

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA**

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 2219/Kol/2017
Assessment Year: 2010-11

ACIT CIR 42 Murshidabad.....Appellant
39, R.N. Tagore Road, Berhampore,
Murshidabad - 742 101.

Bangiya Gramin Vikash Bank.....Respondent
BMC House, NH-34, Chuanpur,
Nayasarak, Berhampore,
Murshidabad - 742 101.
[PAN: AAALB 0462 D]

Appearances by:

Shri P.K. Srihari, CIT(DR) appearing on behalf of the Revenue.

Shri Soumitra Choudhury, Advocate appearing on behalf of the Assessee

Date of concluding the hearing : August 28, 2018

Date of pronouncing the order : August 28, 2018

ORDER

PER P.M. JAGTAP, AM

This appeal is preferred by the revenue against the order of Ld. CIT(Appeals) - 12, Kolkata dated 28.07.2017.

2. The assessee in the present case is a Scheduled Bank. In the assessment originally completed u/s 143(3) for the year under consideration vide an order dated 18.03.2013, the total income of the assessee was determined by the A.O. at Rs. 20,14,55,260/-. The record of the said assessment came to be examined by the concerned Ld. CIT(A) and on such examination, he found that the assessment u/s 143(3) was made by the A.O. without making proper and adequate enquiry. He, therefore, set aside the order dated 18.03.2013 passed by the A.O. u/s 143(3) vide his order dated 30.03.2015 passed u/s 263 by holding the same to be erroneous and prejudicial to the

interest of the revenue with the direction to the A.O. to pass the assessment order afresh. As per the direction of the Ld. CIT, fresh assessment order was passed by the A.O. on 03.03.2016 u/s 143(3)/263 of the Act by making the following two additions to the total income of the assessee:

<i>i. Provision for wage revision</i>	<i>Rs. 25,57,00,000/-</i>
<i>ii. Liability of leave encashment on superannuation</i>	<i>RS. 1,30,00,000/-</i>

3. Against the order passed by the A.O. u/s 143(3)/263, an appeal was preferred by the assessee before the Ld. CIT(A) disputing both the additions made by the A.O. Meanwhile, the appeal filed by the assessee against the order of the Ld. CIT passed u/s 263 came to be disposed of by the Tribunal vide its order dated 12.05.2017 passed in ITA No. 877/Kol/2015. In the said order, the Tribunal held that the Assessing Officer had made proper enquiries before concluding the assessment on the issue of "provision for wage revision" and there was no error in the order of the A.O. passed u/s 143(3) in allowing the claim of the assessee for "provision for wage revision". The order of the Ld. CIT passed u/s 263 on this issue accordingly was set aside by the Tribunal restoring that of the A.O. Keeping in view this decision of the Tribunal, the Ld. CIT(A) allowed the assessee's appeal on the said issue.

4. As regards the other issue relating to provision for leave encashment of Rs. 1.30 crores, the Tribunal held vide its order dated 12.05.2017 (supra) that in view of proviso to section 43B(f) of the Act, any sum actually paid on account of leave encashment on or before due date of filing the return of income for the year under

consideration should be allowed as deduction. In this regard, it was submitted on behalf of the assessee before the Ld. CIT(A) that a sum of Rs. 57,87,806/- having been paid before 15th October, 2010 which was the due date for filing the return of income for the year under consideration, deduction should be allowed to then extent. The A.O. accordingly was directed by the Ld. CIT(A) to verify this claim of the assessee and allow the deduction to the extent of the amount paid before the due date of filing of return for the year under consideration. Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal on the following grounds:

- “1. CIT(Appeal) erred by deleting the addition made by the A.O. on account of arrear payment due to wage revision is completely arbitrary, unjustified and illegal.*
- 2. CIT(Appeal) erred by deleting the addition made by the A.O. on account of liability of leave encashment on superannuation u/s 43B of the Income Tax Act is completely arbitrary, unjustified and illegal.”*

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned representatives of both the sides, the order of the Ld. CIT passed u/s 263 on the issue of “provision for wage revision” having already been set aside by the Tribunal restoring the order of the A.O. passed originally u/s 143(3) on this issue, the fresh assessment order passed by the A.O. u/s 143(3)/263 on this issue has become infructuous and there is no infirmity in the impugned order of the Ld. CIT(A) allowing the appeal of the assessee against the order passed by the A.O. u/s 143(3)/263 on this issue. Ground No. 1 of the revenue’s appeal is accordingly dismissed.

6. As regards the issue involved in Ground No. 2 relating to the claim of the assessee for deduction on account of provision for leave encashment, it is observed that while deciding the appeal of the assessee against the order passed by the Ld. CIT u/s 263, the Tribunal vide its order dated 12.05.2017 (supra) held that as per the proviso to section 43B(f) of the Act, any sum actually paid by the assessee on account of leave encashment on or before the due date of filing the return of income should be allowed as deduction. Keeping in view this decision of the Tribunal, the Ld. CIT(A) vide his impugned order directed the A.O. to verify the claim of the assessee of having paid the amount of leave encashment to the extent of Rs. 57,87,806/- before the due date of filing of return of income for the year under consideration and allow deduction to the extent of such payment. Keeping in view the specific decision rendered by the Tribunal vide its order dated 12.05.2017 (supra), we find no infirmity in the impugned order of the Ld. CIT(A) in giving the said direction to the A.O. on this issue and upholding the same, we dismiss ground no 2 of revenue's appeal.

7. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 31st August, 2018.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 31/08/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Bangiya Gramin Vikash Bank, BMC House, NH-34, Chuanpur, Nayasarak, Berhampore, Murshidabad - 742 101.
2. ACIT CIR 42, 39, R.N. Tagore Road, Berhampore, Murshidabad - 742 101.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata