

आयकर अपीलिय अधीकरण, न्यायपीठ – सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No.710/SRT/2018 for AY:2014-15

(Hearing in Virtual Court)

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| ACIT, Circle-1(2), Room No. 213, 2 nd Floor, AyakarBhavan, Majuragate, Surat- 395001 | बनाम V/s. | M/s Prime Co-operative Bank Ltd., S.No. 1 to 5, Office 101 T.Kailasdeep Complex, Opp.Sub Jail, Ring Road, Surat [PAN No.AAAAP 5507 G] |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी/Respondent |

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| अपीलार्थी की ओर से /By Appellant | Shri S.T. Bidari, CIT-DR |
| प्रत्यर्थी की ओर से/By Respondent | Shri Hiren R. Vepari, CA |
| सुनवाई की तारीख/Date of Hearing | 14-07-2021 |
| घोषणा की तारीख/Date of Pronouncement | 14-07-2021 |

Order u/s 254(1) of Income Tax Act

आदेश/ORDER

PER PAWAN SINGH, JUDICIAL MEMBER:-

1. This appeal by the Revenue is directed against the Commissioner of Income Tax (Appeals)-2 Surat dated 17.08.2018 for assessment year (AY) 2014-15. The Revenue has raised the following grounds of appeal:-

“1. Whether on the facts and circumstances of the case and in law, the CIST(A) has justified in deleting the addition made by the AO on account of payment of Education Fund of Rs.3,00,000/- without appreciating the facts that said expenditure is not allowable u/s. 37 of the IT Act.?”

2. Whether on the facts and circumstances of the case and in law, the CIT(A) has justified in deleting the addition of Rs.48,00,000/- made by the AO on account of disallowance of provision of Special Long Term Finance Fund u/s 36(1)(viii) without appreciating the facts that the said expenditure is not allowable u/s 36(1)(viii) and the

assessee itself also failed to furnish separate working for eligible advances made on the Long Term Finance u/s 36(1)(viii) of the Act?

3. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has justified in deleting the addition of Rs.3,06,81,350/- made by the AO on account of disallowance of investment depreciation without appreciating the facts that the assessee failed to prove any separate working for investment depreciation nor provided any supporting evidences?

4. It is, therefore, prayed that the order of the Ld.CIT(A) may be set aside and that of Assessing Officer may be restored to the above extent.

5. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”

1. At the outset of hearing the learned Authorized Representative (AR) of the assessee submits that all the grounds of appeal raised by the Revenue are covered in favour of the assessee by the decision of Tribunal in assessee's own case for assessment year 2013-14 or in earlier years or by the orders of Higher Courts. The Ld. AR for the assessee also filed the copy of the decisions Tribunal for A.Y. 2013-14 and for earlier years and the decisions of various other assessee's (**cooperative societies**) and the copies of all such decisions were supplied to the Ld. CIT-DR for the revenue. The Ld. CIT-DR for the revenue after going through the orders of the Tribunal in assessee's own case for earlier years on similar grounds of appeal submits that he rely on the order of the assessing officer.
2. Ground No. 1 relates to deleting the disallowance of Rs.3 lakh made on account of payment of education fund. Brief facts of the case are that the assessee is a co-operative bank engaged in the business of

banking and all the forms of business enlisted in Section 6 of the Banking Regulation Act, 1949 leading which is the main activity predominantly to the members of the co-operative bank. The Assessing Officer disallowed the amount of Rs.3 lakhs under the head payment to education fund on the ground that this amount is estimated provision towards fund created as per section 69 of Gujarat Co-operative Societies Act and it has not been spent during the year under consideration. On appeal before the Id. CIT(A) deleted this disallowance by following the decision of co-ordinate Bench of Ahmedabad Tribunal in the case of Surat National Co-operative Bank Ltd., for AY 2007-08 dated 23.08.2013 in **ITA No.3242/Ahd/2010**, wherein the Tribunal followed the decision of Hon'ble Gujarat High Court in the case of Mehsana District Co-operative Milk Producers Union Ltd., 258 IDTR 780 (Guj), such disallowance were deleted. Aggrieved by this order of Ld. CIT(A) Revenue is in appeal before this Tribunal. The Ld. Departmental Representative (DR) relied on the order of Assessing Officer.

3. On the other hand the Ld. Counsel of the assessee supported the order of the Ld. CIT(A) and submitted that the issue is covered by aforesaid decision of Tribunal. We have considered the rival submission of both the parties and have gone through the order of Ld. CIT(A). We have also gone through the orders of the authorities below. We have considered the facts and found that the issue is covered against the

Revenue by the decision of the Tribunal in the case of Surat National Co-operative Bank Ltd., (supra) wherein para 16 this Tribunal has observed as under:-

“16. At the time of hearing before us, the learned AR reiterated the submissions made before the authorities below and drawing our attention to paper book page 45 and 49, relied on the decisions rendered by the Hon’ble Gujarat High Court in the case of (i) Mahesana District Co-operative Milk Producers Union Ltd. Vs. CIT, 258 ITR 780 (Guj) and (ii) CIT vs., Kaira District Co-operative Milk Producers’ Union Ltd., 209 ITR 898 (Guj) wherein the Hon’ble High Court on similar facts decided the identical issues in favour of the assessee and against the Revenue and pleaded that the claim of the assessee may be allowed. The learned DR could not controvert the submission of the learned Counsel for the assessee. Since we have decided identical issue in ground No.3 of the appeal hereinabove in para 3 of this order in favour of the case laws cited by the learned Counsel for the assessee, there raise no question not to follow the same. Accordingly, we hereby reverse the order of the CIT(A) on this issue and allow the ground of appeal of the assessee in its favour.”

4. After going through above decision of the coordinate bench of the Tribunal on similar issue, wherein no variation is brought to our notice, therefore, we find that this issue is squarely covered against the Revenue by the above decision of Tribunal therefore respectfully following the order of Tribunal (supra), we affirm the order of the Ld. CIT(A). Thus, the ground of appeal raised by revenue is dismissed.
5. Ground No.2 relates to deleting the addition of Rs.48 lakhs made on account of disallowance of Special Long Term Finance Fund u/s 36(1)(viii).

6. Brief facts are that the assessee has claimed deduction of Rs.48 lakhs u/s 36(1)(viii) under the head provisions for special long term finance fund. According to Assessing Officer, this is not allowable as per provisions of section as per provision of section 36(1)(viii) as it was not spent. On appeal, the Ld. CIT(A) observed that the issue was also in appeal for the assessment year 2009-10 wherein the Ld. CIT(A) vide his order dated 17.09.2012 has deleted the addition in appellant's own case. Further, the ITAT Ahmedabad in the case of assessee in **ITA No.2791/Ahd/2012** dated 23.08.2013 has confirmed the findings of Ld.CIT(A) while dismissing the Revenue's appeal. Further similar addition was deleted by Ld. CIT(A) in assessment year 2011-12 vide order dated 20.04.2015 in assessee's own case. The Ld. CIT(A) has allowed the appeal of the assessee. Aggrieved thereby the Revenue filed present appeal before this Tribunal.
7. We have heard the submission of both the parties and has gone through the orders of the authorities below. The Ld. CIT-DR for the revenue supported the order of the assessing officer.
8. On the contrary the Ld. AR for the assessee rely on the order of Ld. CIT(A) and submits that this issue is also covered against the Revenue by the order of Tribunal in assessee's own case for A.Y. 2009-10, 2010-11 and in 2013-14 in **ITA No. 292/SRT/2017** and in The Surat National Co-operative Bank Ltd. in **ITA No.2793/Ahd/2012** dated 23.08.2013.

9. We have considered the rival submissions of the parties and have gone through the orders of the authorities below. We find that on similar grounds of appeal in assessee's own case for A.Y. 2013-14, the coordinate bench, while following the order in Surat National Co-operative Bank Ltd in **ITA No.2793/Ahd/2012** passed the following order;

"19. We have considered the facts and circumstances and perused the material on record and heard both the parties. Both the parties have agreed that this issue is covered against the revenue by the order of Tribunal for assessment year 2009-10 in the case of Surat National Co-operative Bank Ltd in ITA No. 2793/Ahd/2912 dated 23/08/2013 wherein in para 8,9, and 11 of the Tribunal has given the finding as under:-

"8. Brief facts of the case are that during the assessment proceedings, it was noticed by AO that assessee has claimed gift expenses of Rs.17,10,728/-. As per assessee's explanations, these gifts were distributed to the members of the bank to keep alive good image about members and for generating goodwill and ensuring continuity of business with members of societies and such expenses are allowable in the light of decision of Hon'ble Gujarat High Court in the case of Daskroi Taluka Co-operative & Sales Union Ltd., reported in 126 ITR 413. The explanation of assessee was not accepted by AO on the ground that such expenses appeared to be an altruistic and philanthropic urge which should have been satisfied by assessee at its own cost not at the cost of public exchequer or other tax payers and such expenses also prove that assessee wants to increase the expenditure on some pretext or other thereby reducing his tax liability. With this conclusion; AO disallowed the gifts expenses of Rs.17,10,728/- and added to the income of assessee.

9. Before Ld. CIST(A), assessee's submission was as follows:-

'3.2 During the appellate proceedings, it was submitted by appellant that the assessee bank has given gift to its members on the occasion of completion of 35 years by the bank which was spread into two years. Part of total amount paid was disallowed by AO in the AY 2008-09, which was allowed by CIT(Appeals)-II by his order dated 06.05.2011. It was further submitted that the Co-operative movement was primarily for the benefit of the consumers and its members and this aspect has been discussed in detail in the Gujarat High Court judgment referred to earlier. In this background, appellant requested to allow the deduction.'

10. After taking into consideration the submission of the assessee, ld. CIT(A) deleted the addition by observing as under:-

'3.3 I have considered the facts on the issue. This issue has been discussed by my predecessor in detail while deciding the appeal for AY 2008-09. Taking into consideration the decision of Hon'ble Gujarat High Court in the case of Daskro Taluka Co-op & Sale Union Ltd., 126 ITR 413, learned CIT(Appeals) has decided the issue as under:-

*"I have duly considered the judgment of the Hon'ble Gujarat High Court in the case Taluka Co-op. & Sale Union Ltd., (126 ITR 413) where expenditure incurred for purchase of articles for presentation only to its members for keeping alive good image among members and for generating goodwill and ensuring continuity of business with member societies was held to be expenditure incurred wholly and exclusively for the purpose of business. The facts of the appellant's case, in so far as the above decision is concerned, differ only to the extent that in the relied upon case the household stainless steel utensils were distributed to the members of the said Co-op. society, whereas the bank asked the members to take the gift item worth Rs.400/- from the selected stores. I, therefore, following the decision of the jurisdictional High Court in the above referred case, **delete** the above disallowance and allow this ground of appeal."*

Since, the facts on issue are same as in the AY 2-008-09, respectfully following the decision of my predecessor, I also delete the addition made by AO and allow the ground of appeal."

Since Ld. CIT(A) has given relief to the assessee by placing reliance on the decision of jurisdictional High Court in the case of Daskro Taluka Co-operative & Sale Ltd., **126 ITR 413**, we feel no need to interfere with the order passed by him and the same is hereby **upheld**.

11. Ground No. 3 relates to deletion of addition of Rs.38,37,116/- made on account of Staff Ex Gratia."

20. We further found that the issue is covered by decision of Tribunal in assessee's own case for the AY 2010-11 dated 06.07.2018 in **ITA No.1268/Ahd/2015** wherein the Tribunal has observed as under:-

"10. We have considered the facts and rival submission. We find that the issue has been duly covered by the decision of Tribunal in the assessee's own case for AY 2009-10 dtd. 23.08.2013 wherein, the Hon'ble Tribunal observed as under:

'9. Before Ld. CIT(A), assessee's submission was as follows:

"3.2 During the appellate proceedings, it was explained by appellant that during the assessment proceedings complete details of working out the 20% of profits derived, were furnished to the AO but the same were ignored.

'As regards Ground No.II about deduction u/s. 36(1)(viii) for Rs.50,09,000/- the details have been furnished as per para (2) of letter dated 06.08.2011 to the Assessing Officer in course of assessment proceedings. This reproduced.

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| Total interest income on advance | 1640.11 |
| Interest income on Housing (86.41 lacs) and SSI Term Loan (530.52 lacs) | 616.93 |
| Banking operation income | 65.79 |
| So taxable income from Housing loan and SSI long term loan is | 250.44 |
| 20% special provision on above | 50.09 |

Branch wise particulars of interest on housing and machinery loan are furnished."

10. After taking into consideration the submission of the assessee, Id. CIT(A) deleted this addition by observing as under:-

*"3.3 I have considered the facts on the issue, basis of addition made by AO and submissions of appellant. The AOP has wrongly concluded that the appellant did not prove that whatever the amount set aside by it, constitutes 20% of profits derived from the eligible business. All the relevant details are present in the P&L account only and AO himself could have computed the 20% of profit derived from the eligible business. The appellant has again furnished all the required details and worked out the profit amounting to 250.44 lacs, 20% of profit thereof is Rs.50.09 lacs amount credited to special reserve is Rs.50,09,000/- which is 20% of the income from housing loans and SSI long term loans. This working has not been challenged by AO. It is therefore, held that the appellant has claimed expenses under this head as per provisions of section 36(1)(viii) which are allowable to him. In the result, appeal on this ground is **allowed**.*

*Since, the above finding of the Ld. CIT(A) remained uncontroverted at the time of hearing before us, we feel no need to interfere with the order passed by him and this same is hereby upheld. This ground of the revenue is also **dismissed**.*

*In view of above, since the facts are identical, therefore, respectively following Tribunal order dtd. 23.08.2013, we find that the issue is covered in favour of the assessee, therefore, appeal of the revenue on this ground is **dismissed**."*

21. In the light of the above, as the facts are identical as agreed by the parties, and finding of the Ld. CIT(A) remained as uncontroverted before us, therefore, respectfully following finding of the Tribunal in assessee's own case as well as in the case of Surat National Co-operative Bank Ltd. in **ITA No.2793/Ahd/2012** dated 23.08.2013. We affirm the order of Ld. CIT(A). This ground of Revenue's appeal is dismissed."

10. Considering the consistent decisions of the Tribunal in assessee's own case on similar grounds of appeal, we do not find any merit in the ground of appeal raised by the revenue, thus, we affirm the order passed by Ld. CIT(A). In the result this ground of appeal is also dismissed.
11. Last issue in this appeal relates to deleting the addition of Rs.3,06,81,350/- on account of disallowance of investment depreciation. The Ld. CIT-DR for the revenue supported the order of the assessing officer.
12. On the other hand the Ld. AR for the assessee submits that this grounds of the appeal is also covered in favour of the assessee and against the revenue by the order in assessee's own case for A.Y. 2013-14. Further the assessing officer allowed the similar investment depreciation in A.Y. 2012-13 in assessment order passed under section 143(3) dated 30.03.2015.
13. We have considered the rival submissions and perused the relevant material on record. We find that on similar grounds of appeal in assessee's own case for A.Y. 2012-13 the Tribunal passed the following order;

“27 We have heard the rival submissions and perused the relevant material on record. We find that as per Schedule 17 to Accounts for the year ended 31.03.2014 shown in the return of income, the bank wrote back Rs. 2,86,27,844/- as excess provision for investment depreciation which included ad-hoc amount of depreciation of Rs.2,50,00,000/- for provision for investment depreciation. As per the working filed, the

assessee way back in AY 2012-13 had claimed investment depreciation loss of Rs.1,21,88,023/- (shown in schedule 17 of provisions & contingencies). This market to make loss was reduced to Rs.19,93,840/- in AY 2013-14 and after reducing the outstanding loss of Rs.19,93,840/- from investment depreciation of Rs.1,21,88,023/- claimed in earlier year, the assessee was required to pay tax on Rs.1,01,94,183/- i.e. [1,21,888,023 – 19,93,840] only being eligible profit for taxation and therefore, the assessee has rightly claimed the amount of Rs.1,48,05,817/- as investment depreciation loss instead of the entire amount of Rs.2,50,00,000/-. Thus, we find that the Ld. CIT(A) has verified the working submitted by the assessee before him during appellate proceeding and after analyzing the same has allowed the claim. These facts are remained as uncontroverted before us by the Revenue. In view of this matter, we do not find any infirmity in the order of Ld. CIT(A), accordingly, same is upheld. Accordingly, this ground of Revenue is therefore, dismissed.

14. Considering the consistent decisions of the Tribunal in assessee's own case on similar grounds of appeal, we do not find any merit in the ground of appeal raised by the revenue, thus, we affirm the order passed by Ld. CIT(A).

In the result, appeal of the Revenue is dismissed.

Order announced at the time of hearing of appeal on 14th July 2021 in the Virtual Court hearing.

Sd/-

(लेखा सदस्य)

(Dr.Arjun Lal Saini)
(Accountant Member)

Surat,

*Dkp, Sr.P.S O.S.

दिनांक:- 14/07/2021 सूत ।

Sd/-

(न्यायिक सदस्य)

(Pawan Singh)
(Judicial Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी / Appellant-ACIT, Cir-1)2) R.No. 213 2nd Fl. AyakarBhavan, Majuragate
Surat-395001
2. प्रत्यर्थी / Respondent-M/s Prime Co-operative Bank Ltd., S.No.1 to 5, Office 101 T.
Kalasdeep Complex, Opp. Sub Jail, Ring Road, Surat
3. संबंधित आयकर आयुक्त/ Concerned CITसूरत
- 4.आयकर आयुक्त- अपील / CIT (A)सूरत
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण,सूरत/ DR, ITAT, Surat
6. गार्ड फाइल / Guard file.

By order/आदेश से,

सहायक पंजीकार/Sr. Private Secretary,
Head ofOffice/DDO
आयकर अपीलीय अधिकरण,
सूरत ।