

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE-B, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 131/JP/2018
निर्धारण वर्ष/Assessment Year :2010-11

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|---|-------------|---------------------------------------|
| M/s Sikar Sahakari Bhoomi Vikas Bank Ltd., Basant Vihar, Jaipur Road, Sikar | बनाम Vs. | The Income Tax Officer, Ward-4, Sikar |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAS1603E | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

निर्धारिती की ओर से/ Assessee by : Shri F. Rahaman (Advocate)
राजस्व की ओर से/ Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख/ Date of Hearing : 25/02/2019
उदघोषणा की तारीख/ Date of Pronouncement: 26/02/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 27.12.2017 wherein the assessee has taken the following grounds of appeal:-

"1.1 The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently the impugned assessment framed u/s 143(3)/148 dated 23.03.2015 also kindly be quashed.

1.2 The impugned order u/s 143(3)/148 dated 23.03.2015 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. Rs. 10,65,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowance of the provision of overdue interest merely alleging that the same is not allowable under the Act. The

disallowance so made and confirmed by the Id. CIT(A), being totally contrary to the provisions of law and facts, kindly be deleted in full."

2. Briefly stated, the facts of the case are that the assessee is a Co-operative Society and its case was reopened by issuance of notice u/s 148 and thereafter, the assessment was completed u/s 143(3) read with section 147 wherein the provision of overdue interest of Rs. 10,65,000/- was disallowed and added to the total income of the assessee.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the action of the Assessing Officer following the decision of the Co-ordinate Bench in assessee's own case in AY 2011-12 and the relevant finding of the Id. CIT(A) are contained at para 5.2 which is reproduced as under:-

"5.2 I have carefully considered the material before me. I find that this issue already decided in appellant own case by the Hon'ble ITAT Jaipur bench ITA No. 285/JP/2017 in AY 2011-12 vide order dated 29/08/2017 as under:-

"We have heard the rival contentions, perused the material available on record. We find that the Id. CIT(A) has given finding on fact that assessee has not written off such NPA and interest thereon as bad debt during the year under consideration this finding on fact is not controverted by the Id. Counsel for the assessee. Id. Counsel submitted that this is allowable u/s 37 of the Act.

In our view, the contentions of the Id. Counsel for the assessee is misplaced the Section 37 relates to the any expenditure not being expenditure of the nature described in Section 30 to 36 since the interest is part of that would be covered u/s 36(1)(vii) of the Act.

Further, the plea of the assessee is that this has been allowed in the earlier years in our view rule of consistency would apply where the assessee has been following the particular accounting policy and the revenue has been accepted the same but the issue of allowability or disallowability of expenses would certainly depend upon the provision of the Act. Therefore, this ground of assessee's appeal is dismissed."

The facts of the case are totally similar. Therefore following the decision of the Hon'ble ITAT as discuss above. I confirm the addition of Rs. 10,65,000/- as overdue interest. This ground is not allowed."

4. During the course of hearing, the Id. AR submitted that the assessee is eligible for deduction u/s 80P(2)(a)(i) of the Act and following the directions of Rajasthan Sahakari Bhoomi Vikas Bank Ltd, the assessee has created the provision for overdue interest of Rs. 10,65,000/- which relates to old loans and advances. It was further submitted that AO has not made any disallowance on account of provision of overdue interest in the earlier years and following the rule of consistency, no disallowance should be made.

5. Per contra, the Id. DR submitted that the matter is squarely covered by the decision of the Co-ordinate Bench in favour of the Revenue and the same may be followed in the present case.

6. We have heard the rival contentions and perused the material available on record. We find that the limited issue under consideration relates to disallowance of provision towards overdue interest in respect of loans and advances given by the assessee in the earlier years. We find that the matter has been decided by the Co-ordinate Bench in assessee's own case in ITA No. 285/JP/2017 in AY 2011-12 wherein vide order dated 29.08.2017, the said

claim has been denied to the assessee. There being no change in the facts and circumstances of the claim as fairly submitted by both the parties, following decision of Co-ordinate Bench in AY 2011-12, the disallowance so made by the Assessing Officer is hereby confirmed. In the result, ground no. 2 is dismissed.

7. Regarding other grounds of appeal, no arguments have been advanced by the Id AR, the same are thus dismissed as not pressed.

In the result, appeal of the assessee is dismissed.

Pronounced in the Open Court on 26/02/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 26/02/2019

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Sikar Sahakari Bhoomi Vikas Bank Ltd., Sikar
2. प्रत्यर्थी / The Respondent- The ITO, Ward-4, Sikar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 131/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

