

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 47 to 50 & 3361/Ahd/2016
A.Y.2007-08 to 2009-10, 2011-12 & 2013-14**

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| The Dabhoi Nagrik Sahakari Bank Ltd. Sahkar Bhawan, Kansara Bazar, Dabhoi, Baroda-391110 PAN: AAAAT1314K (Appellant) | Vs | The ITO, Ward-3(2), Baroda-390007 (Respondent) |
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Revenue by: Shri Lalit P. Jain, Sr. D.R.

Assessee by: Ms. Urvashi Shodhan, A.R.

Date of hearing : 30-04-2019

Date of pronouncement : 06-05-2019

आदेश/ORDER

PER BENCH:-

These five appeals filed by assessee for A.Y. 2007-08 to 2009-10, 2011-12 & 2013-14, arise from order of the CIT(A)-5, Vadodara dated 01-10-2015, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short the Act.

2. As the facts and issues in these five appeals filed by assessee are common, so, we take ITA No. 47/Ahd/2016 as lead case and its finding will

be also be applicable to the remaining four appeals for the sake of convenience.

3. The assessee has raised following grounds of appeal:-

47/Ahd/2016

- “1. The Assessee is a Co-operative Bank established in the year 1934 and has worked for more than 75 years in a co-operative sector. In initial Years the appellant was registered as a co-operative society and was granted Banking License by The Reserve Bank of India on 31.12.1986 since then appellant was conducting banking business.*
- 2. RBI vide letter dated 09.06.2004 issued directives dated 08.06.2004. In terms of directive, appellant bank is precluded with effect from the close of business on 14.06.2004 from incurring any liability (i.e. resorting to borrowing, accepting deposits etc.) or sanctioning / renewing loans /advances or making payments or discharging any liabilities or obligations except in accordance with the directions contained in the said directive.*
- 3. The Assessee filed return of income electronically on 30.10.2007 declaring total income of Rs. Nil. The Assessee has shown Net Profit of Rs. 14,01,741/-and after setting off brought forward loss of Rs. 16,55,77,329/- has shown total income of Rs. Nil.*
- 4. The case was reopened u/s 148 of The Act and was issued notice on 30.03.2013.”*

4. The brief fact is that the assessee has filed return of income for the assessment year 2007-08 declaring taxable income at Rs. nil. Subsequently, case was reopened by issuing of notice u/s.148 of the act on 30th March, 2013. The assessee is a co-operative society established in the year 1934 and was granted banking license by the Reserve Bank of India on 31st December, 1986. The assessing officer has stated that the Reserve Bank of India vide its letter dated 9th June, 2014, the assessee bank was precluded with the effect from the close of business on 14th June, 2004 from incurring any liability or sanction/reviewing or making payment or discharging any liability or obligation except in accordance with directions contained in the said directive. It is further stated that Reserve Bank of India vide its order dated 1st March, 2006 has cancelled the license of the assessee bank w.e.f. 01-04-2016 and debarred the assessee bank from carrying on any banking business in India u/s. 22 of the Banking Regulation Act, 1949. After

cancellation of banking license, registrar of Co-operative Gujarat vide his order dated 8th March, 2006 has appointed liquidator for liquidation process. During the course of appellate proceedings on verification of income and expenditure account, the assessing officer has noticed that the assessee has shown income of Rs. 47,95,218/- earned from interest on deposit with other banks and govt. securities and other income during the financial year 2006-07 and after deducting expenses to the amount of Rs. 33,93,477/-. The assessee has shown net surplus income of Rs. 1401741/-. On further verification from the computation of income, the assessing officer has noticed that assessee has set off brought forward loss of Rs. 165577329/- against the aforesaid net profit of Rs. 1401741/-. The assessing officer was of the view that since the banking license of the assessee co-operative bank has been cancelled by the RBI w.e.f. 1st April, 2006, therefore, the assessee was not entitled to carry out any business of banking. Therefore, the assessing officer observed that the assessee cannot show its income under the head profit and gains from business and claim set off of brought forward losses. In view of the above reasoning, the assessing officer stated that the net surplus income of the assessee was required to be treated as income from other sources. Therefore, a show cause notice was issued to the assessee to explain why not its income for financial year 2006-07 of Rs. 1401741/- should not be treated as income from other sources and also to explain why not the claim of set off business losses against the income from other sources should not be disallowed. The assessee has explained that the banking license was cancelled but the bank was required to perform banking activity in the nature of recovery of loan, payment of liabilities including payment of deposit. It was further explained that business loss carried forward was

available to set off against the net profit earned by the bank without performing banking activities, bank would not be in a position to recover its due and repay its liability. It was also explained that majority income consists of interest income on FDR investment which was out of surplus fund temporarily available which were remained to be distributed to the depositors. The assessing officer has not accepted the explanation of the assessee and stated that in view of the cancellation of license by the Reserve Bank of India, the assessee has ceased to carry on banking business w.e.f. 01-04-2006. Therefore, after reducing the amount of income tax refund from the income of Rs. 14,01,741/-, the assessing officer has treated the income of Rs. 2,49,272/- as income earned from other sources and same was added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee by following the decision of ld. CIT(A)-IV, Baroda in the case of Anand Co-operative Ltd. stating that ld. CIT(A) has held that the income earned was income from other sources after dis-continuation of the assessee's business.

