

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2100/Ahd/2017

(निर्धारण वर्ष / Assessment Year:2014-15)

The Anand People Co-op Bank Ltd. Peoples Palace, Society, Sardar Gunj Road, Anand- 388001	बनाम/ Vs.	DCIT Anand Circle, Anand
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAA AT2 812 9		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Pramesh Doshi, A.R.
प्रत्यर्थीकीओरसे / Respondent by:	Shri S. K. Dev, Sr. DR

सुनवाईकीतारीख/Date of Hearing	26/06/2019
घोषणाकीतारीख /Date of Pronouncement	31/07/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal filed by the assessee for A.Y. 2014-15, arise from order of the CIT(A)-4, Vadodara dated 21.06.2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The brief facts of the case is that assessee has filed return of income declaring total income at Rs. NIL on 13.10.2015. The case of the assessee was subject to scrutiny and notice under Sec. 143(2) of the Act was issued on 01.08.2016. The assessee was engaged in the banking business, however, no banking activities was carried out during the year under consideration as the

assessee bank was in the liquidation. Further facts of the case are discussed while adjudicating the ground of appeal filed by the assessee as under:-

- “1. The Assessing Officer and Ld. CIT(A), Baroda both have erred in law in considering income of interest received on advances Rs. 9,88,259/- as “Income from other sources” instead of business income as shown by the assessee in the return of income.
2. The Assessing Officer and Ld. CIT(A), Baroda both have also erred in law in disallowing the claim of bad debts of Rs. 1,35,000/- written off by the assessee in the books of accounts during the year.
3. The Assessing Officer and Ld. CIT(A), Baroda both have erred in law in applying the decision of Hon’ble ITAT in respect of assessee’s own case for A.Y. 2009-10 because the facts of the current year A.Y. 2014-15 are different from that of A.Y. 2009-10 so far as Sec. 176(3A) of the I.T. Act was not referred by the assessee in A.Y. 2009-10 while the claim is made under that section in current A.Y. 2014-15.
4. The order of the Assessing Officer is illegal against the natural justice and good conscience.
5. The appellant preserves right to add, alter or amend any or more grounds of appeal.”

Ground No. 1:-

Considering Income of interest received on advances Rs. 9,88,259/- as income from other sources:-

&

Ground No. 3:-

For not considering provision of Sec. 176(3A) of the Act:-

3. During the assessment the AO has that assessee has received interest on advances at Rs. 9,88,259/-. The AO has asked the assessee to explain why not the aforesaid interest on advances should be treated as income from other sources. The assessee has responded that interest income of Rs. 9,88,259/- was pertained to amount received from the particular borrower against its outstanding balance, therefore, the same cannot be assessed as income from other sources looking to the provisions of Sec. 176(3A) of the Income Tax Act. The AO has not agreed with the submission of the assessee and stated that on similar facts and circumstances in the assessee’s own case for A.Y. 2009-10 the AO has treated

similar income (i.e. interest on advance and interest from banks) as income from other sources.

4. The aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal.

We have heard the rival contention on this issue. The assessee has claimed the interest income of Rs. 9,88,259/- pertaining to the amount received from the borrower against its outstanding balance. In this regard, we have perused the provision of Sec. 176(3A) of the Act. The relevant part of this provision is reproduced as under:-

“Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the person who carried on the business has such sum been received before such discontinuance.”

5. In view of the above provision of Sec. 176(3A) it is clear that the interest income on advances is to be assessed as business income and the lower authority has failed to consider the provision of Sec. 176(3A) of the Act which deal with the income from discontinued of business. Accordingly, the aforesaid income is to be assessed as income from business and profession considering the provisions of Sec. 176(3A) of the Act.

In the light of the above facts and findings we are not inclined with the decision of the Ld. CIT(A), therefore, the appeal of the assessee on this issue is allowed.

Ground No. 2:-

Disallowing the claim of bad debts of Rs. 1,35,00,000:-

6. During the course of assessment on perusal of profit and loss account the AO noticed that assessee has claimed investment written off to the amount of Rs. 1,35,00,000/-. The AO asked the assessee to justify the nature of investment written off and what efforts were made to recover the investment which was

claimed as written off. The assessee responded that the aforesaid claim of investment written off is pertained to the fixed deposit made with Sarvoday Co-operative Bank Ltd., Ahmedabad. Since the Sarvoday Co-operative Bank was under liquidation and there was no probability of recovering the said fixed deposit amount from the bank, therefore, the impugned amount had been written off as bad debts. The AO has not agreed with the submission of the assessee. The AO was of the view that assessee's banking licence for carrying on banking business in India was cancelled under Sec. 22 of the Banking Regulation Act, 1949 by the Reserve Bank of India on 25th October, 2015, therefore, the assessee was not entitled to claim bad debt.

7. The aggrieved assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.

We have heard the rival contention on this issue. The assessee had made investment in fixed deposit with Sarvoday Co-operative bank Ltd., Ahmedabad in the regular course of business. It is claimed that the income from the aforesaid fixed deposit placed with the bank had been offered as income regularly in the earlier year. Since the Sarvoday Co-operative was under liquidation and there was no probability of recovering the said amount from the bank, therefore, the assessee had written off the same as bad debt. During the course of appellate proceeding before us the assessee has placed reliance on the judicial pronouncements in the case of CIT vs. Morgan Securities 292 ITR 339, BDA Ltd. vs. DCIT (2002) 125 taxmann 182 (Mum), New Deal Finance Investment vs. DCIT 74 ITD 469 CIT vs. Ahmedabad Electricity Co. Ltd. 262 ITR 97. It was also submitted that as per the provision of Sec. 36(2) of the Act the claim of bad debt should be allowed. We have perused the above referred judicial pronouncements and gone through the provision of 36(2) of the Act which read as under:-

“No such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year or

represents money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee.”

8. In this regard, we have noticed that Ld. CIT(A) has given specific finding that assessee has not demonstrated with relevant details that aforesaid deposit was made in the ordinary course of the business and the income earned from such deposit was shown in the preceding year in its total income. With the assistance of the Ld. Representative we have gone through the material on record and observed that assessee has not demonstrated with any supporting evidences that it had shown any income earned from such deposit in the preceding years. In order to facilitate to adjudicate the impugned issue on merit we consider it appropriate to restore this issue to the file of the Ld. CIT(A) for adjudicating afresh after examination and verification of the relevant supporting detail to be furnished by the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

9. In the result, the appeal of the assessee is partly allowed.

This Order pronounced in Open Court on 31/07/2019

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Ahmedabad: Dated 31/07/2019

TANMAY

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।