

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Hon’ble Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 2056/Kol/2017

Assessment Year : 2012-13

The West Bengal State Co-operative Bank Ltd. -vs- DCIT, Circle-40, Kolkata .
[PAN: AAAAT 7072 N] (Appellant) (Respondent)

For the Appellant : Shri N.C. Mondal, FCA

For the Respondent : Shri A. Bhattacharyya, Addl. CIT

Date of Hearing : 20.08.2018

Date of Pronouncement : 05. 09 .2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-12, Kolkata [in short the Id CIT(A)] in Appeal No. 39/CIT(A)-12/Kol/Cir-40/2015-16 dated 04.07.2017 against the order passed by the DCIT, Circle-40, Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 28.03.2015 for the Assessment Year 2012-13.

2. The Ground Nos. 1 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

3. The first issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance of expenses towards ‘Bakshis’ of Rs 4,58,350/- and ‘Tips and Bakshis’ of Rs 76,150/-, in the facts and circumstances of the case.

3.1. The brief facts of this issue are that the assessee is a co-operative society carrying on banking business. In the course of assessment proceedings u/s 143(3) of the Act, the Id AO noticed that the assessee had claimed as deduction a sum of Rs 4,58,350/- and another sum of Rs 76,150/- under the head 'Tips and Bakshis' respectively. The assessee explained that the payment of Bakshis and Tips were made to casual/part time workers engaged purely on temporary and adhoc basis like sweepers, water boys, canteen boys, security staffs, lift man, drivers etc, on the eve of Eid-UI-Fitre and Durga Puja festival in the nature of ex-gratia / bonus and the said payments are in the nature of contractual obligation though unwritten. It was also pointed out that the assessee has been paying the said amounts consistently since long and debited in 'Bakshis' and 'Tips and Bakshis' account and the said expenses are part of salary / wages and the payment is not voluntary but obligatory. The services of those casual / part time workers are utmost necessary for normal and smooth conduct of day to day business of the bank. Without the service of those persons, it would be utmost difficult to carry on day to day operations of the bank and in their absence, the business of the bank would suffer substantially. Minimum amenities like supply of water, tea, cleanliness etc to the employees and customers during office hours are essential for running and success of any business. The bank is engaged in the business of banking, so security is of utmost importance to protect the bank from any eventuality. So though the service of those casual / part time workers are not directly connected to the earnings of the bank, in their absence, the bank cannot run its operations smoothly and efficiently to earn its income. The bank has been making payments of this nature as a customary obligation for several years pursuant to the authorization of such payments by the Board of Directors. The vouchers at Head office were duly submitted during the course of assessment proceedings by the assessee and the note sheets attached with the vouchers clearly indicate the names of persons to whom such payments were made. The subject mentioned payments were made from 44 regional offices and branches of the bank situated in different parts of West Bengal and necessary vouchers were kept at the

concerned regional offices / branches. It was pointed out that it would be very difficult to collect all such vouchers from different regional offices / branches within a short time. Hence time was sought for to collect the same from the concerned regional offices / branches for submission before the Id AO.

3.2. The Id AO found that the assessee could not produce relevant vouchers and could not also justify the business expediency of these expenses despite giving sufficient time for the assessee. The Id AO therefore disallowed the claim of the assessee for deduction of the aforesaid expenses while computing income under the head 'income from business'.

3.3. The Id CITA upheld the action of the Id AO on the ground that similar disallowance was upheld by him in assessee's own case for the immediately preceding assessment year i.e. Asst Year 2011-12.

3.4. Aggrieved, the assessee is in appeal before us.

3.5. We have heard the rival submissions. We find that the issue under dispute is covered in favour of the assessee in its own case for the Asst Year 2011-12 in ITA No. 1471/Kol/2016 dated 9.2.2018 wherein it was held as under:-

"7. At the time of hearing the Id. Counsel for the assessee filed before us a copy of the order of ITAT ' B " Bench in assessee's own case for A.Y. in ITA No.746/Kol/2013 order dated 30.11.2017. In the aforesaid order this tribunal came to the conclusion that on identical facts that the expenditure was allowable as deduction. The following were the relevant observations of the tribunal.:-

"6. Ground no 2 and 3 is against the disallowance of expenditure of an amount paid as Tips & Baksis by the bank to casual workers on festive occasion. The assessee submits that these payments were made to casual workers like water boys, canteen boys, security staffs etc. during annual festivals like Durga Puja and Eid. It was submitted that the payment is in the nature of ex-gratia/bonus. The break-up of these payments, as made by different branches of the bank was given. These payments were authorised by appropriate resolutions of the Board of Director of the bank. The Assessing officer as well as the Ld. CIT (A) did not allow this expenditure on the ground that there was no commercial expediency behind incurring this expenditure and that the

explanation is not satisfactory. The Id. Counsel for the assessee the disallowance is bad in law the assessee has produced sufficient evidence in the form of vouchers and receipts in evidence of any payment of Tips & Baksis. Payments were made by the Head Office, Regional Offices as well as 44 branches situated in different parts of West Bengal. Such payments are made after due authorization from the management. The revenue authorities were wrong in coming to a conclusion that there is no commercial expediency in making these payments. The disallowance arbitrarily unjustified. Hence we allow this ground of the assessee."

8. The DR pointed out that no evidence whatsoever was filed before the AO. Therefore order of the CIT(A) should be sustained. The Id. DR also placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs Calcutta Agencies 19 ITR 191 (SC).

9. We have perused the decision of the Hon'ble Supreme Court and are of the view that the same is not applicable to the facts of the present case. The said decision on the the jurisdiction of the Hon'ble High Court in a reference u/s 66(1) of the I.T.Act, 1962 and was held to be advisory in nature. The court held that on facts the decision of the tribunal is final unless its conclusion are based on no evidence. In the present case the plea of the assessee is based on the existing customs and practice prevalent for a long time. This was accepted by the tribunal in A.Y.2009-10. Moreover, the vouchers were filed before the CIT(A) which were omitted to be considered by the CIT(A). In these circumstance we are of the view that the decision rendered by the tribunal on identical facts should be followed. Respectfully following the decision of the tribunal we direct that the impugned addition made by the AO be deleted."

Respectfully following the aforesaid decision, we direct the Id AO to delete the disallowance of expenses made in the sums of Rs 4,58,350/- and Rs 76,150/-. Accordingly, the Ground No.2 raised by the assessee is allowed.

4. The last issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition made in the sum of Rs 61,750/- towards difference in interest income between Form 26AS and that disclosed by the assessee, in the facts and circumstances of the case.

4.1. The brief facts of this issue are that the assessee derived interest income on deposits with banks and others and offered a sum of Rs 93,06,103.03 by crediting the same in the profit and loss account. The corresponding interest income figure reflected in Form 26AS was Rs 93,12,278.03 thereby leading to a difference of Rs 6,175/-. The assessee

even identified this difference as attributable from interest calculations from deposits kept with State Bank of India. It stated that State Bank of India considered interest amount at Rs 4,44,792/- whereas the assessee considered interest income thereon of Rs 4,38,598/- leading to difference of Rs 6,175/-. The Id AO treated the said difference as difference in TDS amount and accordingly calculated the interest income thereon by extrapolating it to Rs 61,750/- (6175 / 10%) and made addition towards concealed interest income to the tune of Rs 61,750/-. This action of the Id AO was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us.

4.2. We have heard the rival submissions. We find that the total difference in interest income was only Rs 6,175/- which is to be brought to tax and we find that the same was accepted to be taxed by the Id AR at the time of hearing before us. Accordingly , we direct the Id AO to tax only a sum of Rs 6,175/- being the actual difference in interest income with State Bank of India and delete the remaining sum of Rs 55,575/- (61750-6175) . Accordingly, the Ground No. 3 raised by the assessee is partly allowed.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 05.09.2018

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 05.09.2018

SB, Sr. PS

Copy of the order forwarded to:

1. The West Bengal State Co-operative Bank Ltd, 24A, Waterloo Street, Kolkata-69.
2. DCIT, Circle-40, Kolkata, 3, Govt. Place (West), Second Floor, Kolkata-700001.
- 3..C.I.T.(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches