

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.125 & 2846/PUN/2016
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

ACIT, Circle-3,
Aurangabad

.... अपीलार्थी/Appellant

Vs.

Vaidyanath Urban Cooperative Bank
Ltd.,
Head Office, Parli Vajinath,
Dist. Beed - 431 515
PAN : AAAAV0305N

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Anil Kumar Chaware
प्रत्यर्थी की ओर से / Respondent by : Shri S.N. Puranik

सुनवाई की तारीख / Date of Hearing : 20.03.2018	घोषणा की तारीख / Date of Pronouncement: 23.03.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 2 appeals filed by the Revenue under consideration. They are filed against the orders of CIT(A)-2, Aurangabad dated 05-11-2015 and 21-10-2016 for the A.Yrs 2011-12 and 2012-13 respectively. The grounds raised by the Revenue are identical and therefore, they are clubbed together and adjudicated in this composite order.

We shall first take up the appeal for A.Y. 2011-12.

ITA No.125/PUN/2016
A.Y. 2011-12

2. **Request for condonation of delay of 17 days** : At the outset, in connection with the delay of 17 days in filing the appeal, Ld. DR for the Revenue referred to the letter issued by ACIT, Circle-3, Aurangabad dated 15-03-2018 intimating that there is clerical mistake in mentioning the date

of receipt of order as 09-11-2015 instead of 30-11-2015. Otherwise, the limitation period expires on 28-1-2016 whereas the appeal has been filed on 25-01-2016. Therefore, Ld. DR submitted that the appeal has been filed in time.

3. After hearing the parties and considering the reasonable cause of mentioning the date of receipt of order, we admit the appeal filed by the Revenue for adjudication.

4. Ground raised by the Revenue reads as under :

“1. On the facts and circumstances of the case, the Ld.CIT(A)-2, Aurangabad erred in deleting the addition made by disallowing the depreciation and losses on account of merger of Sinhagad Co-op. Bank Sanjivani Cooperative Bank amounting to Rs.66,03,000/-.

5. Briefly stated relevant facts are that the assessee is a Cooperative Society and engaged in the banking activities. Assessee filed the return of income on 30-09-2011 declaring total income of Rs.6.35 crores (rounded off). Subsequently, the assessee filed revised return on 31-03-2013 declaring total income of Rs.7.05 crores (rounded off). At the end of the assessment proceedings u/s.143(3) of the Act, the assessed income is determined at Rs.11,81,70,030/-. AO made addition of Rs.4,76,32,334/- on account of interest accrued on NPA as per the discussion given in Para No.4 of the assessment order. On this issue, the CIT(A) granted relief to the assessee relying on the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Deogiri Nagari Sahakari Bank Limited, Aurangabad vide ITA No.53/2014 and others. Revenue has not raised any ground on this relief granted by the CIT(A).

6. During the assessment proceedings, another issue came up for scrutiny of the AO relates to claim of deduction of expenditure incurred on account of merger of two banks. Rs.16.17,000/- is the expenditure

incurred in connection with merger of **Sinhgad Sahakari Bank Ltd.** Similarly, Rs.49,86,000/- is the expenditure incurred in connection with merger of **Sanjivani Urban Co.op Bank.** The total expenditure on merger of both the banks works out to Rs.66,03,000/- being an amount of depreciation on intangible assets and goodwill acquired by the assessee in the said merger process of two banks. Although the claim of deduction was made in the original return of income the same was withdrawn while filing the revised return of income. However, during the assessment proceedings, assessee repeated the said claim of deduction and submitted for allowing of the same. AO did not allow this claim and he relied on his decision for the A.Y. 2010-11 in the assessee's own case. It is the case of the AO that the loss of the said banks were not eligible since they did not file their return of income in time. Similar claim was made in earlier assessment year A.Y. 2009-10 also and thus the Department is consistently rejecting the claim of such losses. Eventually, the loss of Rs.66,3,000/- was not allowed.

7. During the First Appellate proceedings, on this issue of disallowance of claim of Rs.66,03,000/- the CIT(A) granted relief relying on the decision of Pune Bench of the Tribunal in the case of **The Cosmos Co.op Bank Ltd. Vs. DCIT** – ITA Nos. 460 & 461/PN/2012 dated 23-01-2014, dated 23-01-2014 for the A.Yrs. 2007-08 and 2008-09. It is the decision of the Tribunal that the claim of the assessee in respect of excess of liabilities over the assets of merged banks constitutes an allowable deduction. The CIT(A) extracted the relevant para No.14 and 15 of the said order of Tribunal as per the discussion given in Para No.8 to 10 of his order.

8. Aggrieved with the order of CIT(A) the Revenue is in appeal before us with the ground extracted above.

9. Ld. DR for the Revenue relied on the order of the AO dutifully.

10. Before us, Ld. Counsel for the assessee brought our attention to the facts and submitted that the claim of expenditure/loss of Rs.66,03,000/- was relatable to the merger of Sinhgad Sahakari Bank Ltd. and Sanjivani Urban Co.op Bank. This amount constitutes excess liabilities over the assets of the banks. On Similar facts, the Pune Bench of the Tribunal in the case of The Cosmos Co-op. Bank Ltd. Vs. DCIT (supra) has allowed the claim of the assessee. Therefore, Ld. Counsel prayed for confirming the order of CIT(A).

