

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

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2090/MUM/2017
Assessment Year: 2012-13**

The Hindustan Co-op Bank Ltd., 4/A, Devi Galli, Baburao Bodde, Lokhand Bazar, Mumbai-400009	Vs.	Assistant Commissioner of Income Tax-17(3), Mumbai.
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PAN No. AABAT4355R
Appellant

Respondent

Assessee by	:	Mr. Amar Gahlot, AR
Revenue by	:	Mr. Abiram Karthikeyan, DR

Date of Hearing	:	30/07/2018
Date of pronouncement	:	31/07/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-28, Mumbai [in short CIT(A)] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:
 1. The Hindustan Co-op, Bank Ltd. (Appellant) engaged in the banking business and is governed by Banking Regulation Act, 1949 and Maharashtra Stale Co-operative Societies Act, 1960.
 2. The Appellant filed its return of its income for Assessment Year 2012-13, declaring total income of Rs.7,77,03,518/-, on August 31, 2012. The return

was selected for scrutiny and the Assessing Officer (AO), vide order dated March 25, 2015 passed u/s 143(3) of the Income Tax Act, 1961 (Act) assessed the total income of the Appellant at Rs.8,26,77,710/.

3. Aggrieved by the order of the AO, the Appellant filed an appeal before the CIT(A) u/s 246. The Appellant *inter alia* challenged that disallowance of repairs and maintenance expenses amounting to Rs.36,51,593/-.
 4. The submissions of the Appellant were that the repairs and maintenance expenses were incurred on account of various types of annual maintenance charges, such as UPS, Inventor Security, Water Purifier, Pest Control, Hardware & Software annual maintenance, CCTV, Gold Valuation Machine, Air Conditioners, Token Display Machine & Router & Connectivity Annual Maintenance Charges. The expenses were erroneously shown under the head 'Repairs to Property'. The nature of the expenses is recurring in nature. Thus the AO erred in holding that the expenses ought to be capitalized.
 5. The Learned CIT (A) without appreciating the submissions of the Appellant dismissed the appeal *vide* order dated December 5, 2016, and upheld the order of the AO.
3. The assessee Co-operative Bank filed its return of income for the assessment year (AY) 2012-13 on 31.08.2012 declaring total income of Rs.7,77,03,518/-. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee has debited repairs to properties amounting to Rs.42,95,992/-. Further, the assessee was also having 'Property Renovation Head' in its balance sheet. Therefore, the AO asked the assessee to explain as to why the above sum of Rs.42,95,992/- should not be considered as capital expenses on which only depreciation is allowable. In response to it, the assessee filed a reply dated 17.03.2015 before the AO. However, the AO was not convinced with the said reply of the assessee and relying on the decision in *Arvind Mill Ltd. v. CIT* (1992) 197 ITR 422, 429, 431 (SC)

and *CIT v. Navsari Cotton & Silk Mills Ltd.* (1982) 135 ITR 546 (Guj), treated the above expenses of Rs.42,95,992/- as capital expenditure. After allowing depreciation @ 15% on it, the AO made a disallowance of the balance amount of Rs.36,51,593/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). Before him, the assessee contended that the nomenclature change is also supported by the fact that the claim of repair to property was favourably decided in favour of the assessee by the AO in AYs 2010-11 and 2011-12. However, the Ld. CIT(A) found that in the AY 2010-11, substantial expenses on computer and software system and installation of new software were all taken as capital in nature and they were added back. Only depreciation thereon was allowed. The Ld. CIT(A) also found that in the next assessment year again there is disallowance of depreciation in respect of several assets.

Further, the Ld. CIT(A) held that even upgradation of capital assets or making repairs etc. to such an extent as to give enduring benefit would lead to a classification of the expenses as capital in nature and depreciation thereon would be allowable.

Relying on the decision in *CIT v. India's Hobby Centre (P) Ltd.* (1994) 78 Taxman 377 (Cal), the Ld. CIT(A) observed that to consider an explanation which is contrary to the books of accounts would be against established judicial position.

On the basis of the above reasons, the Ld. CIT(A) confirmed the disallowance made by the AO.

5. Before us, the Ld. counsel of the assessee files a Paper Book (P/B) containing (i) Details of Repairs and Maintenance as of 31.03.2012, (ii) Sample Invoices of repairs and maintenance, (iii) Profit and Loss Account of other financial years and (iv) List of registered branches of the Bank.

The Ld. counsel further submits that the assessee is a Co-operative Bank which is operating in Mumbai through several branches for the past 48 years. Given the size of operations of the assessee-bank, wherein the total receipts of the bank are in excess of Rs.44 crores, and the fixed assets are around Rs.14 crores, an amount of Rs.42.95 lakhs being incurred towards repairs and maintenance is trivial, especially when the operations of the bank depend heavily on assets (such as computers, ATM etc.) which are consumer-facing and are amenable to damage immediately. It is stated that for the year under consideration, the assessee claimed expenditure on repairs and maintenance on various assets such as computers, UPS, water purifiers, air conditioners, token displays etc. The Ld. counsel submits that the expenses incurred on repairs and maintenance of various assets are recurring in nature and every year such expenses are incurred. As the business of the assessee has grown, the number of assets has also increased and as such, the repairs and maintenance expenditure has also increased.

Considering the above facts, the Ld. counsel submits that the claim of deduction on account of repairs and maintenance be allowed being in the nature of revenue expenditure.

6. On the other hand, the Ld. DR submits that the assessee has debited repairs to properties amounting to Rs.42,95,992/-. Therefore,

the AO has rightly treated the above amount as capital expenditure and allowed depreciation @ 15%. Thus the Ld. DR supports the order of the Ld. CIT(A) confirming the disallowance of Rs.36,51,593/- made by the AO.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

It is now well settled that the way in which entries are made by an assessee in his books of accounts is not determinative of the question whether the assessee has earned any profit or suffered any loss. As held in *Sutlej Cotton Mills Ltd. v. CIT* (1979) 116 ITR 1(SC), what is necessary to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee.

We find that the AO has mentioned at para 4 of his assessment order dated 25.03.2015 that in response to a query raised by him to explain as to why the said sum of Rs.42,95,992/- should not be considered as capital expenditure, the assessee filed a reply dated 17.03.2015 before him. The AO has not given any reasons for not accepting the above reply of the assessee. Immediately, the AO has relied upon case laws and made a disallowance of Rs.36,51,593/-.

Let us now examine the various expenses in excess of Rs.1,00,000/- incurred by the assessee in respect of "Repairs to Properties". We mention it below:

Service provider	Amount paid	Description
Jnmac Computer Pvt. Ltd.	Rs.7,65,267	Amount paid towards annual maintenance charges for hardware and repair of computers and peripherals, such as routers etc.

Classic Cool	Rs.5,65,190	Amount paid towards repairs of air conditioners, AMC of water purifiers, and repairing of water purifiers and other equipments.
Sify Technologies	Rs.5,44,952	Amount paid towards the warranties and AMC of computers and internet peripherals such as routers etc.
Shamrao Vitthal Coop Bank	Rs.4,73,175	Amount paid towards the AMC of software used by the bank.
J K Traders	Rs.3,41,080	Amount paid towards expenses incurred for civil works carried out at SN Branch (Saraswati Godown), which included current repairs to such premises.
Ojas Enterprises	Rs.1,87,975	Amount paid towards payment of AMC charges of UPSs, Inverters, and Security Systems.
Mukti Coop Housing Society	Rs.1,25,196	Amount paid for maintenance charges called for by the housing society wherein the assessee bank has its branch office.
Argus Electronic	Rs.1,05,582	Amount paid for AMC of CCTV and DVR equipment.

A perusal of the above details clearly indicates that the expenditure of Rs.42,95,992/- incurred by the assessee is indeed revenue expenditure.

8. In view of the above facts, we set aside the order of the Ld. CIT(A) and allow the appeal filed by the assessee.

Order pronounced in the open Court on 31/07/2018.

Sd/-
 (C.N. PRASAD)
 JUDICIAL MEMBER

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

Mumbai;

Dated: 31/07/2018

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