

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 272/JP/2018
निर्धारण वर्ष/Assessment Year: 2014-15

Baroda Rajasthan Kshetriya Gramin Bank Plot No. 2343,2 nd Floor, Vaishali Nagar, Ajmer	बनाम Vs.	The DCIT Circle - 1 Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAJB 1164 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Ajay Somani, CA
राजस्व की ओर से / Revenue by: Shri Varinder Mehta, CIT - DR

सुनवाई की तारीख / Date of Hearing : 15/03/2018
घोषणा की तारीख / Date of Pronouncement : 17/05/2018

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id.
CIT(A), Ajmer dated 03-01-2018 for the Assessment Year 2014-15
raising therein grounds of appeal as under:-

1. That the Id. CIT(A)'s order of upholding the conversion of the case from Limited Scrutiny to Complete Scrutiny which is bad in law as no additions have been made regarding the 'Limited Scrutiny' through CASS. The assessment proceeding and order passed by AO is devoid of jurisdiction and void ab initio.
2. That the Id. CIT(A) has Ajmer has erred in law and the facts in confirming the additions/disallowances and enhancement totaling to

Rs. 40,70,85,297/- (36,90,95,944+3,80,89,353/-) the same needs to be deleted.

I. That the disallowance of provision for Bad and Doubtful debts of Rs. 2,71,72,000/- is bad in law as the appellant is Scheduled Bank governed by RBI Guidelines and provisions made are allowable business expenditures under section 36(1)(viii) of Income Tax Act, 1961 as held by ITAT Jodhpur (ITA No. 240/Jodh/2013 dated 29-11-2013) in Nagaur Urbanj Cooperative Bank Ltd vs ACIT, Nagaur. Total Income was Rs. 128.50 Crores whereas provision is only 2.71 crores.

II. That the disallowance of Insurance Premium paid to LIC and others regarding leave encashment liability, Rs. 34,19,23,944/- (Rs. 35,19,00,000/- less Rs. 99,76,056/-) is unlawful as the expenditure is allowable under section 36/37. Hon'ble High Court, Uttarakhand in ITA No.39 of 2009 CIT vs M/s. The Nainital Bank Ltd and Hon'ble ITAT Delhi in Hero Motor Corporation Ltd vs Id. CIT (2013) 60 SDT d25 (Delhi) has allowed similar contribution to LIC as deductible expenditure.

3. That the Id. CIT(A), Ajmer has erred in law and the facts of the case in enhancement of income by an income of Rs. 3,80,89,353/- treating the same as an interest income of the appellant. The same has neither been received nor accrued to the appellant.

2.1 Apropos Ground No. 1 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“6.2 I have gone through the assessment order , statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. After going through the remand report dated 25-10-2017 alongwith the enclosures, I am convinced that approval to convert the case of the appellant from “limited scrutiny” to “complete scrutiny” was granted by the Pr. CIT, Ajmer vide letter No. Pr.CIT/AJM/ITO(Tech)/16-17/2022 dated 30-11-2017. Therefore, I find no merit in the ground raised by the appellant. Accordingly, this ground is dismissed.

2.2 We have heard the rival contentions and perused the materials available on record. We have also taken into consideration the written submission of the assessee but we did not find it controverting the decision of Id. CIT(A) on the issue of converting the case of the assessee from “limited scrutiny” to “complete scrutiny”. It is noted that the Id. CIT(A) has explicitly dealt with the issue in his order which does not require any interference. Hence, the Ground No. 1 of the assessee is dismissed.

3.1 Apropos Ground No. 2 (1) of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“8.3 I have gone through the assessment order, statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. This issue has already been decided by me against the appellant vide order dated 15-10-2015 (Appeal No.328/2014-15, A.Y. 2012-13). The ITAT Jodhpur Bench in the case of Rajasthan Marudhar Gramin Bank vs Pr. CIT -1, Jodhpur (ITA No.143/Jodh/2015, A.Y. 2010-11 order dated 15-09-2017) has also decided the issue against the assessee. Therefore, following my decision given in the case of appellant for A.Y. 2012-13 and the order of the ITAT Jodhpur Bench in the case of Rajasthan Marudhar Gramin Bank vs Pr. CIT-1, Jodhpur referred above, this ground of appeal is dismissed.”

3.2 During the course of hearing, the Id.AR of the assessee prayed that the disallowance of provision for bad and doubtful debts is bad in law as

the appellant bank is schedule bank governed by RBI Guidelines and provisions made are allowable business expenditures u/s 1961 as held by ITAT Jodhpur Bench (ITA No.240/Jodh/2013 dated 29-11-2013) in Nagaur Urban Cooperative Bank Ltd. vs ACIT, Nagaur. Total income was Rs. 128.50 crores whereas provision is only 2.71 crores. The ld.AR of the assessee submitted that bank advanced totaled to Rs. 6169 crores. The provision for bad and doubtful debts made as per RBI guidelines Rs. 22.86 crores (including Rs. 2.71 crores on standard assets. The ld.AR of the assessee further submitted that the deduction claimed is in conformity with the Instruction No. 17/2008 dated 26-11-2008 of CBDT (PB Page 41) which in para (iii) lays down that:-

“(iii) Section 36(2)(viii) (a) of the Act provides that in respect of any provision for bad and doubtful debts to the type referred to in that sub-clause made by a bank, an amount not exceeding 5 percent upto 31st March 2003 and thereafter 7.5 percent of the total income (computed before making any deduction under this clause and Chapter VIA of the Act) and an amount not exceeding 10 percent of the aggregate average advances made by ‘rural branches’ of such banks computed in the manner prescribed under the Income Tax Rules, 1962 shall be allowed as deduction.’”

The ld.AR of the assessee during the course of relied on the order ITAT Jodhpur Bench (ITA No.240/Jodh/2013 A.Y. 2009-10 dated 29-11-2013)

in the case of Nagaur Urban Cooperative Bank Ltd vs ACIT, Circle – Nagaur wherein the appeal of the appellant bank has been allowed on this issue by the ITAT, Jodhpur Bench by observing as under:-

“10 After circumspecting the entire records vis-à-vis the oral submissions, we are of the considered opinion that ground no. 2 stands covered in favour of the assessee vide order of ITAT, Chennai Bench as discussed in the above excerpt. We have gone through the copy of the Tribunal Order referred above and are convinced that this ground stands covered in favour of the assessee. The relevant portion of the order of the Tribunal (supra) is reproduced as under:-

“8. *Now the second question which arises for determination before us is whether the assessee has created any reserve/provision for bad and doubtful debts?*

The AR has contended that the assessee has created provision for bad and doubtful debts under nomenclature ‘Reserve for NPA’. The terminology ‘Reserve for NPA’ has been used by the assessee in accordance with the RBI directions. As is evident from the assessment order, the assessee has indeed created ‘Reserve for NPA’. For claiming benefit under the provisions of Section 36(1)(vii)(a) the condition to be satisfied is: that provision for bad and doubtful debts should have been made by the bank eligible to claim such deduction. Cooperative Banks do not strictly follow the provisions of Banking Regulation Act for the purpose of maintaining their Books of Accounts. In our considered opinion, the assessee has created provision for bad and doubtful debts may be under different nomenclature. This will not dis-entitle the assessee for claiming deduction under the provision of

Section 36(1)(viia)(a). The purpose for creation of reserve for NPA is same i.e. creating provision towards bad and doubtful debts.

In view of the above, we find that the assessment order dated 09-09-2010 is neither erroneous nor prejudicial to the interest of the Revenue. The impugned order of CIT u/s 263 is set aside and the appeal of the assessee is allowed.’’

11. Therefore, by respectfully following the ratio decidendi of the above Tribunal Order, we allow Ground No. (2) of this appeal in favour of the assessee. These provisions which are in line with the RBI guidelines become allowable.’’

3.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.4 We have heard the rival contentions and perused the materials available on record including the written submission of the assessee. It is not imperative to repeat the facts and circumstances of the case as the ld. CIT(A) has elaborately discussed the issue in question. In this ground, the assessee has taken the support of ITAT Jodhpur Bench (supra) wherein similar issue has been decided in favour of Nagaur Urban Cooperative Bank Ltd. Jodhpur(supra). The assessee further submitted the provision for bad doubtful debts made are as per RBI guidelines amounting to Rs. 22.86 crores which includes Rs. 2.71 crores on standard assets. The

deduction claimed is in conformity with the CBDT Instruction No. 17/2008 dated 26-11-2008 (supra). In view of the facts and circumstances of the case, the issue of disallowance for standard asset of Rs. 2.71 crores is restored to the file of the AO to verify as to whether the provision for standard assets has been made as per guidelines of the RBI. If the assessee has complied with the provision as per RBI Guidelines, the relief may be given to the assessee by providing adequate opportunity of being heard to the assessee. Thus Ground No. 2 (I) of the assessee is allowed for Statistical purposes.

4.1 The Ground No. 2 (II) of the assessee is regarding the disallowance of insurance premium paid to LIC and others towards leave encashment liability of Rs. 34,19,23,944/- (Rs. 35,19,00,000 less Rs. 99,76,056). Brief facts of the case are that the AO during the course of assessment proceeding requested the assessee bank to furnish the information relating to the amount of leave encashment and confirm as to whether the amount of leave encashment shown in P&L a/c is actually paid to the employees. If the same is paid to the employees then the assessee bank shall furnish the documentary proof for the same. The assessee bank submitted reply of the above query vide letter No. 18028 dated 29-12-2016 which has

been considered by the AO. However, the AO did not find the assessee bank's reply acceptable on the following grounds:-

(i) It is seen that the assessee bank has been claiming this deduction on the basis of investment made for this purpose with the LIC, Bajaj Allianz, future generali, Aviva, HDFC, India first and Birla. Any payment for leave encashment in future has to be made out of that fund. However, no such deduction is allowable under any of the provisions of the Income Tax Act and deduction if any has to be allowed only on the actual payment made to the employees.

(ii) The contention of the assessee bank was duly considered but was not acceptable for the reason that section 37(1) provides for the allowing of any expenditure laid out or expended wholly and exclusively for the purpose of the business. It does not cover any provision made for the purpose of any future liability.

(iii) The provisions made by the assessee for leave encashment expenses (although the payment has been made to LIC) is not a payment to employees and as such the expenses are not allowable under the provisions of section 43B(f) of the Income Tax Act, 1961. The case of the assessee is clearly hit by the provisions of Section 43B(f) of the Act. As the assessee has not made any payment to employees more particularly in view of the provisions of section 43B(f) of the Act, the deduction in respect of expenses claimed by the assessee on account of provisions for leave encashment is not allowable to the assessee.

(iv) Moreover the assessee has not furnished the documentary proof that the group leave encashment fund is an approved fund by the competent authority.

In view of the above reasons , the provision made for the leave encashment of Rs. 35,19,00,000/-is disallowed and added to the total income of the assessee by the AO.

4.2 In first appeal, the ld. CIT(A) has confirmed the addition of Rs. 34,19,23,944/- by observing as under:-

“4.12.....The appellant has also relied upon the decision of ITAT Jaipur in the case of Jhalawar Kendriya Sahakari Bank. In this case also, the relief was allowed to the appellant on the submission made by the appellant that “after contribution of premium, the appellant has no control over the same”. (page No 9 of the order). The Tribunal also relied upon the decision of Hon'ble Supreme Court in the case of Textool Company Ltd and decision of ITAT Delhi in the case of The Nainital Bank Limited. As I have already discussed above the facts of Textool Compay Limited, on which the decision of The Nainital Bank Limited was based were totally different from the facts of the appellant's case. Therefore, the decision of ITAT Jaipur is also not applicable to the case of the appellant because the appellant has absolute control over the funds parked with these companies and the employees do not have any control over these funds. The other decision relied upon by the appellant are not relevant for deciding the allowability of deduction u/s 43B(f). I have gone through the various decisions relied upon by the appellant carefully. In the decision given by the ITAT Delhi ‘H’ Bench in the case of the Nainital Bank, the amount paid to LIC on account of leave encashment was allowed as deducting relying on the decision of the Supreme Court in the case of CIT vs Textool Company Ltd (262 iktr 257) and the decision in the case of Associated Electrical Industries (India) Pvt. Ltd. I have gone through the decision of the Supreme Court in the case of Textool Company Ltd. carefully. The issue decided by the Hon'ble Supreme Court