11. We heard both the parties on the limited issue relating to the depreciation and losses on account of merger of Sinhgad Co-op Bank and Sanjivani Co-op. Bank. We have also perused the orders of the Revenue and the decisions relied on by both the parties on this issue. We find the CIT(A) has dealt with an identical issue in the case of The Cosmos Co-op Bank Ltd. Vs. DCIT (supra) and deleted the addition. For the sake of completeness, we proceed to extract the operational Para Nos. 8 to 10 as follows :

“8. Ground Nos.3 & 4 are concerned with the disallowance of Rs.66,03,000/- being the deduction of expenditure incurred on account of merger of Sinhgad Bank (Rs.16,17,000/-) and Sanjivani Urban Co-op. Bank (Rs.49,86,000/-) being the amount of depreciation on intangible asset and goodwill acquired by merger of the above two banks with the assessee bank. Alternatively, the assessee has claimed that the above amount may be allowed as deferred revenue expenditure being 1/5th of the total expenditure on account of excess of liability over assets on merger of the above mentioned two bank with the assessee bank. It was prayed that the same may be allowed as a regular banking business expenditure, which is allowable under the Income Tax Act.

9. During the F.Y.2007-08, the assessee has taken over Sinhgad Sahakari Bank Limited, Pathri. The value of all business liabilities over the assets of this bank was Rs.80,80,936/-. Similarly in the F.Y. 2008-09, the assessee bank had taken over Sanjivani Urban Co-op. Bank Limited. The value of liability over assets was Rs.2,49,30,268/-. Both the mergers were approved by the RBI as well as Co-operative Department of Maharashtra Government. The assessee submitted that the difference paid by the assessee being the excess of liabilities over assets represents payment of acquisition of commercial rights of similar nature which is liable to be construed as an intangible assets contemplated u/s.32(1)(ii) of the Act. The assessee also drew my attention to the decision of the Hon’ble ITAT Pune Bench, Pune, in the case of Cosmos Co-op. Bank Ltd., in ITA Nos. 460 & 461/PN/2012 for the A.Y. 2007-08 and 2008-09, wherein the claim of the assessee in respect of excess of liabilities over assets of the merged banks was allowed. The assessee had claimed that this excess amount paid

represented acquisition of an intangible assets as contemplated under section 32(1)(ii) of the Act, on which depreciation would be allowable. This claim was allowed by the Hon'ble Tribunal in the following words :

14. In the aforesaid light, factually speaking, in the present case, it can be seen that the assessee by acquiring the four co-operative banks has acquired existing running banking businesses complete with the required statutory licenses, operational bank branches, customers base as also the employees, besides other assets. The plea of the Revenue is that the difference paid by A.Ys. 2007-08 & 2008-09 the assessee in excess of liabilities over the realizable values of the assets taken-over does not represent payment for any business or commercial rights is untenable. In-fact, the impugned sum reflects the amount paid by the assessee over and above the net worth of the banks which have been taken-over, which ostensibly is a reflection of the value of the aforesaid intangible advantages obtained by the assessee. Such advantages are to be considered in the nature of "business or commercial rights of similar nature" specified in section 32(1)(ii) of the Act, having regard to the parity of reasoning laid down by the Hon'ble Delhi High Court in the case of Areva T & D India Ltd. & Ors. (supra). In the case of SKS Micro Finance Ltd. (supra), assessee acquired a running business under a slump sale agreement and the consideration paid included, sum paid for acquiring the client base of the transferor. The acquisition of rights over the assets of the transferor, inclusive of its customers base was held to be an 'intangible asset' being 'business or commercial rights of similar nature' contemplated in section 32(1)(ii) of the Act and was held eligible for depreciation. Following the aforesaid discussion, in the present case, the business advantages detailed earlier, are liable to be considered as an intangible asset, being 'business or commercial rights of similar nature' contemplated u/s 32(1)(ii) of the Act. In our considered opinion, the plea of the assessee for allowance of depreciation in terms of section 32(1)(ii) of the Act cannot be faulted either in law or on facts.

15. The other objection of the CIT(A) to the effect that the amalgamation in question is not by way of purchase but is an amalgamation by merger, in our view, is no ground to deny the claim of the assessee, which is otherwise well- founded. Therefore, having regard to the aforesaid discussion, in our view, on facts and in law the assessee is entitled for depreciation on the impugned sum for acquisition of business of commercial rights contemplated in section 32(1)(ii) of the Act. Thus, on the Ground of Appeal No.3, assessee succeeds.

10. Respectfully following the above decision given in the case of Cosmos Bank, I hold that the acquisition of right over the assets of the transferor inclusive of its customer base and the required statutory licenses operational branches etc. is an "intangible asset" being "business or commercial right of similar nature" contemplated in section 32(1)(ii) of the Act, which is eligible for depreciation. Hence, the assessee succeeds on this ground also. Since Ground No.3 is decided in favour of the assessee, Ground No.4 does not require adjudication."

From the above, it is evident that the CIT(A) has relied dutifully on the decision of Coordinate Bench of the Tribunal in the case of The Cosmos Co-op Bank Ltd. Vs. DCIT (supra). In our view, the order of the CIT(A) is fair and reasonable and it does not call for any interference. Accordingly, the grounds raised by the Revenue are dismissed.

12. In the result, appeal of the Revenue is dismissed.

ITA No.2846/PUN/2016
A.Y. 2012-13

13. It was brought to our notice that the submissions made by the parties are identical to the one already adjudicated by us in connection with appeal ITA No.125/PUN/2016 for the A.Y. 2011-12.

14. After hearing both the sides, we find, in that appeal, the issue raised by the Revenue is settled one in favour of the assessee and dismissed the grounds raised by the Revenue. Therefore, we find no reason to deviate from the same for this assessment year also. Accordingly, we dismiss the grounds raised by the Revenue for the A.Y. 2012-13.

15. In the result, appeal of the Revenue is dismissed.

16. To sum up, both the appeals of the Revenue are dismissed.

Order pronounced on this 23rd day of March, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 23rd March, 2018.
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Aurangabad
4. आयकर आयुक्त / The CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" /
DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune