

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "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. 1332/JP/2018
निर्धारण वर्ष / Assessment Year : 2012-13

The ACIT, Circle-1, Ajmer.	बनाम Vs.	M/s Baroda Rajasthan Kshetriya Gramin Bank (Erstwhile Rajasthan Gramin Bank), 2343, Plot No., 2 nd Floor, Vaishali Nagar, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAR 4349 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Karani Dan (JCIT)
निर्धारिती की ओर से / Assessee by : Shri Ajay Somani (C.A.)

सुनवाई की तारीख / Date of Hearing : 06/08/2019
उदघोषणा की तारीख / Date of Pronouncement: 07/08/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order of dated 07.09.2018 of the Id. CIT(A), Ajmer arising from the penalty order passed U/s 271(1)(c) of the I.T. Act for the assessment year 2012-13.

The Revenue has raised the following grounds:-

" Cancelling the penalty levied for disallowance of provision for standard assets of Rs. 1,93,30,000/- without going into merits of the case and only considering that the disallowance has been deleted by the ITAT, Jaipur.

2. Cancelling the penalty levied for disallowance provision for standard assets of Rs. 1,93,30,000 without appreciating the fact that the Misc. Application has been filed by the department before the Hon'ble High Court, Jaipur to recall/review its order dated 24.04.2018 disposing off the appeal of the revenue without going into the merits."

2. We have heard the Id. DR as well as the Id. AR and considered the relevant material on record. The AO levied the penalty U/s 271(1)(c) of the Act in respect of addition made on account of disallowance of Rs. 1,93,30,000/- towards the provision for standard assets as well as in respect of disallowance of capital loss of Rs. 7,000/-. The said order of penalty levied U/s 271(1)(c) of the Act was challenged before the Id. CIT(A) and the Id. CIT(A) deleted the penalty levied in respect of disallowance of provisions for standard assets on the ground that in the quantum appeal the said addition itself was deleted by the Tribunal. As regards the penalty against the disallowance of capital loss the same was confirmed by the Id. CIT(A). At the outset, we note that the Id. CIT(A) has considered this issue in para 4.3 of the impugned order is as under:-

"4.3 I have gone through the penalty order, statement of facts, grounds of appeal and written submission carefully. It is seen that penalty of Rs. 59,75,150/-was levied by the AO in respect of

following two additions/ disallowances made by the AO while completing the assessment:

- (i) *Disallowance on account of "Provision For Standard-
Assets* *Rs. 1,93,30,000/-*
- (ii) *Disallowance of "capital loss"* *Rs. 7,000/-*

(i) As far as the disallowance of "Provision For Standard Assets" of Rs. 1,93,30,000/- is concerned, the appellant has contended that the ITAT Jaipur vide its order dated 04.09.2017 (ITA No. 982/JP/2015, A.Y. 2012-13) has deleted the disallowance made by the AO. I have gone through the copy of the ITAT's order filed by the appellant. The ITAT has deleted the disallowance of Rs. 1,93,30,000/- observing at Para 3.5 as under:

"3.5 The facts are identical; there is no change into facts and circumstances. It is pointed out by the Ld. Counsel for the assessee that this is a Scheduled Bank This fact is not rebutted by the Revenue by placing any contrary material on record. Therefore, respectfully following the decision of the Co-ordinate Bench, we hereby direct the AO to delete the disallowance. Thus, this ground of the assessee's appeal is allowed."

As the disallowance of Rs. 1,93,30,000/- made by the AO has been deleted by the ITAT, therefore, there remains no justification for sustaining the penalty levied by the AO u/s 271(1)(c) in respect of such disallowance. Accordingly, the penalty levied by the AO in respect of the disallowance of provision For Standard Assets" of Rs. 1,93,30,000/- is hereby cancelled.

With regards to the disallowance of capital loss of Rs. 7,000/- is concerned the AO had made the disallowance observing as under:

"(ii) Capital Loss of profit and loss account it is seen that Rs. 7000/- On account of loss on sale of SFF i.e. Safe Furniture and Fixture assets was

claimed. Therefore vide letter dated 20.02.2015 it was show caused as to why Rs. 7,000/- incurred on sale of SFF assets be not disallowed and added back to total income of the assessee bank. In compliance vide submission dated 27.02.2015, the assessee stated that loss on sale of SFF of Rs. 7,000/- has inadvertently not been added back to the total income. We regret the inadvertent lapse.

The assesses's submission is perused and duly considered and assessee itself has agreed to disallow the loss of Rs. 7,000/- on sale of SFF assets. The loss on sale of assets would have been added back while computing total income in the computation but the same has not been done. Therefore, loss of Rs. 7,000/- is disallowed and added to the total income. Penalty proceedings 271(1)(c) are initiated for furnishing inaccurate particulars of income."

The appellant itself has admitted that it had filed inaccurate particulars with respect to the capital loss of Rs. 7,000/- by claiming the same as deductible expenditure for the purpose of computing business income and the appellant has not furnished any submission on this issue. Therefore, I am of the considered view that the appellant had filed inaccurate particulars of income of Rs. 7,000/- by claiming the capital loss as deductible expenditure while computing the business income. Therefore, the penalty levied by the AO u/s 271(1)(c) with respect to the disallowance of capital loss of Rs. 7,000/- is hereby confirmed."

Thus, it is clear that the penalty levied by the AO in respect of provision for standard asset has been deleted by the CIT(A) because the addition itself was deleted by this Tribunal in the quantum appeal. The Id. AR has filed a copy of the order of this Tribunal dated 04.07.2017 in the quantum appeal in ITA no. 982/JP/2015 wherein the

Tribunal has deleted the addition made by the AO. The relevant finding of the Tribunal in para 3.3 to 3.5 are as under:-

"3.3. We have heard the rival contentions, perused the material available on record. The Id. CIT(A) decided this issue in para 4.3 by observing as under :-

" 4.3. I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that the provisions of Sec. 36(1)(vii) are very clear and unambiguous on this issue. The deduction u/s 36(1)(vii) is allowable, subject to certain conditions only in respect of any 'provision for bad and doubtful debts' made by a Scheduled Bank. The provision made for 'standard assets' is not a 'provision for bad and doubtful debts', therefore, I am of the considered view that deduction in respect of the provision made by the appellant for standard assets is not an admissible deduction u/s 36(1)(vii). Therefore, the disallowance made by the AO is hereby confirmed."

3.4 Under the identical facts, the Tribunal had decided the issue in ITA No. 240/Jodh/2013 by observing as under:-

"10. After circumspecting the entire records vis-à-vis the oral submissions, we are of the considered opinion that ground no.2 stands covered in favour of the assessee vide order of ITAT, Chennai Bench as discussed in the above excerpt. We have gone through the copy of the Tribunal Order referred above and are convinced that this ground stands covered in favour of the assessee. The relevant portion of the order of the Tribunal (supra) is reproduced as under :-

"8. Now the second question which arises for determination before us is whether the assessee has created any reserve/provision for bad and doubtful debts?

The AR has contended that the assessee has created provisions for bad and doubtful debts under the nomenclature 'Reserve for NPA'. The terminology 'Reserve for NPA' has been used by the assessee in accordance with the RBI directions. As is evident from the assessment order, the assessee has indeed created 'Reserve for NPA'. For claiming benefit under the provisions of Section 36(1)(vii)(a) the conditions to be satisfied is: that provision for bad and doubtful debts should have been made by the bank eligible to claim such deduction. Co-operative Banks do not strictly follow the provisions of Banking Regulation Act for the purpose of maintaining their Books of Accounts. In our considered opinion, the assessee has created provisions for bad and doubtful debts may be under different nomenclature. This will not dis-entitle the assessee for claiming deduction under the provisions of Section 36(1)(vii)(a). The purpose for creation of reserve for NPA is same i.e., creating provision towards bad and doubtful debts.

In view of the above, we find that the assessment order dated 09.09.2010 is neither erroneous nor prejudicial to the interest of the Revenue. The impugned order of CIT passed u/s. 263 is set aside and the appeal of the assessee is allowed."

11. Therefore, by respectfully following the ratio decidendi of the above Tribunal Order we allow ground no.(2) of this appeal in favour of the assessee. These provisions which are in line with the RBI guidelines become allowable."

3.5 The facts are identical; there is no change into facts and circumstances. It is pointed out by the Ld. Counsel for the assessee that this is a scheduled Bank. This fact is not rebutted by the Revenue by placing any contrary material on record. Therefore, respectfully following the decision of the Coordinate Bench, we hereby direct the AO to delete the disallowance. Thus, this ground of the assessee's appeal is allowed."

Thus, in view of the facts that the addition itself was deleted by the Tribunal in the quantum appeal the penalty levied by the AO U/s 271(1)(c) of the Act would not survive. Accordingly, we do not find any error or illegality in the impugned order of the Id. CIT(A) qua this issue.

In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 07/08/2019

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

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

जयपुर / Jaipur

दिनांक / Dated:- 07/08/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- ACIT, Circle-1, Ajmer.
2. प्रत्यर्थी / The Respondent- M/s Baroda Rajasthan Kshetriya Gramin Bank (Erstwhile Rajasthan Gramin Bank), Ajmer.
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. 1332/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar