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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.501/PUN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

RBL Bank Limited,
(Formerly : The Ratnakar Bank Limited),
Shree Shahu Market Yard,
Kolhapur – 416001

PAN : AABCT3335M

.......अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Circle – 2, Kolhapur

......प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.502/PUN/2015
निर्धारण वर्ष / Assessment Year : 2011-12

RBL Bank Limited,
(Formerly : The Ratnakar Bank Limited),
Shree Shahu Market Yard,
Kolhapur – 416001

PAN : AABCT3335M

.......अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 2, Kolhapur

......प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Aseem Sharma

सुनवाई की तारीख / Date of Hearing : 30-05-2018
घोषणा की तारीख / Date of Pronouncement : 31-05-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals for the assessment years 2010-11 and 2011-12 have been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1&2, Kolhapur dated 18-02-2015 common for the assessment years 2010-11 and 2011-12.

Since, identical issues are involved in both the appeals, the appeals are taken up together for adjudication and are disposed of vide this common order.

2. The assessee is engaged in the business of Banking. During the course of scrutiny assessment proceedings, the Assessing Officer made following additions :

		Amount in Rs.	
Sr. No.	Additions/Disallowances	A.Y. 2010-11	A.Y. 2011-12
1	Disallowance of interest paid to Co-operative Credit Societies	Rs.2,07,00,000/-	Rs.3,33,00,000/-
2	Provision for Bad Debts u/s. 40(a)(ia)	Rs.12,63,559/-	
3	Loss on account of fraud	Rs.9,19,360/-	
4	Contribution to pension fund	Rs.41,79,872/-	

3. Shri Nikhil Pathak appearing on behalf of the assessee submitted that the assessee has paid interest to Credit Co-operative Societies Rs.2.07 crores in assessment year 2010-11 and Rs.3.33 crores in assessment year

2011-12 without deducting tax at source. The Assessing Officer held that the assessee should have deducted tax u/s. 194A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Since, the assessee has violated TDS provisions, the Assessing Officer made disallowance u/s. 40(a)(ia) of the Act. The ld. AR contended that the assessee is raising additional ground of appeal in respect of said disallowance in both the assessment years. By way of additional ground the assessee is praying that in the light of newly inserted second proviso to section 40(a)(ia) the matter may be remanded to Assessing Officer for verification. The assessee shall furnish necessary documents to show that recipients of interest have disclosed the same in their respective return of income. In support of his submissions the ld. AR placed reliance on the decision of Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Ansal Land Mark Township (P) Ltd. reported as 377 ITR 635.

3.1 In respect of ground No. 2 of the appeal the ld. AR submitted that the assessee had advanced loans to Shah Group against Fixed Deposit Receipts (FDRs) in the normal course of business. The said FDRs were attached by the Income Tax Department in 2001. The said loans have become bad. The assessee has created provision for the said loans including interest Rs.12,63,559/- in the books for Financial Year 2009-10. The Assessing Officer has disallowed the irrecoverable loans claimed as business loss on the ground that advancing loans against FDRs already under attachment is negligence on the part of assessee, hence such loss cannot be allowed.

3.2 In respect of ground No. 3, the ld. AR submitted that a fraud was committed in Rukadi Branch of the Bank. The assessee suffered loss of Rs.9,19,360/-, after the detection of fraud FIR was immediately registered with the Police. The assessee claimed the loss arising out of fraud. However, the Assessing Officer disallowed the same on the premise that sufficient documentary evidence is not furnished to support the claim.

3.3 In respect of ground No. 4 the ld. AR of assessee submitted that contribution towards pension fund Rs.41,79,872/- were made in the period relevant to the assessment year 2008-09. The claim of the assessee was rejected by the Assessing Officer. The matter travelled up to the Tribunal. The Tribunal in ITA No. 891/PUN/2012 for assessment year 2008-09 decided on 21-12-2017 allowed the claim of assessee. Hence, the ground No. 4 has become academic.

3.4 The ld. AR contended that against the assessment order dated 30-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) in a mechanical manner upheld the findings of Assessing Officer and confirmed the additions. Hence, the assessee is in second appeal before the Tribunal.

4. On the other hand Shri Aseem Sharma representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

4.1 In respect of ground No. 1 relating to disallowance made u/s. 40(a)(ia) of the Act the ld. DR submitted that second proviso to section

40(a)(ia) was introduced w.e.f. 01-04-2013 and has prospective application only. The assessment year under appeal is prior to the date of insertion of second proviso, therefore, the benefit of second proviso cannot be extended to the assessee. In support of his submissions, the ld. DR placed reliance on the decision of Hon'ble Kerala High Court in the case of Thomas George Muthoot Vs. Commissioner of Income Tax reported as 287 CTR 101.

5. Controverting the submissions of DR, the ld. AR of assessee submitted that the Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Ansal Land Mark Township (P) Ltd. (supra) has held that second proviso to section 40(a)(ia) is clarificatory in nature and is applicable retrospectively. The ld. AR further contended that the Co-ordinate Bench of the Tribunal in the case of Yamazaki Mazak India Pvt. Ltd. Vs. Pr. Commissioner of Income Tax in ITA No. 153/PN/2016 for assessment year 2010-11 decided on 28-10-2016 has considered the decision of Hon'ble Kerala High Court in the case of Thomas George Muthoot Vs. Commissioner of Income Tax (supra) and thereafter allowed the benefit of second proviso to the assessee.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered the decisions on which both the sides have placed reliance. The first issue in appeal for assessment year 2010-11 is with respect to disallowance of interest paid to Co-operative Credit Societies without deduction of tax at source. The assessee was under obligation to deduct tax u/s. 194A on the payment of interest to the Co-operative Credit

Societies. Since, the assessee failed to comply with the TDS provisions, disallowance was made u/s. 40(a)(ia) of the Act.

The assessee has now raised an additional ground seeking benefit of second proviso to section 40(a)(ia) inserted by the Finance Act, 2012 w.e.f. 01-04-2013. The ld. AR submitted that the assessee would furnish necessary documents to show that the recipients of interest have offered interest income to tax in their respective returns. The Department has vehemently opposed the additional ground raised by assessee on the ground that second proviso to section 40(a)(ia) does not apply retrospectively. We find that identical issue had come up before the Tribunal in the case of Yamazaki Mazak India Pvt. Ltd. Vs. Pr. Commissioner of Income Tax (supra). The Co-ordinate Bench after considering the decision of Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Ansal Land Mark Township (P) Ltd. (supra) and the decision of Hon'ble Kerala High Court in the case of Thomas George Muthoot Vs. Commissioner of Income Tax (supra) decided the issue in favour of assessee. The relevant extract of the findings of Tribunal on this issue are as under :

> *"6. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. The only issue in the present appeal arising from the arguments made on behalf of both the sides is; Whether the second proviso to section 40(a)(ia) inserted by Finance Act, 2012, is applicable retrospectively or w.e.f. 01-04-2013. Before we proceed with the issue it would be relevant to first refer to the amendment brought in by the Finance Act, 2012 to section 40(a)(ia) by way of insertion of proviso.*
>
> > *"**40.** Notwithstanding anything to the contrary in sections 30 to [38], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—*
> > *(a) in the case of any assessee—*
> > *xxxxxxxxxx*
> > *xxxxxxxxxx*

(ia) [any interest, commission or brokerage,[rent, royalty,] fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, [has not been paid on or before the due date specified in sub-section (1) of section 139;]

Provided that xxxxxxxxxx

Provided *further that where an assessee fails to deduct* ***the whole or any part of the tax*** *in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso."*

With the introduction of second proviso it would be imperative that before disallowing any amount for non-deduction of tax at source it would be necessary to ascertain whether the recipient of the amount in question had paid taxes on such amount. If the answer is in affirmative no disallowance u/s. 40(a)(ia) is warranted on such payment. The Memorandum explaining the insertion of new proviso reads as under :

"A related issue to the above is the disallowance under section 40(a)(ia) of certain business expenditure like interest, commission, brokerage, professional fee, etc. due to non-deduction of tax. It has been provided that in case the tax is deducted in subsequent previous year, the expenditure shall be allowed in that subsequent previous year of deduction.

In order to rationalise the provisions of disallowance on account of non-deduction of tax from the payments made to a resident payee, it is proposed to amend section 40(a)(ia) to provide that where an assessee makes payment of the nature specified in the said section to a resident payee without deduction of tax and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the payee, then, for the purpose of allowing deduction of such sum, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee.

These beneficial provisions are proposed to be applicable only in the case of resident payee.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years."

7. In the present case it is an admitted fact that the assessee has made payment of rent to the tune of `1,15,90,000/- to M/s. Elpro International Ltd. No tax has been deducted on the aforesaid payment by the assessee. The assessee was supposed to deduct tax at source @ 0.75%, in accordance with the low rate tax certificate issued by the Department. The Assessing Officer during the scruting assessment proceedings failed to take into consideration the rent paid by the assessee without deduction of tax at source. The Pr. Commissioner of Income Tax invoked the provisions of section 263 and directed the Assessing Officer to make disallowance u/s. 40(a)(ia) of the Act. While issuing aforesaid directions the Pr. Commissioner of Income Tax held that the assessee is not eligible to claim the benefit of the second proviso to section 40(a)(ia) inserted by Finance Act, 2012 as the amendment is effective from 01-04-2013. The Pr. Commissioner of Income Tax has further placed reliance on the decision of Hon'ble Kerala High Court in the case of Prudential Logistics And Transports Vs. Income Tax Officer (supra) to fortify his view. The contention of the assessee is that the amendment to section 40(a)(ia) by way of insertion of the second proviso is applicable with retrospective effect. To strengthen this contention support has been drawn from the judgment of Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Ansal Land Mark Township (P) Ltd. (supra). The question before Hon'ble High Court for determination was :

> *"5. The other issue urged by the Revenue during the course of arguments pertains to the retrospectivity of the second proviso to Section 40(a)(ia) of Act.........."*

The Hon'ble High Court answered the question by holding the amendment to be retrospective. The relevant extract of the judgment is reproduced as under :

> *"12. Relevant to the case in hand, what is common to both the provisos to Section 40 (a) (ia) andSection 210 (1) of the Act is that the as long as the payee/resident (which in this case is ALIP) has filed its return of income disclosing the payment received by and in which the income earned by it is embedded and has also paid tax on such income, the Assessee would not be treated as a person in default. As far as the present case is concerned, it is not disputed by the Revenue that the payee has filed returns and offered the sum received to tax.*
>
> *13. Turning to the decision of the Agra Bench of ITAT in Rajiv Kumar Agarwal v. ACIT (supra) , the Court finds that it has undertaken a thorough analysis of the second proviso to Section 40 (a)(ia) of the Act and also sought to explain the rationale behind its insertion. In particular, the Court would like to refer to para 9 of the said order which reads as under:*
>
> > *"On a conceptual note, primary justification for such a disallowance is that such a denial of deduction is to compensate for the loss of revenue by corresponding income not being taken into account in computation of taxable income in the hands of the recipients of the payments. Such a policy*

motivated deduction restrictions should, therefore, not come into play when an assessee is able to establish that there is no actual loss of revenue. This disallowance does deincentivize not deducting tax at source, when such tax deductions are due, but, so far as the legal framework is concerned, this provision is not for the purpose of penalizing for the tax deduction at source lapses. There are separate penal provisions to that effect. Deincentivizing a lapse and punishing a lapse are two different things and have distinctly different, and sometimes mutually exclusive, connotations. When we appreciate the object of scheme of section 40(a)(ia), as on the statute, and to examine whether or not, on a "fair, just and equitable" interpretation of law- as is the guidance from Hon'ble Delhi High Court on interpretation of this legal provision, in our humble understanding, it could not be an "intended consequence" to disallow the expenditure, due to non deduction of tax at source, even in a situation in which corresponding income is brought to tax in the hands of the recipient. The scheme of Section 40(a)(ia), as we see it, is aimed at ensuring that an expenditure should not be allowed as deduction in the hands of an assessee in a situation in which income embedded in such expenditure has remained untaxed due to tax withholding lapses by the assessee. It is not, in our considered view, a penalty for tax withholding lapse but it is a sort of compensatory deduction restriction for an income going untaxed due to tax withholding lapse. The penalty for tax withholding lapse per se is separately provided for in Section 271 C, and, section 40(a)(ia) does not add to the same. The provisions of Section 40(a)(ia), as they existed prior to insertion of second proviso thereto, went much beyond the obvious intentions of the lawmakers and created undue hardships even in cases in which the assessee's tax withholding lapses did not result in any loss to the exchequer. Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. In view of these discussions, as also for the detailed reasons set out earlier, we cannot subscribe to the view that it could have been an "intended consequence" to punish the assessees for non deduction of tax at source by declining the deduction in respect of related payments, even when the corresponding income is duly brought to tax. That will be going much beyond the obvious intention of the section. Accordingly, we hold that the insertion of second proviso to Section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 1st

> > *April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004."*
>
> *14. The Court is of the view that the above reasoning of the Agra Bench of ITAT as regards the rationale behind the insertion of the second proviso to Section 40(a) (ia) of the Act and its conclusion that the said proviso is declaratory and curative and has retrospective effect from 1st April 2005, merits acceptance.*
>
> *15. In that view of the matter, the Court is unable to find any legal infirmity in the impugned order of the ITAT in adopting the ratio of the decision of the Agra Bench, ITAT in (Rajiv Kumar Agarwal v. ACIT)."*

8. Similar view has been taken by the Kolkata Bench of the Tribunal in the case of New Alignment Vs. Income Tax Officer (supra) and Mumbai Bench of the Tribunal in the case of Reliance Communications Ltd. Vs. Assistant Commissioner of Income Tax (supra). In both the above said cases, the Tribunal has followed the decision of Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Ansal Land Mark Township (P) Ltd. (supra).

9. One of the contentions of the ld. DR is that in the cases cited on behalf of the assessee, the decision rendered by Hon'ble Kerala High Court has not been considered. We find that Raipur Bench of the Tribunal in the case of R K P Company Vs. Income Tax Officer (supra) has considered the decision of Hon'ble Kerala High Court in the case of Thomas George Muthoot Vs. CIT (supra), in which the judgment rendered in the case of Prudential Logistics And Transports Vs. Income Tax Officer (supra) was considered. The Raipur Bench by following the judgment of Hon'ble Delhi High Court held that the amendment is retrospective in nature. The relevant extract of the findings of Raipur Bench of the Tribunal are reproduced here-in-below :

> *"4. We find that Hon'ble Delhi High Court has specifically approved the stand taken by a coordinate bench of this Tribunal, in the case of Rajeev Kumar Agarwal Vs ACIT [(2014) 149 ITD 363 (Agra)], and upheld the action of the Tribunal in following the same.*
>
> > *9. ………………………. Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. In view of these discussions, as also for the detailed reasons set out earlier, we cannot subscribe to the view that it could have been an "intended consequence" to punish the assessees for non deduction of tax at source by declining the deduction in respect of related payments, even when the corresponding income is duly brought to tax. That will be going much beyond the obvious intention of the section. Accordingly, we hold that the insertion of second proviso to Section 40(a)(ia) is declaratory*

> *and curative in nature and it has retrospective effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.*
>
> *10. In view of the above discussions, we deem it fit and proper to remit the matter to the file of the Assessing Officer for fresh adjudication in the light of our above observations and after carrying out necessary verifications regarding related payments having been taken into account by the recipients in computation of their income, regarding payment of taxes in respect of such income and regarding filing of the related income tax returns by the recipients. While giving effect to these directions, the Assessing Officer shall give due and fair opportunity of hearing to the assessee, decide the matter in accordance with the law and by way of a speaking order. We order so*

5. In effect thus, Their Lordships have approved the action of the Tribunal in remitting the matter to the file of the Assessing Officer with a direction to ascertain whether the recipient has taken into account related payments into computation of his income and offering the same to tax, and, if so, delete the disallowance under section 40(a)(ia) in respect of the same.

6. When, however, we asked the learned Departmental Representative as to why we should also not remit the matter to the file of the Assessing Officer, with the same directions, he, alongwith his senior colleague Shri Darhan Singh, who happens to be the CIT(A) authoring the impugned order and who was on duty as CIT(DR) before us, had three points to make- first, that there are decisions in support of the stand of the Assessing Officer's stand, by way of Hon'ble Kerala High Court's decision in the case of Thomas George Muthoot Vs CIT [(2015) 63 taxmann.com 99 (Kerala)]; second, that even if insertion of second proviso to Section 40(a)(ia) can be construed as retrospective in effect, the corresponding rule in the Income Tax Rules 1962 is not, and has not been held to be, retrospective, and the second proviso to Section 40(a)(ia) cannot, therefore, be give retrospective effect; and, third, that there is no decision on this issue by Hon'ble jurisdictional High Court and, as such, the stand of the Assessing Officer cannot be faulted.

7. As for Hon'ble Kerala High Court's decision in the case of Thomas George Muthoot (supra), undoubtedly, outside the jurisdiction of Hon'ble Kerala High Court and outside the jurisdiction of Hon'ble Delhi High Court- which has decided the issue in favour of the assessee, there are conflicting decisions on the issue of restrospectivity of second proviso to Section 40(a)(ia). It is thus evident that views of these two High Courts are in direct conflict with each other. Clearly, therefore, there is no meeting ground between these two judgments. The difficulty arises as to which of the Hon'ble non

jurisdictional High Court is to be followed by us in the present situation. It will be wholly inappropriate for us to choose views of one of the High Courts based on our perceptions about reasonableness of the respective viewpoints, as such an exercise will de facto amount to sitting in judgment over the views of the High Courts something diametrically opposed to the very basic principles of hierarchical judicial system. We have to, with our highest respect of both the Hon'ble High Courts, adopt an objective criterion for deciding as to which of the Hon'ble High Court should be followed by us. We find guidance from the judgment of Hon'ble Supreme Court in the matter of CIT vs. Vegetable Products Ltd. [(1972) 88 ITR 192 (SC)]. Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted". This principle has been consistently followed by the various authorities as also by the Hon'ble Supreme Court itself. In another Supreme Court judgment, Petron Engg. Construction (P) Ltd. & Anr. vs. CBDT & Ors. (1988) 75 CTR (SC) 20 : (1989) 175 ITR 523 (SC), it has been reiterated that the above principle of law is well established and there is no doubt about that. Hon'ble Supreme Court had, however, some occasions to deviate from this general principle of interpretation of taxing statute which can be construed as exceptions to this general rule. It has been held that the rule of resolving ambiguities in favour of taxpayer does not apply to deductions, exemptions and exceptions which are allowable only when plainly authorised. This exception, laid down in Littman vs. Barron 1952(2) AIR 393 and followed by apex Court in Mangalore Chemicals & Fertilizers Ltd. vs. Dy. Commr. of CT (1992) Suppl. (1) SCC 21 and Novopan India Ltd. vs. CCE & C 1994 (73) ELT 769 (SC), has been summed up in the words of Lord Lohen, "in case of ambiguity, a taxing statute should be construed in favour of a tax-payer does not apply to a provision giving tax-payer relief in certain cases from a section clearly imposing liability". This exception, in the present case, has no application. The rule of resolving ambiguity in favour of the assessee does not also apply where the interpretation in favour of assessee will have to treat the provisions unconstitutional, as held in the matter of State of M.P. vs. Dadabhoy's New Chirmiry Ponri Hill Colliery Co. Ltd. AIR 1972 (SC) 614. Therefore, what follows is that in the peculiar circumstances of the case and looking to the nature of the provisions with which we are presently concerned, the view expressed by the Hon'ble Delhi High Court in the case of Ansal Landmark (supra), which is in favour of assessee, is required to be followed by us. Revenue does not, therefore, derive any advantage from Hon'ble Kerala High Court's decision in the case of Thomas George Muthoot (supra)."

10. It is a well settled law that where two divergent views are possible and both the views are equally convincing, the view in favour of the assessee must be adopted. Thus, <u>applying the ratio laid down by the Hon'ble Supreme Court of India in the case of CIT Vs. Vegetable Products Ltd. (supra) we accept the contentions of the assessee and hold that the second proviso to section 40(a)(ia) inserted by Finance Act, 2012 is applicable retrospectively w.e.f. 01-04-2005</u>."

7. Thus, in light of the above order of Co-ordinate Bench, we deem it appropriate to remit this issue back to the file of Assessing Officer for de-novo consideration. The assessee shall furnish necessary documents to show that the recipients of interest have disclosed the interest income in their respective returns. The Assessing Officer after affording reasonable opportunity of hearing shall decide this issue afresh, in accordance with law. Accordingly, the ground No. 1 raised in the appeal for assessment year 2010-11 is allowed for statistical purpose.

8. In ground No. 2 of appeal, the assessee has assailed disallowance of loans granted to Shah Group against FDR. It is an undisputed fact that the assessee has created provision for such loans along with interest thereon. It is an undisputed fact that the loans granted against FDR to Shah Group were irrecoverable as the FDRs were attached by the Department. The Assessing Officer cannot step into the shoes of assessee to decide the prudence of loans advanced. The disallowance made by the authorities below is not justified and hence, the loss claimed by assessee has to be allowed. The ground No. 2 of the appeal is thus allowed.

9. In ground No. 3 of appeal, the assessee has assailed disallowance of loss arising on account of fraud. The claim of assessee has been disallowed for the reason that the assessee has not furnished necessary documentary evidence viz. report of internal inspection team, action taken report against errant officials etc. to substantiate fraud. The assessee is a Scheduled Bank. After detection of fraud a complaint was filed with the Police. The assessee furnished the copy of FIR to the Assessing Officer in support of its claim. Furnishing of basic document indicating

misappropriation of funds/fraud is sufficient compliance. We are of considered view that authorities below have taken pedantic view to disallow the claim of assessee. Accordingly, we direct the authorities below to allow the claim of assessee on account of loss arising from fraud. Accordingly, ground No. 3 raised in the appeal by the assessee is allowed.

10. In ground No. 4 the assessee has assailed disallowance of contribution towards Pension Fund Rs.41,79,872/-. The Commissioner of Income Tax (Appeals) has rejected this claim of the assessee as the issue is not emanating from the assessment order. The ld. AR has admitted that the contribution was made towards Pension Fund in the period relevant to the assessment year 2008-09 and the claim of assessee has been allowed by the Tribunal in the appeal for assessment year 2008-09. Since, the ground raised in appeal is unconnected to additions/disallowances made in the assessment year under appeal the same is liable to be dismissed. We hold and direct accordingly.

11. In the result, the appeal of assessee for assessment year 2010-11 is partly allowed in the terms aforesaid.

ITA No. 502/PUN/2015 (A.Y. 2011-12)

12. In appeal for assessment year 2011-12, the assessee has raised solitary issue with respect to disallowance of interest paid to Co-operative Credit Societies u/s. 40(a)(ia) of the Act. The assessee in appeal has raised 5 grounds, all the grounds are directed towards the above mentioned single issue. The issue in appeal is identical to the ground No. 1 raised in the appeal for assessment year 2010-11. The findings given by us while

deciding ground No. 1 in assessment year 2010-11 would *mutatis mutandis* apply to the grounds raised in appeal for assessment year 2011-12. Accordingly, ground Nos. 1 to 5 raised in the appeal are allowed for statistical purpose in the same terms. In the result, the appeal of assessee for assessment year 2011-12 is allowed for statistical purpose.

13. To sum up, the appeal of assessee for assessment year 2010-11 is partly allowed and the appeal of assessee for assessment year 2011-12 is allowed for statistical purpose.

Order pronounced on Thursday, the 31st day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st May, 2018
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1&2, Kolhapur
4. आयकर आयुक्त / The CIT-I/II, Kolhapur/CIT(Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच, पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune