

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 851/Ahd/2016
Assessment Year 2010-11**

The Kalupur Commercial Co-op. Bank Ltd. Kalupur Bank Bhavan, Nr. Income Tax Circle, Ashram Road, Ahmedabad PAN: AAAAT9360R (Appellant)	Vs	The ACIT, Circle-7, Ahmedabad (Respondent)
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**Revenue by: Shri Lalit P. Jain, Sr. D.R.
Assessee by: Shri Bandish S. Soparkar**

Date of hearing : 24-01-2019
Date of pronouncement : 31-01-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2010-09, arises from order of the CIT(A)-XXI, Ahmedabad dated 20-01-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. During the course of assessment, the assessing officer observed that assessee's claim of following expenditure was not justifiable looking to the business of the assessee.

- I. Payment towards scholarship to children of members Rs. 4,92,231/-
- II. Payment to nominee / legal heirs of members Rs. 18, 60,000/-

The assessee explained that aforesaid expenditure were incurred in order to maintain cordial relationship with the members with the object of promoting the business in the competitive area of banking fields. It was claimed that these expenses were incurred for the business purposes only. The assessing officer had not accepted the explanation of the assessee observing that these expenditure were incurred only for the benefits for the members of the bank.

3. The assessee has preferred appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

4. We have heard the rival contentions. With the assistance of the Ld. representative we have gone through the material on record and noticed that both the issue contested in the impugned appeal has been decided by the Co-ordinate Bench of the ITAT for assessment year 2008-09 and assessment year 2009-10 vide ITA no. 2614/Ah/2011-ITA No. 2676/Ahd/2013 on 17-08-2016 and 25-11-2016 respectively in favour of the assessee. The Ld. Counsel has also brought to our noticed that Honøble jurisdictional High Court of Gujarat vide ITA N. 596 of 2017 has also dismissed the appeal of the Revenue on this issue in the appeal. The relevant part of the decision of the Honøble Gujarat High Court is reproduced as under:-

"2. The issue pertains to allowability of a certain claim of the assessee of business expenditure. Assessing Officer as well as Commissioner (Appeals) found that the expenditure HC-NIC Page 1 of 4 Created On Tue Aug 22 05:46:10 IST 2017 O/TAXAP/596/2017 ORDER was not incurred wholly and exclusively for the purposes of business. Tribunal reversed such findings making following observations:

"5.4 We have heard both sides, perused the material available on record and gone through the orders of the authorities below. The main source of income of the assessee is that of receipt of interest realized on the advances made by the bank and out of the total advances outstanding at the end of the year at Rs.735.36 crores which comprises more than 98% of total advances. The principal source of recurring income of the assessee is from the members and therefore the expenditure for keeping members' support and attraction towards the bank is wholly and exclusively necessary for the purpose of business. The Hon'ble High Court of Gujarat (Full Bench) in the case of Karjan Co-operative Cotton Sales Ginning Pressing Society (supra) has held that it was absolutely necessary for the assessee to maintain goodwill amongst its members and to lure them to continue to do their business with the society if it give presents to its members and to commemorate silver jubilee celebrations, it could not be said that the society was not doing something as a prudent business.

5.5 Reliance is also placed in the case of CIT vs. Dascroi Taluka Coop Purchase & Sales Union Ltd, 126 ITR 413 of Hon'ble Gujarat High Court judgment, where it was held that the amount spent by the assessee society on purchase of stainless steel utensils and other for the purpose of tour expenses of members was considered to be business expenditure within the meaning of Section 37 of the Act.

5.6 Considering to the above stated facts and circumstances the volume of earning of the assessee bank are mainly made through its members. These expenses are incurred by the assessee bank to attract the members confidence and loyalty towards the bank in the prevailing competition so that, the members place their HC-NIC Page 2 of 4 Created On Tue Aug 22 05:46:10 IST 2017 O/TAXAP/596/2017 ORDER deposits with the assessee bank and also continue to borrow funds from the assessee bank in order to improve the profit earning and income of the assessee bank. We have also considered that the amount spent on the aforesaid expenditures is very marginal compared to the amount of interest realised on the advances made to the members by the bank and amount of deposit made by the members with the bank. Under these circumstances the amount spent on scholarship to the children of members, payment to legal heirs of members and gifts to members could be said to be expenditure incurred wholly and exclusively for the purpose of business since the amount was spent for keeping alive its good image amongst its members and ensuring that goodwill and continuity of business with the members. In view of above mentioned facts and circumstances, we find that the assessee had incurred above stated expenditure for promoting the business, even though there is no legal obligation to incur these expenditure but the assessee had incurred it for preserving business connection and goodwill of the business. Therefore, in view of above findings, we allow the aforesaid expenditure as business expenditure under Section 37 of the Act.

3. It can thus be seen that the Tribunal accepted the assessee's version that the expenditure was incurred for the purpose of business to maintain goodwill and continuity of business being provided by important members. It was pointed out that these members had provided for nearly 98% of the bank's business and the expenditure was marginal as compared to the interest realised on advances made to such members by the bank and the amount of deposits made by the members with the bank. The Tribunal held that merely because there was no legal obligation to incur such expenditure would not mean that the same was not allowable business expenditure if it could be pointed out that the HC-NIC Page 3 of 4 Created On Tue Aug 22 05:46:10 IST 2017 O/TAXAP/596/2017 ORDER expenditure incurred in preserving the business connections and goodwill of business.

4. No question of law arises. Tax appeal is accordingly dismissed.”

In view of the above respectfully following the decisions of the coordinate bench and the Honøble jurisdictional High Court of Gujarat on identical issue based on similar facts the appeal of the assessee is allowed.

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

Order pronounced in the open court on 31-01-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 31/01/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश कल्ललम अणत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.-

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीललय अधकरण,
अहमदाबाद