

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A", KOLKATA
BEFORE SH. P.M.JAGTAP, VICE PRESIDENT
AND
SH. S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

ITA No.655/KOL/2016
[Assessment Year: 2011-12]

Balageria Central Co-operative Bank Ltd., Saraswatital, Contai, Dist.- Purba, Medinipur-721401. PAN-AAALB0087A	vs	ACIT, Circle-27, Haldia, Basudeopur, P.O.- Khanjan Chak, Haldia, Purba Medinipur-721101.
(Appellant)		(Respondent)
Appellant by	Sh. Soumitra Choudhary, Advocate	
Respondent by	Sh. Soumesh Dash, Addl. CIT. Sr.DR	
Date of Hearing	04.09.2018	
Date of Pronouncement	28.11.2018	

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal filed by the assessee against the order dated 20.01.2016 passed by CIT(A)-7, Kolkata for AY 2011-12.

2. Ground Nos. 1 & 6 are general in nature, require no adjudication, are dismissed.

3. Ground No.2, Ld.AR submitted that the assessee is not interested in prosecuting the issue raised in Ground No.2 and prayed to dismiss as not pressed. We, therefore, dismiss Ground No.2 as not pressed.

4. Ground No.3 is relating to confirmation of addition made on account of provision on investments.

5. Heard both parties and perused the material available on record. It is noted from the record that the addition made by the AO as confirmed by the CIT(A) is nothing but depreciation value of provision on investments. The same is supported vide balance sheet as on 31.03.2011 placed at pages 45 & 46 of the Paper Book. It is noted from the order of AO, the claim of the assessee was rejected in terms of CBDT Instruction No.17/2018 dated 26.11.2008. It is also noted from the impugned order that the assessee did not furnish the details of share-wise value diminished with sufficient proof. Therefore, in our opinion, the matter should be considered by the AO again. Ld. DR did not controvert the same. Therefore, we deem it proper to remand the matter to the file of AO to verify the exact nature of investments as per the Instruction No.17/2018 of CBDT (supra). Thus, Ground No.3 raised by the assessee is allowed for statistical purposes.

6. Ground No.4 raised by the assessee challenging the action of the CIT(A) in confirming the disallowance made on account of unpaid service tax by invoking section 43B of the income Tax Act, 1961 (in short "Act").

7. Heard both parties and perused the material available on record. We find the service tax was not debited to the P&L Account and, therefore, we find force in the arguments of the Ld.AR that no disallowance is maintainable when the said sum is not claimed and not debited to the P&L A/c. We also find force in the arguments that when the service tax was paid before the due date of filing of return of income and no disallowance could be made u/s 43B of the Act. The Ld.AR

undertakes to file relevant evidence before the AO showing the service tax was paid even before filing of return of income. Therefore, taking into consideration the submissions of the Ld.AR and Ld.DR and in the interest of justice, we deem it proper to remand the matter to the file of AO for his verification as discussed above. The assessee is liberty to file evidence, if any, in support of his contention. Thus, Ground No.4 raised by the assessee is allowed for statistical purposes.

8. Ground No.5 is consequential in nature, requires no adjudication and it is dismissed.

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

Order pronounced in the open court on 28.11.2018.

Sd/-
(P.M.JAGTAP)
VICE PRESIDENT

Date:- 28.11.2018

Amit Kumar

Copy forwarded to:

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

1. Appellant- Balageria Central Co-operative Bank Ltd., Saraswatital, Contai, Dist.-Purba, Medinipur-721401.
2. Respondent- ACIT, Circle-27, Haldia, Basudeopur, P.O.- Khanjan Chak, Haldia, Purba Medinipur-721101.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

AR/H.O.O
ITAT, KOLKATA