

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2729/MUM/2015
Assessment Year: 2010-11**

Kokan Mercantile Coop. Bank Ltd. Harbour Crest, Mazagaon T.T. Mumbai- 400010.	Vs.	Dy. CIT-Range-20(2) Piramal Chambers, Lalbaug, Mumbai- 400012.
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PAN No. AAAAK2527P
Appellant

Respondent

Assessee by	: None
Revenue by	: Mr. Anoop Hiwase, DR

Date of Hearing	: 10/05/2018
Date of pronouncement	: 16/05/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-32, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 07.05.2018 and 10.05.2018, neither the assessee nor its authorized representative appeared on the above dates. Thus we are proceeding to dispose of this appeal after going through the relevant record and hearing the Ld. DR.

2. The effective grounds of appeal filed by the assessee read as under:

1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in approving the action of the AO in disallowing an amount of Rs.1,00,000/- by invoking the provisions of section 14A read with Rule 8D I.T. Rules, 1962.
2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in not accepting and dismissing the ground of appeal pertaining to "investment depreciation reserve" claim amounting to Rs.1,17,00,000/-.

3. We begin with the 1st ground of appeal. During the course of assessment proceedings, the Assessing Officer (AO) noticed that the assessee had received dividend income from UTI Master Value Fund of Rs.14,01,050/-, but no expenditure had been stated as having been incurred in relation to this income, which is not includible in the total income. Accordingly, the AO requested the assessee to file the details and also a note on section 14A r.w. Rule 8D. The assessee submitted before the AO that the investments were specifically on UTI Master Value Fund of Rs.2,00,00,000/- and it was stated that since dividend was received on this specific investment, 0.5% of total investment should not be taken and it was contested that even this investment should not be taken for such disallowance. However, the AO was not convinced with the above explanation of the assessee and estimated disallowance @ 0.5% on Rs.2,00,00,000/- u/s 14A r.w. Rule 8D and the same comes to Rs.1,00,000/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) relying on the decision in *Godrej*

& *Boyce Mfg. Co. Ltd.* (2010) 328 ITR 81 (Bom) confirmed the disallowance of Rs.1,00,000/- made by the AO.

5. Before us, the Ld. DR relies on the order passed by the Ld. CIT(A).

6. We have heard the Ld. DR and perused the relevant materials on record. In *Godrej & Boyce Mfg. Co. Ltd.* (supra), the Hon'ble Bombay High Court has explained Rule 8D as under :

“As regard Rule 8D(2)(iii), it had been submitted that some mechanism or formula had to be adopted for attributing part of the administrative / managerial expenses to tax-exempt investment income. The administrative expenses attributable to tax-free investment income have a fixed component and a variable component. A view was taken that the disallowance should also be linked to the value of the investment rather than the amount of exempt income. Under Portfolio Management Schemes (PMS), the fee charged ranges between 2 and 2.5 per cent of the portfolio value which would be inclusive of a profit element for the portfolio manager.

While the fixed administrative expenses were excluded on the ground that in the case of a large corporate taxpayer they would be spread over a large number of voluminous activities, the variable expenses were computed at one-half per cent of the value of the investment.”

6.1 In view of the above position of law, we confirm the disallowance of Rs.1,00,000/- made by the AO u/s 14A r.w. Rule 8D. Thus the 1st ground of appeal is dismissed.

7. Now we turn to the 2nd ground of appeal. The Ld. CIT(A) observed that the claim of ‘Investment Depreciation Reserve’ of Rs.50,00,000/- had been raised for the first time before him and it was

not taken up before the AO. The assessee had contended that the claim of this deduction was made before the AO vide letter dated 15.11.2011 during the assessment proceedings. However, the Ld. CIT(A) found that in the said letter, the assessee had not given any written submission on the above issue. Therefore, the Ld. CIT(A) dismissed the additional ground filed by the assessee in respect of 'Investment Depreciation Reserve'.

The Ld. CIT(A) further held that premium on investment amortized of Rs.1,28,03,000/- is to be allowed, since the bank had to purchase the government securities to maintain the SLR as per RBI guidelines and as per CBDT Instruction No. 17 dated 26.11.2008, the premium should be amortized over the period remaining to maturity.

However, the Ld. CIT(A) held that the 'Investment Depreciation Reserve' claimed of Rs.1,17,00,000/- cannot be allowed, since said claim did not seem to have been raised before the AO during the assessment proceedings.

8. We have heard the Ld. DR and perused the relevant materials on record. We find that similar arose before the ITAT 'A' Bench Mumbai in assessee's own case for the AY 2009-10 (ITA No. 979/Mum/2014). The Tribunal held as under:

"22. We shall now take up the contention of the assessee that the CIT(A) had erred in not accepting and dismissing the ground of appeal pertaining to "Investment Depreciation Reserve" claim of the assessee amounting to Rs. 50,00,000/-. We find that the CIT(A) observed that the aforesaid claim of deduction of Rs 50,00,000/- on account of investment depreciation reserve was raised by the assessee for the first time before him, and was not taken up before the A.O at all. We further find that the claim of the

assessee that it had raised the aforesaid issue in its letter dated 15.11.2011 was disproved by the CIT(A), who on a perusal of the aforesaid letter observed that no such claim was raised by the assessee before the A.O. We further find that notwithstanding the aforesaid facts, the CIT(A) observed that as even during the course of hearing of the appeal as the assessee had neither given any written submissions, nor furnished the details regarding the nature of such deduction and the basis of allowability of the same, therefore, the validity of the said claim of deduction having not been established by the assessee could not be ascertained, therefore, had for the said reason declined to accept the claim of the assessee in respect of deduction of Rs. 50,00,000/- on account of the investment depreciation reserves. Be that as it may, we find that the assessee had submitted before us that the issue under consideration is squarely covered by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bank of Baroda (2003) 262 ITR 334 (Bom), wherein as averred by the Ld. A.R. the Hon'ble High Court by upholding the order of the Tribunal had concluded that the assessee was entitled to deduction on account of depreciation in the value of the investments. We are of the considered view that as the assessee had not raised this claim before the lower authorities, nor the facts pertaining to the same emerges from the record, therefore, in all fairness we restore this matter to the file of the A.O for fresh adjudication. The A.O is directed to readjudicate the issue after deliberating on the facts involved in the case of the assessee, in the backdrop of the aforesaid judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bank of Baroda (2003) 262 ITR 334 (Bom). Needless to say, the A.O shall during the course of the set aside proceedings afford reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate his aforesaid claim before the A.O. The Ground of Appeal No. 2 raised by the assessee is allowed for statistical purposes."

8.1 Facts being identical, we set aside the order of the Ld. CIT(A) on the above issue and direct the AO to make a fresh assessment in the

light of the above order of the Tribunal, after giving reasonable opportunity of being heard to the assessee. Thus the 2nd ground of appeal is allowed for statistical purposes.

9. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 16/05/2018.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 16/05/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai