

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4912/Del/2016
(Assessment Year: 2013-14)

The Ganga Mercantile Urban Cooperative Bank Ltd, C/o. M/s. malik & Co. (Advocates), 305/7, Thapar Nagar, Meerut PAN: AABFT2780R (Appellant)	Vs.	ACIT, Circle-2, Muzaffarnagar (Respondent)
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Assessee by :	Shri Sanjay Malik, Adv
Revenue by:	Shri Amit Katoch, Sr. DR
Date of Hearing	27/11/2018
Date of pronouncement	20/12/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld CIT (A), Muzaffarnagar dated 30.06.2016 for the AY 2013-14.
2. The assessee has raised the following grounds of appeal:-
"1. That the learned Commissioner of Income Tax (Appeals) went wrong on facts and in law and on the grounds taken and basis adopted to confirm the disallowance of Rs. 3,46,000/- (correct figure Rs. 3,00,000/-) representing payment of Gratuity to the employees.
3. Brief facts of the case shows that assessee is a cooperative bank engaged in the banking business. It filed its return of income on 29/9/2013 declaring taxable income of INR 5115 290/-. The assessment under section 143 (3) of the income tax act was passed on 1/3/2016 at INR 6 935563/-. Several additions were made by the learned assessing officer. However, now the only addition in dispute before us is the disallowance of INR 3 46000 on account of gratuity payment as assessee have not obtained any approval from the competent authority. On appeal before the learned CIT – A the above disallowance was confirmed. The learned CIT – A, noted that assessee has paid a sum of INR 3 46000/- towards gratuity fund with life insurance Corp of India. However, the fund for its employee has not been

approved in the relevant year under consideration by the Commissioner of income tax. He held that it is 1 of the mandatory conditions to allow deduction under the provisions of the act. As there is no accrual granted by the Commissioner of income tax, he confirmed the disallowance. However, the assessee contested before him that the correct sum for deduction to be disallowed is only INR 300,000 and not INR 3 46000/-. To that extent, he remitted the matter back to the learned assessing officer to determine the correct amount of disallowance.

4. The learned authorised representative submitted that assessee has already filed an application for approval of gratuity scheme before the learned Commissioner of income tax on 12/2/2013. This fact was also reminded to the principal Commissioner of income tax on 30/03/2016 wherein it was submitted that the approval is pending as the assessee has submitted all the required application along with the necessary trust deed and the rules with the life insurance Corp of India. It was further stated that the assessment year 2013 - 14 was under scrutiny and the learned assessing officer is asking clarification in this regard. Further reminders were placed on 1/7/2016 and 16/9/2017 before the learned Commissioner. However the above approval is still pending. He stated that the application has already been made by the assessee in time, but it is pending approval before the learned Commissioner. Therefore, it was the argument of the learned authorised representative that despite repeated reminders the application of the assessee is pending for approval before the principal Commissioner of income tax and the assessee is facing the disallowance of the above sum.
5. The learned departmental representative supported the orders of the lower authorities.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has paid a submission that its application for the approval for the gratuity trust with life insurance Corp of India is pending since 12/02/2013. Several reminders have been placed on record before us submitted to the principal Commissioner of income tax. However, till to date the above trust has not been registered. In such peculiar circumstances where assessee has already done what he could have done and still facing disallowance for no approval of the about trust

which is according to the standard format with life insurance Corp of India. In such circumstances, we do not inclined to uphold the disallowances made by the lower authorities despite the fact that approval has not been granted to the gratuity trust of the assessee as per the standard deed entered into with life insurance Corp of India. We set aside this ground of appeal back to the file of the learned assessing officer with a direction to the learned AO and the concerned CIT to examine the application of the assessee and if it is found in accordance with the law to grant the registration so that assessee can get the deduction of the expenditure which assessee is rightfully incurring for the gratuity of the employees of the company. The AO shall decide this issue only after the decision of the principal Commissioner of income tax on the application of the assessee. Accordingly, ground number 1 of the appeal of the assessee is allowed with above direction.

Accordingly, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20/12/2018.

-Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20/12/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi