, which forms a part of the tax audit report, quantifies the nature and sub-heads of the expenses and from this Schedule it was noted by AO that bad debt of Rs.5,00,47,813/- had been debited. During the assessment proceedings, the assessee was asked to furnish comprehensive details along with nature of such payments. In response, the assessee submitted before the Assessing Officer that assessee had made a provision for bad debt against NPA and as bank is scheduled by the RBI in Sl. No.250 of the list of Schedule Banks and the same is admissible deduction u/s 36(1)(vii) of the Act. The assessee is in the business of banking having 47 branches in different places. The Assessing Officer observed that no list of non-performing assets has been furnished by the assessee bank. Therefore, he disallowed the amount of bad debts to the tune of Rs.5,00,47,813/-.

4. Aggrieved by the addition made by the Assessing Officer, the assessee filed an appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer. Not being satisfied with the order of the Id. CIT(A), the Revenue is in appeal before us. The Id. DR for the Revenue has submitted before us that on the facts and circumstances of the case, the Id. CIT(A) has erred in holding that the amount of deduction was within the limit prescribed u/s 36(1)(vii) of the Act and without giving an opportunity to the Assessing Officer on this issue. Moreover, the Id. CIT(A) has not taken any remand report for the Assessing Officer and accepted the fresh evidence in contravention of the provisions of Rule 46A of the I.T. Rule, 1962.

5. On the other hand, the Id. Counsel for the assessee has submitted before us that during the assessment proceedings, the assessee bank has submitted the Xerox copy of General Ledger of provision for bad debts against NPA vide its letter dated 03.03.2014. The Counsel pointed out that since the assessee has submitted general ledger of provision for bad debts against NPA to the Assessing Officer during the assessment proceedings by its letter dated 03.03.2014, therefore, it is not a fresh evidence before the Id. CIT(A). However, the Id. Counsel for the assessee has agreed that assessee bank did not submit the list of entire bad debts against NPA, that is, the list of non-performing assets were not furnished before the Assessing Officer item wise. The Id. Counsel for the assessee has also agreed that this issue may be examined by the Assessing Officer afresh.

6. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that assessee has fairly agreed before the Bench that the list of provisions for bad debts against NPA, item-wise were not furnished before the Assessing Officer. During the assessment proceedings, only general ledger account of provisions for bad debts against NPA was furnished which does not contain item-wise list of non-performing assets.

We note that the Id. CIT(A) observed that assessee is a scheduled bank and is entitled for deduction u/s 36(1)(vii) of the I. T. Act, 1961. It was also found from the record that the assessee has submitted 9 rural branches including last published census and calculations showing deduction available to the assessee u/s 36(1)(vii) of the Act and assessee's claim of Rs.5,00,47,813/- was within the limit prescribed u/s 36(1)(vii) of the Act. Therefore, the Id. CIT(A) allowed the claim of the assessee on account of provisions for bad debts against NPA at Rs. 5,00,47,813/-. We note that Id CIT(A) has neither examined item-wise list of NPA nor he has given an opportunity to the assessing officer to examine the same. The Id CIT(A) allowed the claim of the assessee based on ledger account submitted by the assessee bank, which is not sufficient.

Therefore, we are of the view that this issue requires a fresh examination at the end of the Assessing Officer and we note that the Id. DR for the Revenue and Id Counsel for the assessee, both have agreed that the said issue is to be examined by the assessing officer. Accordingly, we set aside the order of Id CIT(A) and remit the matter back to the file of Assessing Officer to examine the list of NPA item-wise. We also direct the assessee-bank to submit list of NPA item wise before the Assessing Officer to substantiate the amount of claim. However, the assessee requested the Bench that the list of provisions for bad debts against NPA is more than 1,000 pages, therefore, assessee-bank may be permitted to file the list of provisions for bad debt against NPA item-wise in soft copy format i.e. in pen drive or CD drive. We agree with the contention of the assessee that due to voluminous accounts in the provisions for bad debts against NPA it is preferably to submit to the Assessing Officer the detail of the same in the form of pen drive/CD drive, in soft copy format. However, if the AO desires to examine any specific documents among the soft copy provided by the assessee, then he is at liberty to do so, in accordance with law. We direct the Assessing Officer to examine the claim of the assessee for provisions of bad debts against NPA and adjudicate the issue in accordance with law.

7.In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order is pronounced in the open court on 28.03.2018.

Sd/-
(A.T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Dated 28/03/2018

[RS SPS]

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant –ACIT, Circle-40, Kolkata
2. प्रत्यर्थी/ The Respondent-The West Bengal State Co-operative Bank Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.