6. During the course of appellate proceedings before us, the ld. counsel has furnished paper book containing copies of submission made before the assessing officer and ld. CIT(A) during the course of assessment proceedings and appellate proceedings. She has vehemently contended that even if banking business is cancelled, bank is required to perform banking activities in the nature of recovery of loan, payment of liabilities including the payment of deposit etc. She has also furnished the copies of decision of

Co-ordinate Bench of ITAT Ahmedabad in the case of Anand Peoples Co-operative Bank Ltd. vs. ITO vide ITA no. 3199 to 3202/Ahd2015 dated 23-01-2018 and also in the case of M/s Charotar Nagarik Sahakari Bank Ltd. vs. ITO vide ITA No. 2678/Ahd/2015, 786/Ahd/2014 and 186/Ahd/2016 dated 28-11-2017. On the other hand, ld. departmental representative has supported the order of ld. CIT(A).

7. We have heard both the sides and perused the material on record. The assessee is a co-operative bank and vide directive dated 8th June, 2014 issued vide letter dated 9th June, 2014, the assessee bank was precluded from incurring any liability i.e. resorting to borrowing accepting deposit etc. or sanctioning/reviewing loan/advances or making payment or discharging any liabilities or obligations except in accordance with the directions contained in the said directive. During the course of appellate proceedings before us, the ld. counsel has also referred directions of Reserve Bank of India given to the assessee bank u/s. 35A of the Banking Regulation Act, 1949 vide letter dated 8th June, 2004 stating that serial no. 3 of the direction state that renewal of the exiting term deposits may be allowed on maturity in the same name and same capacity. Therefore, the ld. counsel has submitted that section 35 never restricts the bank to recover outstanding dues as on the day of invoking section 35 of the Banking Regulation Act, 1949. It is further submitted that bank has recovered its outstanding advances with interest and has paid interest to depositors and to pay for necessary establishment incurring expenses or carrying out business activities. After cancellation of banking license, Registrar of Co-operative, Gujarat State vide his letter dated 8th March, 2006 passed order for liquidation of the bank and appointed

liquidator for liquidation process. In the light of the above facts and circumstances, we have gone through the decision of Co-ordinate Bench of the ITAT in the case of Anand Peoples Co-operative Bank vs. ITO vide ITA No. 3199 to 3202/Ahd/2015 dated 23-01-2018 vide which after referring the decision of Co-ordinate Bench of the ITAT vide ITA No. 2678/Ahd/2015 M/s. Charotar Nagrik Sahakari Bank Ltd. vs. ITO dated 28-11-2017 wherein after considering that the assessee has received back its business advances from its customers with interest which in turn stood deposited in bank fetching the interest income, therefore, it was held that interest received from customer as well as the interest income paid by bank on the same being deposited in its banking account is to be taken as business income and the rest of the income would be taken as income from other sources. The relevant part of the decision of the Co-ordinate Bench of the ITAT is reproduced as under:-

“5. We have heard rival contentions. Case file perused qua the instant issue on merits. Learned Departmental Representative vehemently contends that the Assessing Officer as well as the CIT(A) have rightly assessed assessee's interest income in question under the head "income from other sources" as assessee's banking license stands cancelled. He also quotes above judicial precedent in support of the said action for urging us to follow judicial consistency. We however find that hon'ble jurisdictional high court's judgment hereinabove did not deal with the case wherein the income in question had been realized from the relevant business customers. It rather transpires that the said cooperative bank liquidator had realized its assets and consequential income therefrom had been claimed as "income from business". In view of these facts that their lordships settled the issue to uphold Revenue's action treating income from said realization as under the head "income from other sources". We find that the same is not the case here. The assessee's plea throughout is that it has received back its business advances from its customers with interest which in turn stood deposited in bank(s) fetching the interest income in question. We find in the very backdrop that a co-ordinate bench in ITA No.2678/Ahd/2015 M/s. Charotar Nagrik Sahakari Bank Ltd. vs. ITO decided on 28.11.2017 has remitted an identical issue back to the Assessing Officer with necessary directions to the assessee as well to submit necessary bifurcation of the original interest received from customers as well as the interest income paid by the bank on the same being deposited in its bank account. We follow the very course of action herein as well to leave it open for the Assessing Officer to finalize consequential computation in view of the relevant bifurcation details submitted by the assessee in consequential proceedings. We make it clear that the relevant interest income paid by assessee's customers would be taken as business income. The rest of the income after the same being deposited in bank accounts would be taken as "income from other sources". Needless to say corresponding expenditure both under business head as well as the one u/s.57 of the Act would also be computed and allowed as per law. This latter issue is accepted in assessee's favor but for statistical purposes.”

It is observed that the case of the assessee is also comprised of identical issue on similar facts as involved in the case of Anand People Co-operative Bank referred above. Therefore, respectfully following the decision of the Co-ordinate Bench, we restore the issues in appeals to the file of assessing officer for adjudicating afresh after affording necessary opportunity to the assessee as per the directions laid by the Co-ordinate Bench of the ITAT in the aforesaid cited decision. Accordingly, the appeal of the assessee is allowed for statistical purposes.

8. In the result, all the five appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 06-05-2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 06/05/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालम अ० षत / 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 अपील अ० अधकरण,
अहमदाबाद