

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.132/CTK/2015
(निर्धारण वर्ष / Assessment Year :2007-2008)

M/s Balasore Bhadrak Central Co-Operative Bank Ltd., O.T.Road, Balasore	Vs.	ACIT, Balasore Circle, Balasore
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAT 2620 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri N.Gupta / S. Nanda, AR
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan,CITDR
सुनवाई की तारीख / Date of Hearing : **21/08/2017**
घोषणा की तारीख/Date of Pronouncement **24/08/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The assessee has filed an appeal against the order of CIT(A), Cuttack, dated 31.12.2014, passed in I.T.Appeal No.0206/2012-13, u/s.143(3)/263 of the Income Tax Act, 1961 for the assessment year 2007-2008, wherein the assessee has raised the following grounds :-

1. *The order of Id. CIT(A) Cuttack is erroneous in so far treating the dividend income as taxable ignoring the deductions available u/s.80P(2)(d).*
2. *Ld. CIT(A) Cuttack in his order has treated that dividend income is taxable since it violates the provisions u/s.115-O of the I.T.Act, 1961 read with section 10(23F), 10(23FA), 10(34) as applicable for the dividends declared by the domestic companies but failed to appreciate that this dividend was earned from the investment made with another co-operative society which is its apex body and earning of any interest or dividend income from such investment is fully deductible u/s.80P(2)(d) of the I.T.Act, 1961.*

2. Brief facts of the case are that the assessee is a Central Cooperative Bank and the assessment was completed originally u/s.143(3) of the Act on 31.12.2009. In the said assessment though the

assessee has not claimed exemption of dividend income in the return of income but the AO allowed the exemption of dividend income. Subsequently, Id. CIT initiated revision proceedings u/s.263 of the Act and is of the opinion that the dividend income is not exempted income as per the provisions of Section 10(23F), 10(23FA), 10(34) of the Act and the Id. CIT has passed order considering the assessment order passed u/s.143(3) of the Act dtd.31.12.2009 is erroneous and prejudicial to the interest of revenue and gave direction to the AO to treat the dividend income as taxable. Aggrieved by the revision order passed u/s.263 of the Act dated 8.12.2011, the assessee preferred an appeal with the Tribunal and the Tribunal in ITA No.493/CTK/2012, dated 4.1.2013 has observed at page 4 para 7 of the order and decided that the order u/s.263 of the Act is within the jurisdiction of the CIT. Subsequent to the directions of CIT in revision u/s.263 of the Act, the AO has modified the assessment order giving effect to the directions and made addition of dividend income and also made adjustments to disallowance u/s.14A of the Act and assessed total income of Rs.2,21,87,350/- and passed order u/s.143(3) of the Act r.w.s263 of the Act, dated 9.12.2011. Aggrieved by the order of CIT(A), assessee has filed an appeal before the Tribunal.

3. Before us, Id. AR submitted that the Id. CIT(A) was erred in considering the dividend income as taxable and explained that the dividend income on investments made in other cooperative societies are exempt from tax and filed written submissions in support of its claim.

Contra, Id. DR relied on the orders of CIT(A) and vehemently opposed that the appeal be dismissed.

4. We have heard the rival submissions and perused the material available on record. Prima facie, the contention of Id. AR that the CIT(A) has erred in confirming the action of AO in making the addition of dividend income in the order passed u/s.143(3)/263 of the Act. We perused the CIT order passed u/s.263 of the Act dated 8.12.2011 and the order of the coordinate bench of this Tribunal challenging the order passed u/s.263 of the Act and where the Tribunal has dismissed the appeal of the assessee at page 4 para 7, which read as under :-

“7. On careful analysis of the impugned order passed by the learned CIT, it is found that as per the provisions contained in Section 263 of the Act, the learned CIT while invoking provisions contained in Section 263 of the I.T.Act., the learned CIT while invoking provisions of Section 263 after hearing the assessee and considering the material available in the assessment records and after giving opportunity to the assessee of being heard as well as making enquiries as he deems necessary, pass orders as the circumstance justify including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment. From the provisions contained in Section 263, it is clear that the impugned order passed by the learned CIT is well within the powers given in such Section. Therefore, the contention of the learned AR of the assessee is not sustainable for legal scrutiny. Since the assessee is not able to point out that the order passed by the Assessing Officer u/s.143(3) was not found by the learned CIT as prejudicial to the interest of revenue and erroneous, we are of the considered view that the issues raised by the assessee are not found tenable. Hence, they found devoid of merits and as such, rejected and hence, the appeal of the assessee is dismissed.”

We are of the opinion that since the revision order u/s.263 of the Act has been confirmed by the coordinate bench of the Tribunal and the consequential order u/s.143(3) r.w.s263 of the Act was passed under the directions of Id. CIT and further in the present case Id. CIT(A) has

observed that the assessee could not point out the reasons that the revision order of the Id. CIT is bad in law. Considering the apparent facts and material on record, we are of the opinion, assessee's appeal against the consequential order passed u/s.143(3) r.w.s.263 of the Act cannot be sustained as the coordinate bench of the Tribunal in assessee's own case in ITA No.493/CTK/2012 (supra) has upheld the order passed u/s.263 of the Act and, accordingly, we dismiss the grounds of appeal of the assessee.

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

Order pronounced in the open court on this 24/08/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 24/08/2017

प्र. कु. मि / PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
M/s Balasore Bhadrak Central
Co-Operative Bank Ltd., O.T.Road,
Balasore
2. प्रत्यर्थी / The Respondent-
ACIT, Balasore Circle, Balasore
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार / BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack