

-आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ- अहमदाबाद।

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'**

**BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.1234/Ahd/2016

निर्धारण वर्ष/Asstt. Year: 2011-12

The Kalupur Commercial Co-op Bank Ltd. Kalupur Bank Bhavan Nr. Income Tax Cir. Ashram Road Ahmedabad 380 009. PAN : AAAAT 9360 R	Vs.	DCIT, Cir.7 Ambawadi Ahmedabad 380015.
---	-----	--

आयकर अपील सं./ ITA No.1934/Ahd/2016

निर्धारण वर्ष/Asstt. Year: 2011-12

ACIT, Cir.1(3) Ambawadi Ahmedabad 380015.	Vs.	The Kalupur Commercial Co-op Bank Ltd. 1, Kalupur Bank Bhavan Nr. Income Tax Cir. Ashram Road Ahmedabad 380 009.
---	-----	--

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
-------------------------------	---------------------------------

Assessee by :	Shri S.N. Soparkar, AR
Revenue by :	Shri Saurabh Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15/03/2018

घोषणा की तारीख/Date of Pronouncement: 06/06/2018

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee and Revenue are in cross appeals against order of the Id.CIT(A)-4, Ahmedabad dated 3.5.2016. First we take appeal of the assessee i.e. ITA No.1234/Ahd/2016.

2. First ground of appeal of the assessee is general ground of appeal, which does not call for specific adjudication, hence rejected.

3. Ground No.2: The assessee has pleaded that the Id.CIT(A) has erred in confirming the disallowance of Rs.1,24,39,012/- out of various expenditure debited by the assessee in the profit & loss account and claimed in the return of income.

4. Brief facts of the case are that the assessee is a cooperative society engaged in the business of banking. It has filed return of income on 23.9.2011 declaring total income at Rs.56,03,03,650/-. Case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee has debited expenditure under the head Business Promotion Member's Gift, payment towards scholarship to children of members, and payment to nominee/legal heirs of members. He directed the assessee to defend its claim as to how these expenses be linked with the business of the assessee. In response to the query of the AO, the assessee has filed written statement vide letter dated 30.12.2013 and submitted as under:

"We are in receipt of your above show cause notice dtd. 20/12/2013 asking us to furnish our explanation as to why claim of following expenses be not disallowed being not incurred for banking business.

<i>(i) Business Promotion Member's Gift of</i>	<i>Rs.94,86,753/-</i>
<i>(ii) Payment towards scholarship to children of members</i>	<i>Rs..5,36,259/-</i>
<i>(iii) Payment to nominee/legal heirs of members</i>	<i>Rs.24,70,000/-</i>
	<i>Total Rs.1,24,39,012/-</i>

For the claim of deduction made in computing total taxable income, explanation for the above expenses are furnished hereunder.

(A) Business Promotion of Members Gifts Rs.94,86,753/-

(a) *In the above account, gifts to members/shareholders given to the extent of Rs.94,86,756/- is charged. Normally to boost up the confidence of members in the bank also to attract, more members/depositors in a span about two to three years gift articles are distributed, depending upon the number of coupons gift articles vary and as per the choice of member gifts are distributed. During the relevant previous year. For example gift of Duffle Bags, Tiffin, silver coins etc. were given. The details of payment made to various parties, mode of payment, L, supporting vouchers, copy of resolution etc. are appended. - Annexure A (Page No. 1 to 24).*

To sum up, every year bank is creating reserve/fund for to meet with such expenses. When the said reserve/fund is created same is disallowed and added back to amount of net profit to derive at total taxable income.

Whenever expenditure is incurred same are debited to respective fund/reserve a/c. As the nature of expenditure is not capital in nature or personal in nature and since it is incurred solely on the strength of business expediency which is duly supported by bye laws resolutions, vouchers, bills etc. etc. expenditure incurred being for the purpose of business only same may kindly be allowed. Your assessee shall be happy to furnish, further details/explanation if so required by your Honour.

(b) *For making claim of expenditure, though not directly charged to Profit and Loss Account but debited to respective fund a/c, we clarify that your assessee bank is registered under Multi State Co. Op. Societies Act, 1984. The profit of the Bank is apportioned to various reserves like Reserve Fund, Education Fund, Charity Fund, Member/Customer Incentive Fund, Building Fund etc. as per bye-Laws of the Bank. Since these amounts are appropriations, they cannot be considered as expenditure forming part of the Net Profit of the Bank.*

However, whenever expenditure is incurred it is debited to respective fund a/c and not to Profit and Loss account. As it is evident, when amount is appropriated, it is not claim as expenditure but claim is made whenever they are actually incurred and thus claim of expenditure made being legitimate and genuine it may please be allowed for. moreover, under the provision of the Income Tax Act, in computing total income under the head business income, claim of expenditure is allowed on the basis of incurring of said expenditure for the business purpose and not on the basis of debiting the same or otherwise in profit and loss account.

(c) *For allowability of claim for payment in form of Scholarship to students of the members of the bank, donation and payment to legal heirs of members upon his death we clarify that detailed accounts and particulars have already been given in our earlier submission.*

Almost entire income in form of interest on advances consists of interest income from members to whom advances were made. It being main source of income, and your assessee being Commercial Co. Operative Bank, expenditure incurred to have cordial and long relationship with members such as Scholarship to their children etc. are in nature of business expenditure and as same are incurred for the business purpose only it may kindly be allowed as claimed for.

** The expression " for the purpose of business " used in section 37(1) is wider in scope than the expression " for the purpose of earning profit In order that an expenditure may be allowed as deduction u/s.37(l), it need not have been incurred with the object of gaining a direct and immediate benefit: it would suffice even if it was incurred in order indirectly to facilitates the carrying on of the business.*

The term commercial expediency is not limited to existing practice prevailing in any particular trade or business. It means everything that serves to promote commerce and includes every means suitable to that end. The commercial expediency of a businessman's decision to incur expenditure cannot be tested on the touch stone of strict legal liability to incur such expenditure.

The businessman is the best judge to determine the business expediency and, therefore, expenditure incurred should be viewed from the view point of businessman.

Here are some illustrative cases where in facts of the cases the expenditure incurred was held allowable on the ground of commercial expediency.

- (i) Indian Leaf Tobacco Development Co. Ltd. V. C.I. T.(Ex-gratia payments to the dependents of former employees) 137ITR 827 (Cal)*
- (ii) CITV. Hindustan Motors Ltd. (Payment of pension to the wife of a deceased employees as also to a retired employee) 175 ITR 411 (Cat.)*
- (iii) CIT V. Development Trust Pvt. Ltd. (Expenditure incurred by assessee on construction of a school building in a colony) 198 ITR 766 (All.)*
- (iv) Contribution made by a Co. Op. Society to education fund in order to be able to pay a high, dividend to its members is wholly and exclusively for the purpose of its business.*

Mehsana D/st. Co. Op. Milk Produces V. Union of India 203 ITR 601 (Gujarat) CIT V. Kaira Dist. Co. Op. Milk produces V. Union of India 209 ITR 898 (Gujarat) (V) Payment made voluntarily are not to be disallowed only on account of their voluntary character so long as there is a reasonable nexus between the expenditure and the business, the expenditure will be regarded having been incurred for the purpose of the business. The success of any business enterprise, to a substantial

degree, is dependent on the willing performance of their tasks by the employees. Payment made to employees, by way of gratuity, bonus, retrenchment compensation or compensation for termination of service, whether under compulsion of statute or voluntarily, cannot be said to be unconnected with the business, or as not being commercially expedient, so long as quantum of payment is reasonable, having regard to all the circumstances relevant to that business enterprise.

CIT V. Chandne W.Pvt.L td. 212 ITR 63 (Madras)

Atlas Cycle Indus. Ltd. V. CIT 129ITR 60 (P A H)"

5. The Id.AO was not satisfied with the explanation of the assessee, and he made disallowance of Rs.1,24,39,012/-. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

6. Identical expenditure has been incurred in the assessment year 2008-09, which was deleted by the ITAT vide its order dated 17.8.2016 passed in ITA No.2614/Ahd/2011. Dissatisfied with the order of the ITAT, Revenue went in appeal before the Hon'ble High Court in Tax Appeal No.596 of 2017. The Hon'ble High Court upheld the order of the ITAT. Similarly, ITAT has deleted the addition in the assessment year 2009-10 in ITA NO.2676/Ahd/2013. The Id.counsel for the assessee placed on record copies of all these orders and contended that the issue in dispute is squarely covered in favour of the assessee. On the other hand, the Id.DR is unable to controvert the contentions of the Id.counsel for the assessee.

7. We have duly considered rival contentions and gone through the record carefully. The assessee has debited expenditure under these heads in the assessment year 2008-09. While examining the correctness of the ITAT's order, the Hon'ble High Court has observed that for the purpose business, the assessee has to maintain goodwill and continuity of business being provided by important members. Thus, in order to boost its business, the assessee could plan for providing certain incentives to the members. Following decision of the

Hon'ble jurisdictional High Court in the case assessee's own case, we allow this ground of appeal and delete disallowance.

8. In the next ground of appeal grievance of the assessee is that the Id.CIT(A) has erred in upholding addition of Rs.9.50 lakhs which was made with help of section 14A r.w.s Rule 8D of the Income Tax Rules. The Id.counsel for the assessee did not press this ground of appeal.

9. In Ground No.4, the assessee has challenged initiation of penalty proceedings under section 271(1)(c) of the Act. This is premature at this stage. Penalty is yet to be imposed upon the assessee, hence no separate adjudication is called for, hence it is rejected.

10. Ground No.5: The assessee has challenged charging of interest under section 234/B and 234/C. However, no arguments were advanced, and it was submitted that it is sequential in nature. Hence, this ground is rejected.

11. No other grounds were pressed by the Id.counsel for the assessee. In view of the above, appeal of the assessee is partly allowed.

12. Now we take appeal of the Revenue i.e. ITA No.1934/Ahd/2016.

13. In the first ground of appeal, grievance of the Revenue is that the Id.CIT(A) has erred in deleting disallowance of amortized premium amounting to Rs.2,80,22,415/-.

14. Brief facts of the case are that on scrutiny of the accounts, it revealed to the AO that the assessee has written off government security premium to the extent of Rs.2,80,22,415/-. It is pertinent to observe that the assessee being a cooperative society engaged in doing banking business was required to maintain statutory liquidity ratio (SLR). It used to make three types of investments viz. (i) Held to

maturity (HTM), (ii) Held for Trading (HFT), and (iii) Available for sale (AFS). Investment made in the first category, it has to sometime purchase security on premium. Thus, while finalising the accounts, it used to amortize such premium paid in acquiring security as a loss amortised over the entire period of security. In other words, security is to be retained by the assessee upto maturity and it was acquired at a value higher than the face value. The question arose whether the premium paid by the assessee on acquiring such security could be permitted to be amortised and allowed in phased manner. The Id.AO disallowed the claim of the assessee where the Id.CIT(A) accepted the claim of the assessee on the strength of order of the ITAT in identical situations.

15. The Id.counsel for the assessee contended that the issue in dispute is squarely covered by the decision of the Hon'ble Gujarat High Court rendered in the case of Rajkot District Co-op. Bank Ltd., 43 taxmann.com 161 (Guj). The Id.DR was unable to controvert this contention of the assessee.

16. We find issue in dispute is squarely covered in favour of the assessee by the Hon'ble jurisdictional High Court. The finding recorded in the case of Rajkot District Co-op. Bank Ltd. (supra) reads as under:

5. The learned counsel Shri P.O. Desai for the appellant vehemently contended that the Tribunal committed serious error in overruling the decision of the CIT (Appeals), who had given detailed reasons. He submitted that the investment was in the nature of capital investment in the hands of the assessee as held by the CIT (Appeals). The CBDT Circular dated November 26, 2008 would not apply. There were further instructions which would govern the situation.

6. On the other hand, the learned counsel Shri Tushar Hemani for the respondent placed heavy reliance on the said CBDT Circular dated November 26, 2008 and contended that the benefit of amortisation had to be granted. The assessee as a cooperative bank was bound by the RBI directives. As per such directives, the

assessee had to invest certain amounts in Government securities and to hold the same till maturity. In the process of acquisition, if there was any premium paid on the face value of the security, the loss had to be amortised. Paragraph (vii) of the CBDT Circular No.17 of 2008 dated November 26, 2008 would apply. Such instruction reads as under:

"(vii) As per RBI guidelines dated 16th October, 2000, the investment portfolio of the banks is required to be classified under three categories viz. Held to Maturity (HTM), Held for Trading (HFT) and Available for Sale (AFS). Investments classified under HTM category need not be marked to market and are carried at acquisition cost unless these are more than the face value, in which case the premium should be amortised over the period remaining to maturity. In the case of HFT and AFT securities forming stock-in-trade of the bank, the depreciation/ appreciation is to be aggregated scrip-wise and only net depreciation, if any, is required to be provided for in the accounts. The latest guidelines of the RBI may be referred to for allowing any such claims."

7. The instructions clearly provide for amortisation of premium paid on acquisition of securities when the same are acquired at the rate higher than the face value. Such amortisation would have to be for the remaining period of maturity. This precisely the Tribunal had directed in the impugned order. Though contended, no contrary instructions of CBDT are brought to our notice. The instruction in question having been issued under section 119(2) of the Income-tax Act, 1961, would bind the Revenue. No question of law, therefore, arises."

17. Respectfully following judgment of the Hon'ble Gujarat High Court, we do not find any merit in this ground of appeal. The assessee is entitled for amortization of premium paid by it in acquiring scrip which were held till maturity. The Id.CIT(A) has appreciated this controversy, and hence this ground of appeal is rejected.

18. In the next ground, grievance of the Revenue is that the Id.CIT(A) has erred in restricting the disallowance to Rs.9,50,000/- as against Rs.26,35,056/- under section 14A of the Income Tax Act.

19. Brief facts of the case are that the assessee has shown dividend income of Rs.1,52,00,000/-. Interest earned on other trustees securities of Rs.46,12,380/- were claimed as exempt from tax. The Id.AO has directed the assessee to show interest expenditure for earning its tax free income, and whether such expenditure has been disallowed under section 14A r.w. rule 8D of the Income Tax Rules,1962 or not. In response to the query of AO, the assessee filed detailed reply which has been taken into consideration by the AO. The Id.AO thereafter worked out the disallowance as per Rule 8D and made addition of Rs.26,35,056/-.

20. On appeal, the Id.CIT(A) re-appreciated the contentions of the assessee and observed that at the most half percent of the average investment could be disallowed in order to cover administrative expenditure alleged to have been incurred by the assessee for earning such exempt income.

21. With the assistance of Id.representatives, we have gone through the record. A perusal of the record would indicate that the assessee has net interest income of Rs.95.65 cores. It has capital of Rs.665.81 crores. Thus, the investment could be alleged from interest free funds. The assessee has net interest income. Therefore, the AO was not justified in observing that it is quite difficult to derive exact expenditure incurred by the assessee for earning dividend income or interest income on trustees funds. The assessee has demonstrated that it was having far more funds than the alleged investment. Hence, a presumption could be drawn that the assessee used interest free funds for earning such income. No interest could be disallowed as such. As far as half percent of average investment required to be considered for making disallowance is concerned, the Id.CIT(A) has already upheld disallowance upto Rs.9.50 lakhs. The assessee has not challenged confirmation of such disallowance. It has raised grounds of appeal, but

did not press at the time of hearing. Therefore, after taking into consideration the finding of the Id.CIT(A) we do not find any reason to interfere in it. This ground of appeal is rejected, and the appeal of the Revenue is dismissed.

22. In the result, appeal of the assessee is allowed, whereas appeal Revenue is dismissed.

Order pronounced in the Court on 6th June, 2018.

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 06/06/2018