

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1330/Bang/2018
Assessment year : 2014-15

M/s Pragathi Krishna Gramin Bank, Head Office, No.32, Sangakal Road, Gandhi Nagar, Bellary-583 103. PAN – AACAP 6984 D	Vs.	The Asst. Commissioner of Income-tax, Circle-1, Bellary.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal, Advocate
Respondent by	:	Shri Pradeep Kumar, CIT (DR)

Date of hearing	:	17.12.2019
Date of Pronouncement	:	19.12.2019

ORDER

Per B.R Baskaran, Accountant Member :

The appeal filed by the assessee is directed against the order dated 28/2/2018 passed by Id CIT(A), Gulbharga and it relates to asst. year 2014-15.

2. The effective grounds urged by the assessee relate to the following two issues :-

a) Disallowance made u/s 40(a)(ia) of the Act.

b) Disallowance made u/s 14A of the Act.

3. The assessee is regional rural bank and is engaged in the business of banking.

4. The first issue relates to disallowance made by the AO u/s 40(a)(ia) of the Act. The AO noticed that the TDS verification was carried out in the hands of the assessee and accordingly proceedings u/s 201(1)/201(1A) of the Act was initiated, since there was failure on the part of the assessee to comply with the requirements of sec. 194A of the Act. Accordingly the AO proposed to make addition of Rs.19.34 crores u/s 40(a)(ia) of the Act, out of interest expenditure claimed by the assessee for non deduction of TDS. The assessee submitted that it did not deduct TDS by obtaining Form No.15G/15H and further the interest paid to its members is not liable to deduct tax at source u/s 194A of the Act. The AO noticed that the assessee has not furnished Form No.15G/15H to the CIT as required u/s 194A of the Act and further the assessee did not furnish copies of Form 15G/15H for verification. Accordingly the AO disallowed above said sum of Rs.19.34 crores u/s 40a(ia) of the Act. The ld CIT(A) also confirmed the addition.

5. The ld AR submitted that the proceedings initiated u/s 201(1)/201(1A) was challenged by the assessee by filing appeal before the Tribunal and the Tribunal has since passed the order in ITA No.2/Bang/2017 dated 27/9/2017 wherein the Tribunal followed the order passed in the hands of the assessee by the

coordinate bench for asst. year 2011-13 and 2012-13 and restored the matter back to the file of the AO for examining it afresh. The ld AR further submitted that the interest made to the members are exempt from provisions of sec. 194A.

6. We heard ld DR on this issue and perused the record. We noticed that the coordinate bench of Tribunal has restored the issue relating to proceedings initiated u/s 201(1)/201A of the Act to the file of the AO for examining it afresh. Further the assessee submits that the payment of interest made to members and certain other persons are covered by exemption provided u/s 194A of the Act. We noticed that these aspects have not been examined by the tax authorities. Accordingly we are of the view that this issue requires fresh examination at the end of the AO. Accordingly we set aside the order passed by ld CIT(A) on this issue and restore the same to the file of AO for examining it afresh.

7. The next issue relates to disallowance made u/s 14A of the Act. The ld AR submitted that an identical issue came to the consideration of Hon'ble High Court of Karnataka in the assessee's own case for asst. year 2011-12 and 2012-13 and the matter was restored to the file of the AO with certain directions. Accordingly she submitted that the issue relating to disallowance made u/s 14A may be restored to the file of AO.

8. We heard the ld DR and perused the record. We noticed that the Hon'ble Karnataka High Court in ITA Nos.10001/2018 and 100002/2018 relating to the assessee herein for asst. year 2011-12

and 2012-13 restored an identical issue to the file of AO, vide its order dated 28/5/2018 with the following observations :

“14. We make it clear that the expenditure for earning exempted income has to have a reasonable proportion to the income, so earned, going by the common financial prudence. Therefore, even if the Assessing Authority has to make an estimate of such an expenditure incurred to earn exempted income, it has to have a rational nexus with the amount of income earned itself. Disallowance under Section 14A of Rs.2,48,85,000/- as expenses to earn exempted Dividend income of Rs.1,80,30,965/is per se absurd and hypothetical. The disallowance under Section 8D cannot exceed the expenses claimed by assessee under the Proviso to Rule 8D. Therefore, where Date of Judgment: 28.05.2018 ITA Nos.100001/2018 & 100002/2018 M/s Pragathi Krishna Gramin Bank Vs. The Joint Commissioner the assessee claimed that assessee did not incur any such expenditure during the year in question to earn Dividends of Rs.1,80,30,965/-, the burden was upon the assessing authority to compute the interest on such borrowed funds which were dedicatedly used for investment in securities to earn such exempted Dividend income. The disallowance under Section 14A cannot be a wild guesswork bereft of ground realities. It has to have a reasonable and

close nexus with the factually incurred expenses. It is not deemed disallowance under Section 14A of the Act but an enabling provision for assessing authority to compute the same on the given facts and figures in the regularly maintained Books of Accounts. The assessing authority also could not have called upon the Assessee himself to undertake the exercise of computing the disallowance under Section 8D of the Rules. Such abdication of duty is not permissible

Date of Judgment: 28.05.2018 ITA Nos.100001/2018 & 100002/2018 M/s Pragathi Krishna Gramin Bank Vs. The Joint Commissioner in law. Since no such exercise has been undertaken by the assessing authority, the case calls for a remand.

15. In this view of the matter, the findings of all the three authorities below for Section 14A of the Act are set aside and the matter is remanded back to the Assessing Authority for re-computing the disallowance of expenditure, if any, under Section 14A of the Act, in accordance with law.”

9. Respectfully following the decision rendered by Hon'ble Karnataka High Court, we set aside the order passed by Id CIT(A) on this issue and restore the same to the file of AO for examining it afresh in accordance with the directions issued by Hon'ble High Court in the above said orders.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on **19th December, 2019.**

**Sd/-
(Pavan Kumar Gadale)
Judicial Member**

**Sd/-
(B.R Baskaran)
Accountant Member**

Bangalore, /
Dated, the 19th **December**, 2019.

/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
- Dictation note enclosed
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.
14. Dictation note enclosed