

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1985/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Nashik Merchants Co-op. Bank Ltd.,
A-16, Administrative Building,
Subhashchandra Bose Marg,
Industrial Estate, Satpur,
Nashik – 422007

.... अपीलार्थी/Appellant

PAN: AAAAT3324K

Vs.

The Asst. Commissioner of Income Tax,
Circle-1, Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte

प्रत्यर्थी की ओर से / Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 19.09.2018	घोषणा की तारीख / Date of Pronouncement: 25.09.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-1, Nashik, dated 01.07.2016 relating to assessment year 2012-13 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in making the addition of Rs.1,82,80,841/- being amount credited under the head "Non-Performing Asset (NPA) write-off" by disregarding the appellant's contention in this regard.*

2. *On the facts and in the circumstances of the case and in law the learned Assessing Officer has erred in invoking the provision of the section 14A(2) by rejecting the appellants contention and thereby applying Rule 8D in the appellants case and making the addition of Rs.17,81,318/- by attributing certain expenses towards exempt income.*
3. *Without prejudicing to Ground No.1, the Learned Assessing Officer erred in adopting incorrect formula as specified in Rule 8D thereby inflating the allocable expenses towards the exempt income. Appellant seeks appropriate relief accordingly.*

3. The issue raised in the present appeal is against addition made of ₹ 1,82,80,841/- being the amount credited under the head 'Non-Performance Asset write-off'. The said issue has been raised by way of ground of appeal No.1 raised by the assessee.

4. The learned Authorized Representative for the assessee pointed out that the grounds of appeal No.2 and 3 are not being pressed since the CIT(A) has already allowed the claim, hence the same are dismissed as not pressed. The only issue which was addressed by the learned Authorized Representative for the assessee was the issue raised in ground of appeal No.1

5. Brief facts relating to the issue are that the assessee was Co-operative Bank and the income of assessee was not taxable in earlier years upto assessment year 2006-07, in view of the provisions of section 80P(2)(a)(i) of the Act. Post the amendment, the income of assessee became taxable, simultaneously the provisions of section 36(1)(viia) of the Act i.e. provision for bad and doubtful debts were made applicable in the case of Co-operative Bank and Co-operative Societies also. Earlier to assessment year 2007-08, the assessee was recognizing its bad debts on the basis of norms settled by the Reserve Bank of India, but since the income of assessee was not taxable, the same were added back but not claimed as deduction under section 36(1)(viia) of the Act. The assessee for the year under consideration had credited sum of ₹ 1,82,80,841/- on account of NPA write-off principal recovered. However, in the computation of income, the assessee claimed deduction of said amount.

The Assessing Officer during the course of assessment proceedings asked the assessee to explain as to why the claim of deduction of NPA write-off should not be disallowed. The Assessing Officer noted that where the assessee was making provision for bad and doubtful debts in its Profit and Loss Account and claiming deduction every year, which was normally allowed to the bank; then any recovery from the NPA account or write off of NPA accounts should be credited to the Profit and Loss Account. The Assessing Officer was of the view that deduction claimed by assessee was not available to the assessee under the provisions of the Act. He further held that provision so made had to fulfill the requirement of section 36(2)(v) of the Act. He further held that for any claim of bad debts, provisions of section 36(1)(vii) proviso would also apply i.e. credit balance in the provision for bad and doubtful debts account made under section 36(1)(viiia) of the Act would be the material issue. The Assessing Officer noted that no such provision was created and the deduction was claimed as NPA written off – Principal. The Assessing Officer rejecting the plea of assessee held that the said sum of ₹ 1.82 crores was an item of appropriation of profit and had to be added in the hands of assessee.

6. The CIT(A) upheld the order of Assessing Officer, against which the assessee is in appeal before us.

7. The learned Authorized Representative for the assessee pointed out that the assessee Co-operative Bank was creating two types of Reserves i.e. Reserve created prior to assessment year 2007-08, which was as per RBI norms and added back where the profits were eligible for deduction under section 80P(2)(a)(i) of the Act. He further clarified that the said provisions were made as per norms of RBI; but post 01.04.2007 the provision was made as per section 36(1)(viiia) of the Act. He explained that during the year under consideration the assessee reversed the provision made prior to assessment

year 2007-08 and credited the same to Profit and Loss Account; but reduced the same in computation of income. He also referred to the order of Tribunal in assessee's own case in preceding year, wherein the Tribunal had sent back the matter to the file of Assessing Officer. He further pointed out that the Hon'ble High Court of Delhi in CIT Vs. Jain Co-operative Bank Ltd. in ITA 314 & 315/2012, judgment dated 04.03.2014, however, on identical facts has allowed the claim of assessee and the appeal of Revenue was dismissed.

8. The learned Departmental Representative for the Revenue placed reliance on the order of CIT(A) and also on the order of Tribunal in preceding year.

