IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT), 'B' BENCH MUMBAI

BEFORE SHRI MAHAVIR SINGH, VP

&

SHRI M.BALAGANESH, AM

ITA No.3532/Mum/2019
(**Assessment Year :2010-11**)

Dy. CIT-1(3)(2), Mumbai 540, Aayakar Bhavan M.K.Road, Mumbai	Vs.	M/s. New India Co-operative Bank Ltd., 1260, TPS New India Bhavan Anant Vishram Nagwekar Marg Babasaheb Worlikar Chowk Maharashtra-400025
PAN/GIR No. AAAAN0012G		
(Appellant)	..	**(Respondent**)

Revenue by	Ms. Kavita P. Kaushik
Assessee by	None
Date of Hearing	**01/10/2020**
Date of Pronouncement	**18/11/2020**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.3532/Mum/2019 for A.Y.2010-11 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-3, Mumbai in appeal No.CIT(A)-3/IT-10587/2017-18 dated 15/02/2019 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated

28/12/2017 by the ld. Asst. Commissioner of Income Tax-1(3)(2), Mumbai (hereinafter referred to as ld. AO).

2. The only issue to be decided in this appeal is as to whether the ld CITA was justified in allowing the 'provision of exgratia expenses' of RS 1,62,32,961/- debited in the profit and loss account as allowable expenses and not treating it as contingent liability, in the facts and circumstances of the case.

3. None appeared on behalf of the assessee. We have heard the ld. DR and perused the materials available on record. We find that the assessee is a co-operative bank established in 1967 under the Banking Regulation Act, 1949. The return of income as filed on 14.10.2010 declaring total income of Rs 8,08,92,121/- and assessment was completed u/s 143(3) of the Act on 6.12.2012 accepting the returned income. Later the assessment was reopened by issue of notice u/s 148 of the Act on 31.3.2017. The assessee responded that return already filed may be treated as a return filed in response to notice u/s 148 of the Act. In the re-assessment proceedings, we find that the ld AO had sought to examine the allowability of claim of deduction of exgratia amounting to RS 1,62,32,961/- . We find that the ld AO observed that Form 3CD filed by the assessee did not contain any details of such expenditure and concluded that the said provision for exgratia to its employees is merely a contingent liability and hence not allowable as deduction. We find that the assessee had pleaded before the lower authorities that Section 63(2)(d) of the Multi State Co-operative Bank Societies Act, 2002 inter alia provides that the balance of net profits may be utilized for payment of ex-gratia amount to employees to the extent and manner specified in the bye-laws and that as per assessee's bye-law 52(b)(iv) , ex-gratia

payment out of the profits of the bank has to be made and approved by the Board of Directors of the assessee bank. In the case of the assessee, on finalization of accounts for the year ended 31.3.2009, the matter of appropriation of the net profit was considered by the Board of Directors of the asessee bank at its Board meeting held on 26.5.2009, wherein resolution was passed to the effect of recommending payment for exgratia to employees. Pursuant to such approval, the exgratia payment becomes due to the employees and the said amount was credited to 'Provision for Ex-gratia Payment Account' in the books of accounts of assessee bank for the year ending 31.3.2010. We find that the said exgratia to employees to the extent of Rs 1,62,32,961/- were actually paid by the assessee bank on 17.8.2009 and hence we hold that the same cannot by any stretch of imagination, could be held as contingent liability. Moreover, we find that the provision for ex-gratia amount was debited to profit and loss account in the earlier assessment year i.e Asst Year 2009-10 and during the Asst Year 2010-11, the said liability account was debited while making the actual payment on 17.8.2009. Hence it could be safely concluded that there was no debit to profit and loss account and consequential claim of deduction during the year under consideration and accordingly, there cannot be any disallowance of any deduction thereon by the ld AO. In any case, we also find that this claim of deduction was upheld by this tribunal for the Asst Year 2007-08 in assessee's own case vide order dated 4.6.2014 which had been subsequently upheld by the Hon'ble Jurisdictional High Court vide its order in ITA No. 271 of 2015 dated 25.7.2017. We also find that this tribunal in assessee's own case for the Asst Year 2014-15 in ITA No. 4927/Mum/2017 dated 5.12.2018 had allowed the similar claim of the assessee. Hence on all counts, this amount cannot be disallowed by the ld AO. We find that the ld CITA had duly followed the aforesaid judicial

precedents and granted relief to the assessee, which in our considered opinion, does not warrant any interference. With regard to reliance placed by the ld DR on the decision of of Hon'ble Kerala High Court in the case of CIT vs Travancore Titanium Products in ITA No. 104 of 1988 dated 18.8.1990, we hold that the impugned issue is squarely covered by the decision of Hon'ble Jurisdictional High Court in assessee's own case as stated supra and hence the decision of Hon'ble Kerala High Court relied by ld DR need not be gone into. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, the appeal of the revenue is dismissed.

Order pronounced on 18/11/2020 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(M.BALAGANESH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai; Dated 18/11/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai