आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos.165 & 628/PUN/2019

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

Latur District Central Co-Op.
Bank Ltd.
LDCC Bank Building, 7th Floor,
Yashwantrao Chavan Road,
Latur-413 512.
PAN : AAAAL0225H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax-2,
Aurangabad.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri S.B. Prasad.

सुनवाई की तारीख / Date of Hearing : 30.09.2019
घोषणा की तारीख / Date of Pronouncement : 04.10.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These two appeals preferred by the common assessee emanates from the separate orders of the Ld. Pr. Commissioner of Income Tax-2, Aurangabad dated 28.03.2018 and 30.01.2019 for the assessment years 2013-14 & 2014-

15 passed u/s.263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') as per the grounds of appeal on record.

2. At the outset, we notice that out of the two appeals, one appeal (ITA No.165/PUN/2019) is time barred by 239 days. The assessee has filed an affidavit along with condonation of delay petition. We have gone through the condonation petition as well as the affidavit and have found that reasons specified therein are justified and that the delay cannot be attributed to the deliberate conduct of the assessee neither through intention nor through action. The reasons for delay in filing the appeal late were beyond the control of the assessee and even the Ld. DR stated that he has no objection, if the delay is condoned. In view of the matter, we condone the delay and proceed to hear the appeal on merits.

3. These two cases were heard together. Since facts common, issues are similar, these appeals are being disposed of vide this consolidated order. For the sake of convenience, we would first take up ITA No.165/PUN/2019 as lead case for adjudication.

ITA No.165/PUN/2019
A.Y.2013-14

4. In this appeal, the assessee is challenging the validity of the revisionary jurisdiction assumed by the Pr. Commissioner of Income Tax u/s.263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and the contentions of the assessee are that the requisite specific enquiry has been conducted by

the Assessing Officer on the area where the Pr. Commissioner of Income Tax passed order u/s.263 of the Act.

5. The brief facts in this case are that the assessee is a Co-operative Bank and engaged in the business of lending and borrowing and providing banking facility to the account holders and has maintained the books of account on mercantile basis. The assessee bank filed its return of income electronically for the assessment year 2013-14 on 25.09.2013 declaring total income at Rs.18,47,42,320/-. The case was selected for scrutiny, accordingly, order u/s.143(3) of the Act was passed on 24.11.2015 assessing total income at Rs.18,47,42,320/-.

6. The contentions of the Ld. AR is that once necessary and specific enquiry has been conducted by the Assessing Officer then on those same issues, the Pr. Commissioner of Income Tax cannot pass order u/s.263 of the Act saying the assessment order to be erroneous so as to be prejudicial to the interest of the Revenue. That is so because even after enquiry conducted by the Assessing Officer if the Pr. Commissioner of Income Tax passes order u/s.263 of the Act on those same issues it is nothing but difference of opinion which order therefore, cannot be said to be erroneous so as to be prejudicial to the interest of the Revenue. The Ld. AR invited our attention at Pages 18 to 20 of the paper book wherein specific question was asked by the Assessing Officer and at Pages 23 to 24, the reply was filed by the assessee.

6.1. That further, the Ld. AR placed reliance on the decision of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Vikas

Polymers, 341 ITR 537 (Delhi) wherein it was opined by the Hon'ble Delhi High Court that *"the pre-requisite for the revisionary jurisdiction order u/s.263 of the Act is that Commissioner must give reasons to justify exercise of such power and reasons must also be such as to show that enhancement or modification of assessment or cancellation of assessment or directions issued for a fresh assessment were called for and must irresistibly lead to conclusion that order of Assessing Officer was not only erroneous but was also prejudicial to the interest of revenue*". That placing reliance on this decision, the Ld. AR stated that nowhere in the order of the Ld. Pr. Commissioner of Income Tax, there are facts suggesting such exercise was conducted by him. That therefore, the Ld. AR vehemently submitted that order passed u/s.263 of the Act by the Pr. Commissioner of Income Tax may be quashed.

7. Per contra, the Ld. DR placed strong reliance on the finding of the Ld. Pr. Commissioner of Income Tax as appearing in the order passed u/s.263 of the Act. The Ld. DR specifically pointed out at Para 4.1.2 of the order of the Ld. Pr. Commissioner of Income Tax wherein it has been mentioned that though the assessee claimed that the issue was enquired into by the Assessing Officer the letter dated 17.11.2015 claimed by the assessee is not on record.