9. We have heard the rival contentions and perused the record. The issue which arises in the present appeal relates to the provision made on account of Non Performing Asset, which relate to the period prior to assessment year 2007-08 i.e. where the provision was made in earlier year and has been written back during the year but has been claimed to be not taxable in the hands of assessee. Prior to assessment year 2007-08, profits of assessee Co-operative bank were not taxable in view of provisions of section 80P(2)(a)(i) of the Act. However, w.e.f. 01.04.2007 post amendment, the said income became taxable in the hands of assessee. Simultaneously section 36(1)(viiia) of the Act was amended and even the Co-operative Banks and Co-operative Societies were entitled to claim the benefit of deduction on account of provision made for bad and doubtful debts. Under the said section, the assessee could write off bad and doubtful debts. Prior to assessment year 2007-08 also, the assessee was making the aforesaid provision but the same was as per RBI norms. Hence, the assessee claimed that it had two kinds of provisions; one on which no deduction was claimed i.e. prior to assessment year 2007-08 and the second i.e. post assessment year 2007-08 w.e.f. 01.04.2007. In post amendment

period, in case any bad and doubtful debt has been claimed as deductible on making a provision or on its write off, then in case the same is recovered, then the same has to be brought to tax in the hands of assessee in the year of recovery. The assessee claims that such a provision is applicable only with respect to bad and doubtful debts which were created from 01.04.2007 onwards. Prior to assessment year 2007-08, when provisions of section 36(1)(vii a) of the Act were not attracted in the case of assessee, then even though the assessee could make provision for bad and doubtful debts, on its write back the same would not be taxable in the hands of assessee since no deduction was claimed in earlier year as the income of assessee was otherwise exempt i.e. in view of provisions of section 80P(2)(a)(i) of the Act.

10. Before the Hon'ble High Court of Delhi in the case of Jain Co-operative Bank Ltd, the facts were as under:-

"2..... The assessee is engaged in banking activities and had reversed NPA provisions. The assessee in the proceedings before the AO argued that the provision (for bad debts) was made due to its reflecting the NPA in terms of the Reserve Bank of India guidelines on bad debts and though such provision was made, there was no claim for deduction and, therefore, at the time of reversal, there can be no justification for adding it to the income. The assessee had submitted that it made a claim on account of bad debts and written off separately as per provisions of Section 36 (1) (vii a) read with Section 36 (2) of the Income Tax Act. The Assessing Officer rejected its claim expressing the opinion that whenever the bank actually writes off an amount, it would get a deduction. He also relied upon Section 41 (4) which stated that whenever a bad and doubtful debts is allowed for a previous or earlier years and gets recovered by the bank subsequently, the said amount should be taxed at the time of recovery."

11. The Tribunal in the said case had allowed the claim of assessee, against which the Revenue filed an appeal. Relying on the ratio laid down by the Hon'ble Supreme Court in Southern Technologies Ltd. Vs. JCIT reported in 320 ITR 577 (SC) and it was argued that the claim for deduction by way of set off in the current year through reversal of NPA entry could not be allowed. The assessee on the other hand, placed reliance on the decisions of the Hon'ble High Court of Delhi in CIT Vs. Mohan Meakin Ltd. (2012) 18 Taxman 47 (Del),

CIT Vs. Lal Textile Finishing Mills (P) Ltd. reported in 180 ITR 45 (Del) and Narayanan Chettiar Industries Vs. ITO reported in 277 ITR 426 (Del), wherein the Hon'ble High Court noted that in all those decisions, the various High Courts including the Division Bench of this Court consistently ruled that provision for doubtful debts written back has to be seen in the context of whether the provision had been allowed as deduction in order to determine the taxability at the later point of time of write back. The Hon'ble High Court observed that in Mohan Meakin Ltd. matter (supra), this is what the Court stated: -

"18. As regards the excess provision for doubtful debts amounting to Rs.17,133/- which has been written back, the finding of the CIT (A) that the provision was never allowed as a deduction in the earlier years. Since the finding that the provision was not allowed in the earlier year as a deduction is not under challenge, the amount cannot be added under Section 41 (1) when it is written back in the accounts. The decision of the Tribunal is upheld."

12. The Hon'ble High Court thus, held as under:-

"8. With regard to the contention of the Revenue with respect to Section 80P, this Court is of the opinion that the said provision gives general relief to a class of assesseees by way of mandatory deduction of certain categories of income. The circumstance that the provision for bad debts was either added back or not added back would be irrelevant, since the deduction is with reference to the income from the activities listed in Section 80P (2) which is part of the gross total income. In this view, this Court is fortified by the judgment of the Bombay High Court in Commissioner of Income Tax vs. Nagpur Zilla Krishi Audyogik Sahakari Sangh Ltd., (1994) 209 ITR 481 (Bom)....."

13. The issue raised in the present appeal is squarely identical to the issue before the Hon'ble High Court of Delhi (supra) and following the same parity of reasoning, we are of the view that the amount written back by the assessee on account of provision for doubtful debts in respect of write off made before assessment year 2007-08, since is not allowed as deduction in the hands of assessee under any provisions of the Act but was allowed because of the income being exempt from tax under section 80P of the Act, is not taxable in the hands of assessee in the instant assessment year i.e. year in which the same is written back.

14. Before parting, we may also note that the Tribunal in assessee's own case in earlier year i.e. assessment year 2011-12 had set aside the matter to the file of Assessing Officer to consider law and decide the issue. However, law now stands settled by the Hon'ble High Court of Delhi and we find no merit in setting aside the issue. However, only for the purpose of verifying the claim of assessee that the funds relate to the earlier year i.e. prior to assessment year 2007-08, the issue is set aside to the file of Assessing Officer for limited verification. The assessee shall furnish the details in this regard and the Assessing Officer after verification would allow the claim of assessee. Reasonable opportunity of hearing shall be provided to the assessee before deciding the issue. The ground of appeal No.1 is thus, allowed.

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

Order pronounced on this 25th day of September, 2018.

Sd/-
(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 25th September, 2018.

GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik;
4. The Pr.CIT-1, Nashik;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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