

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" 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.728/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Sangli District Central Co-op. Bank Ltd.,
Pad. Vasantdada Patil Road,
Karmveer Bhaurao Patil Chowk,
Sangli - 416416

PAN : AAAAS1099Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Commissioner of Income Tax-1,
Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri M.K. Gautam

सुनवाई की तारीख / Date of Hearing : 30-07-2018
घोषणा की तारीख / Date of Pronouncement : 03-08-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Pr. Commissioner of Income Tax-1, Kolhapur dated 18-03-2016 passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2012-13.

2. The notice of appeal was duly served on the assessee on 26-12-2017 for 25-01-2018. On the said date at the written request of assessee/appellant, the appeal was adjourned to 09-04-2018. On 09-04-2018 the assessee again vide letter dated 09-04-2018 sought adjournment. Accordingly, the appeal was adjourned to 07-06-2018. On 07-06-2018 none appeared on behalf of the assessee. In the interest of justice fresh notice was issued to the assessee through RPAD for 30-07-2018. On 30-07-2018 again none appeared to represent the assessee. It seems that the assessee is not keen to pursue the appeal. Accordingly, we proceed to decide the appeal of the assessee on the basis of material available on record and with the assistance of ld. DR.

3. The brief facts of the case as emanating from records are : The assessee is a Co-operative Bank and is assessed as AOP. The assessee filed its return of income for the impugned assessment year on 26-09-2012 declaring total income of Rs.14,27,29,646/-. The case of the assessee was selected for scrutiny under CASS and accordingly, statutory notice u/s. 143(2) was issued to the assessee on 06-08-2013. In scrutiny assessment proceedings the Assessing Officer made disallowance of provision for ex-gratia bonus to the employees Rs.38,30,153/- and assessed the total income at Rs.14,65,59,800/-. Thereafter, Pr. Commissioner of Income Tax issued notice u/s. 263 to the assessee on 12-02-2016. The Pr. Commissioner of Income Tax observed that the Assessing Officer while framing assessment has failed to make enquiries with respect to following expenditures claimed for the first time in Profit and Loss account :

- i. Provisions for strengthening primary institutions Rs.3,47,00,000/-.
- ii. Provisions for development of primary institutions Rs.7,25,00,000/-.

The Pr. Commissioner of Income Tax vide impugned order set aside the assessment order and directed the Assessing Officer to examine the claim of aforesaid provisions. Against the above directions of Pr. Commissioner of Income Tax in revision proceedings, the assessee is in second appeal before the Tribunal.

4. Shri M.K. Gautam representing the Department submitted that a perusal of assessment order shows that the Assessing Officer has not examined assessee's claim of 'provisions for strengthening primary institutions and development of primary institutions'. There is no discussion in the assessment order with respect to allowability of above said provisions claimed by the assessee as expenditures u/s. 37(1) of the Act. The ld. DR pointed that in para 6.5(ix) of the impugned order Pr. Commissioner of Income Tax has categorically observed that on verification of the list of distribution of funds it transpired that the amount as low as Rs.5/- in more than 480 cases, Rs.10/- in equal no. of cases of societies and below Rs.1000/- in many cases has been distributed to the primary Co-operative societies for strengthening and development. It is beyond comprehension as to how such a meager amount of Rs.5/-, Rs.10, or for that matter Rs.1000/- would strength and develop primary Co-operative societies. The assessee has provided the list of 4050 primary Co-operative societies wherein funds to the tune of Rs.7,19,56,347/- have been distributed. No basis of distribution of funds has been provided by the

assessee. The Id. DR pointed that the Pr. Commissioner of Income Tax after verification rightly observed that the assessment order is erroneous in so far as prejudicial to the interest of Revenue, as the claim of assessee to the tune of Rs.10.72 cores has been allowed without verification.

5. We have heard the submissions made by Id. DR and have perused the material available on record. The Pr. Commissioner of Income Tax has invoked the provisions of section 263 of the Act on the ground that the Assessing Officer has failed to investigate/inquire the assessee's claim of provisions for strengthening and developing of primary Co-operative societies. The assessee has claimed approximately Rs.10.72 crores u/s. 37(1) for the above said purpose. A perusal of the assessment order shows that there is no discussion or reference to the above said claim made by the assessee. It is not emanating from the assessment order whether any inquiry was made by the Assessing Officer before allowing the claim of assessee with regard to such expenditure on strengthening and developing of Co-operative societies. On the basis of material available before us, prima-facie it appears that the assessment order is erroneous in so far as prejudicial to the interest of Revenue and the Pr. Commissioner of Income Tax was well within its jurisdiction to initiate revision proceedings u/s. 263 of the Act. The Pr. Commissioner of Income Tax set aside the assessment order with the following directions to the Assessing Officer :

"The Assessing Officer is directed to examine the claim of provisions for grants made on a/c of strengthening and development of primary co-operative societies and decide allowability of such provision as per provisions of section 37(1) of the I.T. act in view of above facts and observations and pass the assessment order afresh after conducting proper enquiries, proper examining/investigation assessee's explanation and the evidences produced before the him & produced during proceedings u/s. 263 of the I.T. Act."

We do not find any infirmity in the order of Pr. Commissioner of Income Tax. Accordingly, the same is upheld and the appeal of assessee is dismissed.

6. In the result, the appeal of assessee is dismissed.

Order pronounced on Friday, the 03rd day of August, 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 : 03rd August, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. Commissioner of Income Tax-1, Kolhapur
4. The Income Tax Officer, W-1(3), Sangli
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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