

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं / ITA No.997/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Shiveshwari Nagari Sah. Bank Ltd.,
A/348, Nagnath Building, Mama Chowk,
Basmat, Dist. Hingoli – 431512.

..... अपीलार्थी /
Appellant

PAN : AABAS3857P.

बनाम v/s

The Income Tax Officer,
Ward at Hingoli,
Campt at Parbhani.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri S.N. Puranik.

Revenue by : Shri Rajesh Gawali.

सुनवाई की तारीख / Date of Hearing : 04.04.2019	घोषणा की तारीख / Date of Pronouncement: 03.06.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 1, Aurangabad dated 06.03.2018 for the assessment year 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Bank engaged in the banking business. It electronically filed its return of income for A.Y. 2012-13 on 18.09.2012 declaring total income at Rs.29,33,550/-. The case was selected for scrutiny and thereafter assessment was framed u/s

143(3) of the Act vide order dt.27.03.2015 and the total income was determined at Rs.32,91,210/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.06.03.2018 (in appeal No.ABD/CIT(A)-1/190/2015016) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. Honorable CIT(A) has erred in confirming the disallowance of claim of deduction u/s 36(1)(viiia) of Rs. 2,37,855/- . Same may please be allowed.

2. Honorable CIT(A) has erred in not considering the Submission and Explanation, particularly in the last para of Statement of Facts. Appellant prays for cancellation of said disallowance of Rs. 2.37.855/-

3. Commissioner (Appeals) has erred in observing that "Appellant Co-Operative Bank has not made any Provision for Bad and Doubtful Debts in its books of accounts for claiming deduction u/s 36(1)(viiia). Appellant Bank has made Provision for Rs. 3,50,000/- under the head "NPA PROVISION" therefore, claim of the appellant may please be allowed.”

3. All the grounds being inter-connected are considered together.
4. During the course of assessment proceedings, AO noticed that assessee had not made any provision for bad and doubtful debts in the books of accounts but in the computation of income had claimed deduction to the tune of Rs.2,37,855/- u/s 36(1)(viiia) of the Act. The assessee was asked to explain as to why the deduction in the computation of income not be disallowed as no provision was made in the books of accounts, to which the assessee made submissions which were not found acceptable to the AO. AO noted that as per provisions of Sec.36(1)(viiia) of the Act, assessee will get deduction for provisions of bad and doubtful debts only of the amount of such

provision actually debited to the Profit and Loss account. He noted that since assessee has not created any provision of bad and doubtful debts in the books of accounts no deduction of Rs.2,37,855/- as claimed in the return is allowable u/s 36(1)(vii) of the Act. He also relied on the instructions of CBDT Instruction No.17/2008 dated 26.11.2008. He thus disallowed Rs.2,37,855/- on account of deduction under Sec.36(1)(vii) of the Act and also disallowed Rs.1,00,000/- on account of excess provision for standard assets and Rs.19,805/- on account of revenue receipts. Aggrieved with the disallowance of Rs.2,37,855/- u/s 36(1)(vii) of the Act made by the AO, assessee carried the matter before Ld.CIT(A), who vide ex-parte order upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now before us.

5. Before us, Ld.A.R. at the outset submitted that Ld.CIT(A) has passed an ex-parte order and not on merits. He further submitted that due to unavoidable circumstances, assessee could not appear before Ld.CIT(A) and for non-appearance before Ld.CIT(A), reasonable costs as deemed fit may be imposed. He also undertook that if given a chance, assessee shall appear before the lower authorities and furnish all the required details to substantiate its case. Ld.D.R. seriously objected to the prayer for remitting the matter back to Ld.CIT(A) and submitted that despite various opportunities given by AO and Ld.CIT(A), assessee choose not to appear before the revenue authorities. He submitted that in case the matter is restored to the file of either of the Revenue authorities, then exemplary cost should be

levied on the assessee so that in future he will appear before the Revenue authorities.

6. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to the disallowance of Rs.2,37,855/- u/s 36(1)(vii) of the Act. In the present case due to non-appearance on various occasions, Ld.CIT(A) has passed an ex-parte order dismissing the appeal of assessee on the basis of statement of facts enclosed with Form No.35 filed by the assessee.

7. It is a settled law that Ld.CIT(A) has no jurisdiction to dismiss the appeal of the assessee without going into the merits of the issue before him. Even in an ex-parte order, the Ld.CIT(A) should have decided the grounds of appeal of the assessee on merits thereof. Since there was non-appearance by assessee before AO and Ld.CIT(A), we are of the view that it cannot be said that there was no negligence on the part of the assessee. However, considering the fact that Ld.A.R. has given an assurance that assessee will co-operate and appear before lower authorities and in view of the well settled principle of natural justice that sufficient opportunity of hearing should be afforded to the parties and no party should be condemned unheard, we are of the view that the one final opportunity may be granted to assessee subject to levy of cost of Rs.5,000/-. We therefore restore the matter back to the file of Ld.CIT(A) to decide the issue on merits in accordance with law subject to assessee depositing Rs.5,000/- with Army Welfare Fund and producing the challan before Ld.CIT(A).

Subject to deposit of costs, the appeal of the assessee shall be taken up for adjudication by the Ld.CIT(A). Needless to state that Ld.CIT(A) shall grant adequate opportunity of hearing to both the parties. Assessee is also directed to promptly furnish all the details called for by the authorities. In view of our decision to restore the issue to Ld.CIT(A), we are not adjudicating on merits the grounds of the appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes in the terms aforesaid.**

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on the 3rd day of June, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 3rd June, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A) – 1, Aurangabad.
4. Pr. CIT-1, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.