

आयकर अपीलीय अधिकरण , ' बी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री एन.आर.एस .गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A. Nos. 2856/Chny/2016 & 1813/Chny/2017
निर्धारण वर्ष/Assessment Years : 2012-13 & 2013-14**

The George Town Co-operative Bank
Limited,
No. 2/62, Natesan Building,
Krishnappa Agragaram Street,
George Town, Chennai – 79.

Assistant Commissioner of Income
Tax,
Corporate Circle 4(1),
Chennai.

[PAN: AAAAT 2451K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. A. Sundara Rajan, JCIT

सुनवाईकीतारीख/Date of Hearing

: 25.09.2019

घोषणाकीतारीख/Date of Pronouncement

: 19.12.2019

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeals against the orders of
Commissioner of Income Tax (Appeals)-5, in ITA No. 16/CIT(A)-/15-16
& 16-17 dated 28.07.2016 & 19.05.2017 for the assessment years
2012-13 & 2013-14, respectively.

2. The George Town Co-operative Bank Limited, the assessee, is a co-operative society engaged in the business of banking and is controlled and supervised by the Government of Tamilnadu. While making the assessment for assessment year 2012-13, the AO found that the assessee claimed payment of Rs. 13,97,474/- as security charges and Rs. 5,13,060/- towards rent. Since, the assessee has not deducted TDS on these payments, the AO disallowed these claim and added them to the total income. Further, the AO found that the assessee claimed deduction of Rs. 13,54,250/- u/s. 36(1)(viiia) for provision for bad debts. From the balance sheet, the AO had noticed that the assessee had shown reserve for doubtful debts under the head Nonperforming Assets Reserve at Rs. 18,05,05,393/- as on 31.03.2012 as compared to Rs. 18,02,31,186/- as on 31.03.2011. Thus, as against an increase of Rs. 2,74,207/-, the assessee claimed Rs. 13,54,250/- towards provision for bad debts u/s. 36(1)(viiia). Therefore, relying on the Cochin Bench decision in the case of Trichur District Co-operative Bank Ltd., 26 ITR (Trib) 0031, Cochin, the AO held that the assessee made a fresh reserve for bad and doubtful debts at Rs. 2,74,207/- only and accordingly he disallowed the balance of Rs. 11,10,043/- u/s. 36(1)(viiia).

2.1. Further, the AO noticed that the assessee claimed one crore towards provision for wages in assessment year 2012-13. After considering the assessee's reply etc., the AO held that the copy of resolution passed by the Board of Directors produced by the assessee was passed on 28.09.2012 i.e., after the end of the financial year relevant to assessment year 2012-13 and hence, he held that the liability accrued and crystallized only on 28.09.2012. Since, there was no enforceable contractual liability in respect of the impugned sum as on 31.03.2012, he disallowed the assessee's claim.

3. While making the assessment for assessment year 2013-14, the AO held that the assessee paid interest at Rs. 4,80,97,172/- without deducting TDS u/s. 194 and hence, he disallowed it u/s. 40(a)(ia). With regard to the assessee's claim at Rs. 80 lakhs towards provision for wage revision, the AO after going through the copy of resolution held by the assessee that the resolution has been passed on 19.09.2013, i.e., after the end of the relevant financial year. Therefore, the liability accrued and crystallised only on 19.09.2013. In view of that, he disallowed the assessee's claim.

3.1 Aggrieved against those additions, the assessee filed appeals before the CIT(A). The Ld. CIT(A) by his separate orders referred,

supra, dismissed the assessee's appeals. Aggrieved against those orders of the Ld.CIT(A), the assessee filed the above appeals.

4. The Ld. AR submitted that the Ld. CIT(A) erred in confirming the disallowance made u/s. 40(a)(ia) by the Assessing Officer towards security charges and rent payments on the ground of non-deduction of tax. In this regard, the Ld. AR relied on the Special Bench decision in the case of Merlin Shipping and Transport vs ACIT 16 ITR (Trib) 1.

5. We heard the rival submissions. We find that the issue is settled by the Hon'ble Supreme Court in the case of Palam Gas Services vs CIT reported in 394 ITR 300 (SC), wherein, the Supreme Court held that "payable" includes not only sums payable but also sums paid to contractors. Therefore, the corresponding grounds of the assessee fail.

6. With regard to the disallowance made u/s. 36(1)(viiia), the Ld. AR submitted that the provision for bad and doubtful debts in the books has to be for an equal and matching quantum and the CIT(A) erred in confirming the order of the AO restricting the deduction allowed under the Act to the extent of incremental quantum of the provision for bad and doubtful debts in the books only on a comparative basis in the years 31.03.2011 & 31.03.2012. In this regard, the Ld. AR invited our

attention to the copies of paper book, wherein, inter-alia, NPA statement for March 2012 (audited), statement showing the details of advances and provisions required and made for the financial year 2009-10 to 2014-15 were placed. It was submitted that the AO has not examined the issues properly. Per contra, the Ld. DR supported the orders of the lower authorities.

7. We heard the rival submissions. From the order, it is not clear how the AO has arrived the quantum. Apparently, he has taken the difference between the balance sheet figures as on 31.03.2012 and 31.03.2011. Therefore, we deem it fit to remit this issue back to the AO for a fresh examination and hence we set aside the order of the Ld. CIT(A) on this issue and restore the same to the file of the AO for a fresh examination and due decision in accordance with law.

8. With regard to the disallowance of the provisions for wages, the Ld. AR invited our attention to the additional evidences filed under Rule 29 of the Income Tax Rules, in which it was pleaded that the assessee debited a sum of Rs. 1 crore as provision for wages and claimed it as an expenditure in assessment year 2012-13. This amount was disallowed by the AO, holding that the liability is contingent in nature. The Ld. CIT(A) also confirmed the same. In this regard, it was submitted that

there was a dispute between the assessee bank and the employees union of the assessee, based on a charter of demand on 05.10.2011 for settlement for 10 years commencing from 01.07.2001 to 27.11.2011. In the settlement arrived, the bank was categorised as Grade III bank which were entitled only a 4% wage increase to the employees. Since, the assessee bank is categorised under Grade I, as per the Memorandum of Settlement, where the employees would be entitled for 10% wage increase, the assessee's bank employees raised a dispute for the said difference which was ultimately agreed to by the Registrar of Co-operative Societies on 17.11.2012 and said issue was settled and a Memorandum of Settlement was signed before the Labour officer u/s. 12(3) of Industrial Dispute Act on 29.03.2013. It was pleaded that unfortunately the copy of the Memorandum of Settlement dated 29.03.2013 was not brought to the lower authorities. It is pleaded that non-filing of this document before the lower authorities was neither wilful nor wanton and due to oversight. It was pleaded that if the documents are not admitted as an additional evidence, the petitioner would be put to great hardship and irreparable loss. So, it was pleaded that it is just a necessary that the document is admitted as an additional evidence and it be taken on file for the decision.

9. We heard the rival parties and admit that the additional evidence.

10. The Ld. AR invited our attention to the copy of the additional evidence and submitted that as per Clause 2 of Wage increase for employees working in different grades of urban co-operative banks in the Memorandum of Settlement (MOS) between George Town Co-operative Bank Limited and George Town Co-operative Bank Employees Union dated 29.03.2013, before the Labour Officer-1. Where in it is mentioned that "Since, the (assessee) bank as on 31.12.2006 has satisfied the parameters fixed for the gradation by the Reserve Bank of India is placed under grade-I vide the Registrar of Co-operative Societies letter NAKA 111227/2012, NAVA dated 17.11.2012. It is mutually agreed that the employees will be extended an increase @ 10% of their pay (Basic Pay+ Dearness Allowance) as on 30.06.2001." Therefore, the Ld. AR submitted that the Ld. CIT(A) erred in confirming the disallowance made by the AO at Rs. 1 crore for assessment year 2012-13 and Rs. 80 lakhs for assessment year 2013-14 towards provisions made by the assessee in the books on the grounds that the said liability is only a contingent liability.

11. The Ld. AR further invited our attention to the copy of GO (in Tamil) in NAVA dated 17.11.2012 and submitted that as per this Memorandum of Settlement, the wage revision attained finality in assessment year 2013-14 and hence the wage revision accrued in the

assessment year 2013-14 and hence pleaded to allow the entire provision in assessment year 2013-14. Per contra, the Ld. DR supported the orders of the lower authorities.

12. We heard the rival submissions. It is clear from the Memorandum of Settlement that the settlement attained finality on 29.03.2013 related to assessment year 2013-14. Therefore, the assessee is entitled for the impugned deduction during the assessment year 2013-14. However, since the additional evidence is submitted before this tribunal, this issue is remitted back to the AO for a fresh examination and determination of enforceable contractual liability. In this regard, the assessee shall furnish relevant materials before the AO and comply with the AO's requirements in accordance with law. While examining the issue, if the AO finds that the liability accrued and crystallised in assessment year 2013-14 alone, then, he shall allow the entire amount accrued and crystallised, as per the MOS in that assessment year, irrespective of the quantum of provisions made by the assessee in its books. In the result, the disallowance for provision of wages issue for the assessment years 2012-13 and 2013-14 are restored to the AO for a fresh examination. The corresponding grounds are treated as partly allowed.

13. With regard to the disallowance of interest u/s. 40(a)(ia) at Rs. 4,80,97,192/-, the Ld. AR invited our attention to the assessment order for assessment year 2013-14 submitted that out of the total interest expenses debited in the P&L account at Rs. 16,91,20,987/-, the Assessing Officer disallowed Rs. 4,80,97,192/- for the reason that the TDS was not deducted u/s. 194A as per the amended provisions. The said payments were made to the deposit holders, all of them are members of the bank. The provisions of section 194A(3)(v), exempts the operation of section 194A to such income credited or paid by a co-operative society (other than cooperative bank) to a member thereon. However, the AO did not agree with the assessee's claim for the reason that the section 194A is amended in 2016 w.e.f. 01.06.2015. The Ld. AR inviting our attention to the decision of Jurisdictional High Court in the case of Coimbatore District Central Co-operative Bank Limited vs ITO reported in 382 ITR 264 (Mad) submitted that as per that decision the amendment made in section 194A w.e.f. 01.06.2015 is prospective in operation and there was no liability to deduct tax prior to 01.06.2015. Per contra, the Ld. DR supported the orders of the lower authorities.

14. We heard the rival submissions and gone through the relevant material. It is clear from the assessment order that the assessee has submitted that the impugned interest was paid to all the deposit holders

who are members of the co-operative society and on such payments as per the provisions that existed before the amendment made in June 2015, the assessee was not liable to be deduct TDS, on the impugned payments. Such plea is in accordance with Jurisdictional High Court decision reported in 382 ITR 264, supra. Therefore, the assessee's appeal on this issue is allowed.

15. In the result, the assessee's appeals for both the assessment years viz., assessment years 2012-13 & 2013-14, are treated as partly allowed for statistical purposes.

Order pronounced on 19th December, 2019 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 19th December, 2019

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF