

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'B', NEW DELHI**

**BEFORE SHRI L.P. SAHU, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

ITA No. 3613/Del/2016

AY: 2012-13

The Kangra Co-Operative Bank Ltd. 1916, Chuna Mandi Pahar Ganj New Delhi 110 055 PAN: AAATT0361M	vs.	ACIT, Circle 62(1) E Block Civic Centre New Delhi 110 002
(Appellant)		(Respondent)

Appellant by	Shri S.L.Gupta, C.A.
Respondent by	Smt. Ashima Neb, Sr.DR
Date of Hearing	20/03/2019
Date of Pronouncement	29/03/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 10/05/16 passed by Ld.CIT(A)-20, New Delhi for assessment year 2012-13 on following grounds of appeal:

"1. On the facts and circumstances of the case, the order dated 10.05.2016 passed by the Learned Commissioner of Income Tax (Appeals) - XX New Delhi [CIT- (A)] is bad both in the eyes of law and on facts.

2. On the facts and circumstances of the case, learned CIT (A) has erred both on facts and in law in confirming the additions of

Rs.25,70,000/- made by Assessing Officer on account of disallowance of expenses u/s 14A to earn tax free income

a) On the facts and circumstances of the case, Learned CIT (A) has erred both on facts and in law in confirming the order of the Assessing Officer rejecting the contention of the assessee that the appellant has invested in tax free securities out of their own interest free capital/funds and earned tax free interest.

b) On the facts and circumstances of the case, Learned CIT (A) has erred both on facts and in law in confirming the order of the Assessing Officer rejecting the contention of the assessee that in the absence of any live nexus between the expenditure incurred and the tax free income not forming part of total income, the assessment is bad in law and as such the assessment is illegal and liable to be quashed so.

c) That the above said additions has been confirmed ignoring the fact that no opportunity was provided to the appellant before making the disallowance.

3. That the Ld. CIT (A) has erred both on facts and in law in confirming the additions of Rs. 1,56,079/- out of total telephone expenses of Rs. 15,60,796/- treating the same as personal expenses.

a. That the above said additions has been confirmed ignoring the fact that no opportunity was provided to the appellant before making the disallowance and made the additions without identifying the personal nature of expenses.

4. That the Ld. CIT (A) has erred both on facts and in law in confirming the additions of Rs.80,389/- out of total Vehicle expenses of Rs.8,03,894/- (including depreciation of Rs.3,57,445/-) treating the same as personal expenses.

a. That the above said additions has been confirmed ignoring the fact that no opportunity was provided to the appellant before making the disallowance and made the additions without identifying the personal nature of expenses.

5. That the Ld. CIT (A) has erred both on facts and in law in confirming the addition of Rs.4,06,284/- on account of difference in interest paid u/s 244A by the Deptt.

a. That the above said additions has been confirmed ignoring the fact that no opportunity was provided to the appellant before making the arbitrary additions on account of difference of interest paid by the Deptt. and shown by the appellant as income.

6. That the appellant craves leave for reserving right to amend, modify, alter and/or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

2. Brief facts of the case are as under:

Assessee filed its return of income on 19/09/12 declaring total income of Rs.11,39,82,624/-. Subsequently case was selected for scrutiny, followed by issuance of notice under section 142 (1) and 143(2) along with questionnaire to assessee. In response to statutory notices, representative of assessee appeared before Ld. AO and filed requisite details as called for, which were examined by him.

2.1. Ld. AO observed that assessee is a Co-operative Society registered with Registrar of Co-operative Societies carrying on with business of banking under license from Reserve Bank of India. It has been observed by Ld.AO that main source of income of assessee bank was interest on loans and deposits of members, interest on deposits with other bank and other investments. Ld. AO while completing assessment made following additions in the hands of assessee:

S. No.	Particulars	Amount in Rs.
	Income as per return of income	11,39,82,624/-
1.	Disallowance of Expenses to earn tax free income u/s 14A	25,70,000/-
2.	Disallowance out of Telephone Expense	1,56,079/-
3.	Disallowance out of Vehicle Expenses	80,389/-
4.	Disallowance of Donation & Subscription	1,10,840/-
5.	Disallowance out of Diwali Expenses	51,334/-
6.	Addition on account of Interest allowed u/s 244A	4,06,284/-
	Total (1 to 6)	33,74,926/-
	Total Taxable Income	11,73,57,550/-
	Round off u/s 288A	11,73,57,550/-

3. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT(A) who partly allowed claim of assessee.

4. Aggrieved by order of Ld.CIT(A), assessee is in appeal before us now on additions confirmed.

5. Ld.AR submitted that **Ground No. 1** raised by assessee is general in nature and therefore do not require any adjudication.

6. **Ground No. 2** has been raised in respect of addition confirmed on account of disallowance of expenses under section 14 A read with Rule 8D of Income tax Rules, 1963.

6.1. Both Ld.AR as well as Ld.Sr.DR placed reliance upon decision of *Hon'ble Supreme Court* in case of *Maxopp investment Ltd vs CIT* reported in (2018) 91 taxman.com 154.

6.2. Ld.AR submitted that assessee being financial institution, duly licensed by Reserve Bank of India is involved in borrowing of funds and lending of funds as its main business. It has been

submitted that funds invested by public are sanctioned/disbursed to its members in shape of various types of short-term/long-term loans and surplus funds are time to time invested with other financial institutions in shape of short-term/long-term as per prudential norms of RBI for investment of funds. It has been submitted that investment in bonds and securities etc. are part of working capital of assessee. He submitted that during year under consideration assessee invested in tax-free bonds from its own interest-free funds and its working capital and there is no nexus between expenditure incurred and tax free income for forming part of total income. He submitted that original investment was made in year 2009 and 2010.

6.3. He thus submitted that no disallowance could be made under section 14 A of the Act, read with Rule 8D of Income tax Rules, 1963 towards earning of exempt income from tax-free bonds, against which tax-free interest was received by assessee.

7. On the contrary, Ld.Sr.DR placing reliance upon observations of authorities below submitted that expenses have been incurred to earn tax free income which needs to be disallowed under provisions of Section 14 A read with Rule 8D.

8. We have perused submissions advanced by both sides in light of records placed before us.

8.1. Hon'ble Supreme Court in case of Maxopp Investment Ltd. (supra) observed as under:

"21. Further, as a banking institution, the assessee was also statutorily required to place a part of its funds in approved securities, as held in CIT v. Nawanshahar Central Co-operative Bank Ltd. [2007]

160 Taxman 48/289 ITR 6 (SC). Since, the shares, bonds, debentures purchased by the assessee constituted its stock-in-trade, the provisions of Section 14A were not applicable. Here, the Court noted distinction between stock-in-trade and investment and made the following observations:

"17. Under section 14A, an expenditure can be disallowed only if it is incurred by the assessee in relation to income exempt from tax. The dividend or interest from the assessee's stock-in-trade i.e. the securities was exempt from tax in view of sections 10(15)(iv)(h), (34) and (35). This was incidental to its business of banking. The business income on account of the assessee trading in the securities is assessable under the head "Profits and gains of business and profession". The expenditure incurred in relation to stock-in-trade arising as a result of investment in shares and debentures is deductible under sections 28 to 37. There is a distinction between stock-in-trade and investment. The object of earning profit from trading in securities is different from the object of earning income, such as, dividend and interest arising therefrom. The object of trading in securities does not constitute the activity of investment where the object is to earn dividend or interest."

Further on issue of applicability of section 14 A read with Rule 8D of Income tax Rules, 1963, Hon'ble Supreme Court in case of Maxopp Investments Ltd. Vs. CIT (supra) observed as under:

37. This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in Nawanshahar case wherein it is held that investments made by a banking concern are part of the business or banking. Therefore, the income arises from such investments is attributable to business of banking falling under the head 'profits and gains of business and profession'. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall

be chargeable to income tax under the head 'income from other sources' or it is to fall under the head 'profits and gains of business and profession'. The Board, going by the decision of this Court in Nawanshahar case, clarified that it has to be treated as income falling under the head 'profits and gains of business and profession'. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

38. From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assesseees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.

39. In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share & Stock Brokers (P.) Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned."

8.2. Respectfully following afore stated view, we are of considered opinion that interest on securities/bonds earned by assessee, being a Cooperative bank to which Banking Regulations Act, 1949 applies, would be considered to be made by a banking concern as a part of its business or banking activity, and therefore income arisen from such investment is attributable to business of banking, falling under head 'Income from profits and gains of business or profession' and section 14 A of the Act would not be applicable.

Accordingly this ground raised by assessee stands allowed.

9. Ground No. 3 has been raised against additions of Rs.1,56,079/-, out of telephone expenses, treating the same as personal in nature.

9.1. Ld.AR submitted that telephones are installed within bank premises and Ld.A.O. has not provided any opportunity to assessee before arbitrarily disallowing 10% of total expenses. He submitted that assessee submitted copies of Ledger account under head telephone expenses debited to profit and loss account along with bills/vouchers during assessment proceedings. He submitted that within bank premises, there cannot be any personal use of telephones and without there being any evidence contrary to what has been submitted by assessee no disallowance could be made.

9.2. Ld.Sr.DR placed reliance upon orders of authorities below.

10. We have perused submissions advanced by both sides in light of records placed before us.

10.1. It is observed that disallowance made by Ld.AO is *ad hoc*, and without any basis. There cannot be any denial that expenses

are incurred by assessee for running its business establishment. Further, it is observed that Ld.AO has not held expenses to be not genuine or disallowance was based on any scientific method for any specific defects pointed out by Ld.AO in details filed by assessee. Under such circumstances, we are not inclined to uphold view of Ld.CIT(A), and addition stands deleted.

Accordingly this ground raised by assessee stands allowed.

11. Ground No. 4 has been raised by assessee against addition of Rs.80,389/-, out of total vehicle expenses including depreciation treating same as personal in nature.

11.1. Ld.AR submitted that vehicles have been used by assessee as cash delivery vans, physical verification/debt recovery vans and vans to ferry bank officials. It has been held that these vehicles are owned by assessee and not being run and operated by any staff. He submitted that assessee filed copies of Ledger account under accounting heads vehicle expenses debited to P&L account along with bills/vouchers during assessment proceedings. However Ld. AO, without verifying same mentioned that assessee had not filed any logbook, and no verification of expenses was possible. He submitted that this observation by Ld. AO is wrong, based upon which addition has been made.

11.2. Ld.Sr.DR placed reliance upon orders of authorities below.

12. We have perused submissions advanced by both sides in light of records placed before us.

12.1. It is observed that disallowance made by Ld.AO is *ad hoc* and without any basis. There cannot be any denial that expenses are incurred by assessee for running its business establishment. Further, it is observed that Ld.AO has not held expenses to be not genuine or pointed out any defect in details filed by assessee.

Under such circumstances, we are not inclined to uphold view of Ld.CIT(A), and addition stands deleted.

Accordingly this ground raised by assessee stands allowed.

13. Ground No. 5 has been raised by assessee on account of addition of Rs.4,06,284/-, being difference in interest paid u/s 244 by the Dept.

13.1. We direct Ld.AO to verify the same and allow the claim as per law. Accordingly this ground is set aside to Ld.AO.

Accordingly this ground is treated as allowed for statistical purposes.

14. In the result appeal filed by assessee stands allowed as indicated above.

Order pronounced in the open court on 29th March, 2019.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dated: the 29th March, 2019

* *gmv*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches
New Delhi

	Date
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Date of dispatch of Order.	