8. We observe that on one hand, the Ld. AR of the assessee demonstrated before the Court that specific questions have been asked by the Assessing Officer and reply of the assessee filed thereon is placed in the paper book filed before us. However, contention of the Ld. DR that there is nothing on record to show that the Assessing Officer has conducted necessary enquiry and that further, statement in the order of the Ld. Pr. Commissioner of Income Tax

wherein categorically it is stated that letter dated 17.11.2015 of the assessee is not on record. That therefore in the given facts, we had directed the Ld. DR to check from the records whether necessary enquiry has been conducted by the Assessing Officer on the aspects viz. (i) claim of deduction u/s.36(1)(viia) of the Act; (ii) provision for NPA interest. The Ld. DR is further directed to state on record whether the statement appearing in the order of Pr. Commissioner of Income Tax that letter dated 17.11.2015 of the assessee is not on record whether this is correct or not. The Ld. DR is, therefore, asked to file written submissions on those issues. This exercise is, furthermore, essential because the specific bedrock for analyzing whether the revisionary jurisdiction u/s.263 of the Act is rightly undertaken by the Ld. Pr. Commissioner of Income Tax, first we have to see whether on those issues as raised by the Pr. Commissioner of Income Tax, enquiry was conducted by the Assessing Officer or not. That enquiry may be sufficient or insufficient; it may be more or less according to the Ld. Pr. Commissioner of Income Tax that would only amount to change of opinion. But in a case where no enquiry at all is conducted by the Assessing Officer on issues raised by Ld. Pr. Commissioner of Income Tax then immediately the revisionary jurisdiction u/s.263 of the Act is triggered and would be valid in law since in absence of those enquiries the assessment order shall be erroneous so as to be prejudicial to the interest of the Revenue.

9. That in respect of the aforesaid, the Ld. DR furnished a letter dated 27.09.2019 from ACIT, Latur and annexed there with the copy of letter dated 17.11.2015 given by the assessee in reply to the query made by the Assessing Officer which is placed on record. Therefore, it is absolutely clear that the observations of the Ld. Pr. Commissioner of Income Tax at Para 4.1.2 of his

order stating letter dated 17.11.2015 is not available on record, is incorrect and an arbitrary statement. That further, it is also clear that the relevant documents placed before us in the paper book by the Ld. AR are absolutely true, correct and as per record.

10. That on perusal of these documents, it is crystal clear that the relevant enquiries were conducted through questionnaire by the Assessing Officer to which the assessee had furnished detailed reply. This fact is even sanctified by the submissions of the Ld. DR stating the letter dated 17.11.2015 as disputed by the Pr. Commissioner of Income Tax that this letter was already on record. We further observe that in the order of the Ld. Pr. Commissioner of Income Tax in order to ascertain whether the assessment order of the Assessing Officer was erroneous so as to be prejudicial to the interest of the Revenue, there has been no specific enquiry conducted or there is no exercise of thought culminating into reasons to show that he has arrived at a satisfaction regarding the assessment order to be erroneous so as to be prejudicial to the interest of the Revenue.

11. It is pertinent to mention that the ld. CIT can exercise revisionary power u/s.263 of the Act on finding the assessment order erroneous and prejudicial to the interest of the Revenue. Simply because the Assessing Officer did conduct enquiry during the course of assessment proceedings would not automatically lend credence to the authenticity of the assessment order making it immune from revision, if it turns out that the AO decided the issue wrongly in favour of the assessee. Such a situation would render the assessment order erroneous and prejudicial to the interest of the Revenue, thereby clothing the CIT to invoke the revisionary power u/s 263 of the Act.

12. Adverting to the facts of the present case, we find that the ld. CIT found the assessment order lacking to the extent of allowing deduction towards Provision for bad and doubtful debts to the tune of Rs.3,29,84,041/-. In his opinion, the deduction ought to have been granted for a sum of Rs.1,63,28,977/-, being, 7.5% of Rs.21,77,19,687/-.

13. At this stage, it is relevant to mention that section 36(1)(viia) of the Act, at the material time, provided for deduction of provision for bad and doubtful debts in two parts, viz., (i) 7.5% of the total income of the assessee and (ii) 10% of the aggregate average advances made by the rural branches of the assessee. The assessee computed deduction in such two parts as has been reproduced on page No.3 of the impugned order. The first component i.e. 7.5% of total income was determined at Rs.1.73 crore and second component i.e. 10% of the aggregate average advances made by the rural branches of the assessee, was determined at Rs.20.05 crore, thereby making the maximum qualifying amount of deduction at Rs.21.78 crore. As against this, the assessee actually claimed deduction only to the extent of the Provision on bad and doubtful debts at Rs.3.29 Crore.

14. In the first part of computation at 7.5% of total income, the assessee computed the base amount at Rs.23.11 Crore. In computation of the base amount, the assessee did not reduce the amount of depreciation of Rs.1,34,12,388/-, which was rightly detected by the ld. CIT. It goes without saying that the deduction at 7.5% is on the total income, which obviously cannot be computed by ignoring the amount of depreciation. In other words, the assessee computed the amount at 7.5% of total income without reducing

the amount of depreciation, which ld. CIT rightly took note of. To this extent, the assessment order is found to be erroneous and prejudicial to the interest of the Revenue.

15. In so far as the second part of the qualifying amount of deduction, namely, 10% of the aggregate average rural advances is concerned, it is seen that the assessee stated the same before the ld. CIT, as has been reproduced on page 3 of the impugned order, but the ld. CIT did not adversely comment on it. In this regard, the ld. DR submitted that the assessee claimed deduction on the entire balance of advances made by the rural branches, which also included the advances made in the preceding years. This is how, he tried to support the impugned order.

16. Without delving into whether the DR can support the order of the CIT on an issue, which has not been dealt with by the latter, we find that the Hon'ble Calcutta High Court in the case of *Pr. Commissioner of Income Tax Vs. Uttarbanga Kshetriya Gramin Bank* in G.A. No. 291 of 2016 ITAT No.76 of 2016 vide its judgment dated 07.05.2018 has dealt with the question as to whether the Tribunal erred in allowing deduction u/s.36(1)(viia) of the Act for the rural advances made for all previous years leading to multiple deductions in every assessment year by misinterpreting the Rule 6ABA of the I.T. Rules, 1962. Answering the question in negative, the Hon'ble High Court upheld the view taken by the Tribunal in overturning the computation of aggregate of monthly rural advances made by the rural branches during the year only. The net effect of this judgment renders the claim of the assessee correct as against the argument of the ld. DR that it should be restricted only to the rural advances made during the year alone. From this categorical finding of

the Hon'ble High Court, it becomes evident that the assessee is entitled to get deduction at 10% of aggregate average rural advances, which in the instant case, is Rs.200.55 Crore and 10% of such advances comes to Rs.20.05 Crore.

17. If we adopt the qualifying amount of Rs.20.05 Crore, being, the second part of the deduction along with the first part of the deduction at 7.5% of the total income correctly computed, namely, after reducing the amount of depreciation, still the total qualifying amount of deduction is more than Rs.21 Crore. As against this, the assessee claimed deduction towards provision for bad and doubtful debts only at Rs.3.29 Crore. When we view both the parts of the deduction u/s.36(1)(viia) of the Act in totality, it transpires that even though the assessment order was erroneous in accepting the computation at 7.5% of the income without reducing the amount of depreciation, but on entirety, the assessment order on this issue cannot be construed as prejudicial to the interest of the Revenue because the total amount of deduction u/s 36(1)(viia) is only Rs.3.29 Crore, which is well much short of the correct qualifying amount at more than Rs.21 Crore. That being the position, the assessment order albeit erroneous and prejudicial to the interest of the Revenue at the first part of calculation of qualifying amount at 7.5% on total income, but ceases to be prejudicial to the interest of the revenue on the overall question of granting deduction u/s 36(1)(viia) of the Act because the total amount of deduction, even after correcting the first part of the qualifying amount, remains at the same level at which it was claimed and allowed at Rs.3,29,84,041/-. We, therefore, refuse to accept the validity of the exercise of revisionary power on this issue.

18. The second point which has been taken out by the ld. CIT for holding the assessment order to be erroneous and prejudicial to the interest of the Revenue is provision for NPA interest. The ld. CIT held that this issue was not enquired into by the Assessing Officer before allowing the provision for NPA interest of Rs.13,51,37,126/- shown in the Balance Sheet and Rs.1,86,66,695/- debited to the P & L account on account of NPA interest during the year. Due to this lack of enquiry, the ld. CIT opined the assessment order to be erroneous and prejudicial to the interest of the Revenue.

19. Having heard both the sides and perused the relevant material available on record, we find that the action of the ld. CIT is lacking on this score as well. Firstly, the Assessing Officer conducted enquiry in this regard as is evident from the correspondence between the assessee and the AO, whose copies have been placed before the Tribunal. It is not as if the Assessing Officer did not enquire the issue of NPA interest. To this extent, the finding recorded by the ld. CIT is not correct.

20. On merits, it is seen that the ld. CIT has held that the Assessing Officer did not examine that the assessee debited Rs.1,86,66,695/- in P & L account on account of NPA interest. In principle, the question of NPA interest arises in the context of recognizing income and not claiming deduction. The factual position is that the sum of Rs.1.86 Crore is the amount of NPA interest which was not credited during the year as is evident from page 5 of the impugned order. The opening balance of the NPA interest stood at Rs.15.50 Crore. The assessee recovered the NPA interest amounting to Rs.1,71,40,806/- and credited the same to the P & L account. The amount of Rs.1.86 Crore is an

amount of NPA interest which is not credited during the year, which if added makes the total figure of Rs.13.51 Crore, shown in the balance sheet. In this connection, it is relevant to note the legal position on the taxability of NPA interest, which has been dealt with by the Hon'ble Bombay High Court in *Commissioner of Income Tax Vs. CIT vs. Deogiri Nagari Sahakari Bank Ltd, 379 ITR 24 (Bom.)* holding that NPA interest should be charged to tax on receipt basis only. As the amount of NPA interest recovered by the assessee during the year was credited to P & L account at Rs.1.71 crore and odd, no infirmity can be found in the view canvassed by the assessee as accepted by the AO on this issue. As the amount of Rs.1.86 Crore of NPA interest accrued but not realized, the same was not rightly credited to the P & L account. We, therefore, hold that the ld. CIT was not justified in treating the assessment order erroneous and prejudicial to the interest of the Revenue on this score as well.

21. The Hon'ble Delhi high Court in the case of Commissioner of Income Tax Vs. Vikas Polymers (supra.) has categorically opined that "*while exercising power u/s.263, the Commissioner must give reasons to justify such exercise of revisionary powers by him to reopen a concluded assessment and exercise of power being quasi-judicial in nature, reasons must be such as to show that enhancement or modification of assessment or cancellation of assessment or directions issued for a fresh assessment were called for and must irresistibly lead to conclusion that order of Assessing Officer was not only erroneous but was also prejudicial to the interest of the revenue".*

That on perusal of the entire order of the Ld. Pr. Commissioner of Income Tax, no such exercise conducted can be seen on this aspect also.

Therefore, the Ld. Pr. Commissioner of Income Tax could not have assumed revisionary jurisdiction u/s.263 of the Act as per law. We have already examined that there were specific enquiries conducted by the Assessing Officer and if such enquiries were not upto the satisfaction of the Ld. Pr. Commissioner of Income Tax, it amounts to only change of opinion but that cannot be said the assessment order is erroneous so as to be prejudicial to the interest of the revenue. In view of the matter, we quash the 263 order passed by the Ld. Pr. Commissioner of Income Tax and allow the appeal of the assessee.

22. In the result, **appeal of the assessee in ITA No.165/PUN/2019 is allowed.**

ITA No.628/PUN/2019
A.Y.2014-15

23. Both the parties agreed that the facts and circumstances of this case are identical except the amounts. Since all other facts, arguments of the parties are same and similar, the same ruling as in ITA No.165/PUN/2019 shall **apply *mutatis-mutandis*** to ITA No.628/PUN/2019. Therefore, in this case also, we quash the 263 order passed by the Ld. Pr. Commissioner of Income Tax and allow the appeal of the assessee.

24. In the result, **appeal of the assessee in ITA No.628/PUN/2019 is allowed.**

25. In the combined result, **both appeals of the assessee for the assessment years 2013-14 and 2014-15 are allowed.**

Order pronounced on 04th day of October, 2019.

Sd/-	Sd/-
R.S.SYAL	**PARTHA SARATHI CHAUDHURY**
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 04th October, 2019.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-2, Aurangabad.
4. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	30.09.2019	Sr.PS/PS
2	Draft placed before author	01.10.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		