in that case was admissibility of deduction of the payment made to LIC towards gratuity fund u/s 36(1)(v) of the I.T. Act, 1961. The issue of allowability of deduction u/s 43(B)(f) of leave encashment was not there before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the claim of the appellant observing as under:-

“Having considered the matter in the light of the background facts, we are of the opinion that there is no merit in the appeal. True that a fiscal statute is to be construed strictly and nothing should be added or subtracted to the language employed in the Section, yet a strict construction of a provision does not rule out the application of the principles of reasonable construction to give effect to the purpose and intention of any particular provision of the Act (See: Shri Sajjan Mills Ltd. vs LD. CIT, M.P. & Anr.(1985) 156 ITR 585). From a bare reading of section 36(1)(v) of the Act, it is manifest that the real intention behind the provision is that the employer should not have any control over the funds of the irrevocable trust created exclusively for the benefit of the employees. In the instant case, it is evident from the findings recorded by the Commissioner and affirmed by the Tribunal that the assessee had absolutely no control over the funds created by the LIC for the benefit of the employees of the assessee and further all the contribution made by the assessee in the said fund ultimately came back to the Textool Employees Gratuity Fund, approved by the Commissioner with effect from the following previous year. Thus the conditions stipulated in Section 36(1)(v) of the Act were satisfied.”

.....

Thus I am of the opinion that even the decision of Associated Electrical India Pvt. Ltd is also not applicable in the case under consideration.

The appellant has also relied upon the decision of ITAT Jaipur in the case of Jhalawar Kendriya Sahakari Bank. In this case also, the relief was allowed to the appellant on the submission made by the appellant that “after contribution of premium, the appellant has no control over the same” (Page No. 9 of the order). The Tribunal also relied upon the decision of Hon'ble Supreme Court in the case of Textool Company Ltd and decision of ITAT Delhi in the case of the Nainital Bank Limited. As I have already discussed above the facts of Textool Company Limited on which the decision of the Nainital Bank Ltd was based were totally different from the facts of the appellant's case.

Therefore, the decision of ITAT Jaipur is also not applicable to the case of the appellant because the appellant has absolute control over the funds parked with these companies and employees do not have any control over these funds. The other decision relied upon by the appellant are not relevant for deciding the allowability of deduction u/s 43B(f)

4.13 It is pertinent to mention that in the A.Y. 2009-10 and 2010-11, the appellant itself had shown the funds parked with LIC and other companies for leave encashment as investment in Schedule II of the Balance Sheet (Rs. 4,35,91,748 and Rs. 5,77,16,828 as on 31-03-2009 and 31-03-2010 respectively) In the A.Y. 2010-11, the interest accrued on such funds was credited to the Profit & Loss Account under the head "Other income". Therefore, I find no justification for claiming investment of same nature as expenditure in the A.Y. 2014-15.

4.14 As per information furnished by the appellant, the actual amount paid towards leave encashment to employees through LIC was Rs. 99,76,056/-, therefore, in view of the discussion made above, the deduction of Rs. 99,76,056/- is held to be allowable u/s 43B(f) because this was the sum payable and actually paid by the assessee as employer in lieu of any leave at the credit of his employee, as specified u/s 43B(f). Accordingly, out of the total disallowance of Rs. 35,19,00,000/- disallowance of Rs. 99,76,056/- is deleted and the remaining disallowance of Rs. 34,19,23,944/- (Rs. 35,19,00,000 – Rs. 99,76,056) is hereby confirmed.

4.3 We have heard the rival contentions and perused the materials available on record. During the course of hearing, the Id.AR of the assessee drew our attention to the decision of ITAT Jaipur Bench in the

case Jhalawar Kendriya Sahakari Bank Ltd vs ACIT (ITA No.1032/JP/2011 and ITA No. 1051/JP/2011 in the case of ACIT vs Jhalawar Kendriya Sahakari Bank Ltd wherein the Bench has allowed the benefit of Group leave encashment Scheme to the Bank by observing as under:-

“19. Apropos the Departmental appeal, the assessee took a policy from LIC named as Jhalwar Kendriya Sahakari Bank Employee Group Leave Encashment Scheme. The facts are mentioned in detail above. The payment of leave encashment is a contractual liability, a charge on assessee's profit. To ensure timely benefit of leave encashment of employees' scheme is devised by the LIC, which works out the leave encashment liability and fixation of premium. The liability is ascertained and crystallized on a scientific method by the LIC. Thus, the assessee's payment of Rs. 40 lacs towards the same is within the framework of the scheme. In our considered view, the same is allowable deduction. This view further supported by the Hon'ble Supreme Court in the case of Textool Co. Ltd (supra) and ITAT judgement in the case of Nainital Bank Ltd (supra). Respectfully following the same, we hold that the assessee is eligible for this deduction.”

The ld.AR of the assessee further submitted that the assessee has discharged its liability towards leave encashment scheme, the same is therefore, allowable as expenditure u/s 37(1) of the Act. Taking into consideration the above facts and circumstances of the case and the decisions relied upon by the ld.AR of the assessee, it will be in the interest of equity and justice to restore the issue to the file of the AO for afresh adjudication. The assessee is directed to submit the written

submission alongwith relevant details before the AO. Thus Ground No. 2(ii) of the assessee is allowed for Statistical purposes.

5.1 Apropos Ground No. 3, the facts as emerges from the order of the Id. CIT(A) are as under:-

“5.2 I have gone through the assessment order, statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. While deciding Ground No. 2(c) above, I have already held that the deduction admissible to the appellant u/s 43B(f) is only of Rs. 99,76,056/- because this was the sum payable and actually paid by the assessee as an employer in lieu of any leave at the credit of his employees, as specified u/s 43B(f). The interest of Rs. 3,80,89,353/- has accrued to the appellant on the funds parked with the various companies discussed by the AO in the assessment order at page 6 and the appellant has not credited this interest income in the Profit & Loss Account. I am of the considered view that the interest income of Rs. 3,80,89,353/- has accrued to the appellant and credited in the amount of the appellant by the companies, therefore, this income should have been offered for taxation by the appellant in the A.Y. 2014-15. As the appellant has failed to disclose the interest income of Rs. 3,80,89,353/- in return of income of the A.Y. 2014-15, therefore, the assessment of the appellant for the A.Y. 2014-15 is enhanced u/s 251(1) by sum of Rs. 3,80,89,353/-. Penalty proceedings u/s 271(1)© have already been initiated for concealing the particulars of income of Rs. 3,80,89,353/-.”

5.2 We have heard the rival contentions and perused the materials available on record. This issue is concerned with the issue of leave encashment liability which has been restored back to the file of the AO

for afresh adjudication. Therefore, this issue also needs afresh adjudication by the AO as it pertains to Ground No. 2 (ii) of the assessee. Thus Ground No. 3 of the assessee regarding interest income is allowed for Statistical purposes.

6.0 In the result, the appeal of the assessee is partly allowed for Statistical purposes.

Order pronounced in the open Court on 17 -05-2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 17 /05/ 2018
*Mishra

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s. Rajasthan Kshetriya Gramin Bank, Ajmer
2. प्रत्यर्थी/ The Respondent- The DCIT, Circle – 1, Ajmer
3. आयकर आयुक्त(अपील)/ CIT(A).
4. आयकर आयुक्त/ CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 272/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar