

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI

BEFORE SHRI O. P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI K. N. CHARY, JUDICIAL MEMBER

ITA No.1811/DEL/2018  
A.Y. 2013-14

ACIT,  
Circle- 19 (1)  
New Delhi

VS. Oriental Bank of Commerce  
Central Accounts Office  
Plot No.5, Sector-32,  
Institutional Area,  
Gurgaon  
PAN No. AAACO0191M

Appellant by : Ms. Pramita M. Biswas, CIT DR  
Respondent by : Sh. K. S. V. R. Krishna, CA

Date of Hearing : 17.08.2021  
Date of Pronouncement : 27.08.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the Revenue is directed against order dated 29/12/2017 passed by the Learned Commissioner of Income-tax (Appeals)-20, New Delhi [in short the Ld. CIT(A)] for assessment year 2013-14, raising following grounds:

1. *“On the facts and under the circumstances of the case, the ld. CIT(A) has erred in law and facts in deleting the addition of Rs.18,00,00,000/- ignoring the facts produced by the Assessing officer that the said liability was not crystallized and was unascertained and assessee had only made a provision for the same whereas the outflow could be more or less.”*
2. *The appellant craves to be allowed to add and alter any fresh ground(s) of appeal and / or delete or amend any of the ground (s) of appeal.*

2. Briefly stated facts of the case are that the assessee is a nationalised bank and is engaged in the business of banking including accepting deposit from public for the purpose of lending, investment etc. For the year under consideration, the assessee filed return of income on 27/09/2013 declaring total income of Rs.963,08,18,932/- which was finally revised to Rs.769,94,12,146 on 23/02/2015. The return of income filed by the assessee was selected for scrutiny assessment. In the scrutiny assessment under section 143(3) of the Income-tax Act, 1961 (in short the Act) completed on 20/03/2015, the Assessing Officer assessed total income under normal provisions of the Act at Rs.1996,43,16,100/- and at book profit of Rs.3453,63,30,299/-. Further the Assessing Officer rectified the book profit to Rs.3 471,63,30,299/- in his order under section 154 dated 26/04/2016. In the impugned rectification order, the Assessing Officer observed that interest on overdue

deposits amounting to Rs.18,00,00,000/- was added as an ascertained liability in normal provisions of the Act while passing order u/s. 143 (3) of the Act and therefore same was to be added while computing the book profit. Thus he rectified the order passed u/s. 143 (3) of the Act. On further appeal, the Ld. CIT(A) deleted the addition on the ground that addition made under normal provisions was also deleted by the Learned CIT(A) in appeal against order u/s 143 (3) by the assessee holding that liability is ascertained liability. Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us the parties appeared through videoconferencing facility and filed paperbook and other documents through email.

4. We have heard the rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that Ld. CIT(A) has deleted the addition made in rectification in view of the finding of the Ld. CIT(A) in first appellate order, and finding of the Tribunal in assessment year 2009-10. The relevant part of the order of the Ld. CIT(A) is reproduced as under:

*“4.4.2 The appellant, on the other hand, has claimed that this is not a case of rectification u/s 154 as there is no mistake apparent from the record arising out of the order sought to be rectified. The assessment under 143(3) in this case was completed after considering and examining the books and records of the appellant. The appellant has claimed the sum of Rs. 18,00,00,000/- as an allowable deduction which is as per RBI circular. The appellant has*

also claimed that in the appeal against the order u/s 143(3) of the Assessing Officer, the CIT(A)-36 vide its order dated 31.01.2017 in Appeal no. 238/2016- 17 has deleted the disallowance made by the Assessing Officer and while allowing this relief the CIT(A) has followed the previous order of A.Y. 2009-10 & 2010-11 and hold that the liability determined in respect of interest on overdue deposits is definite and ascertained liability and the disallowance made by the Assessing Officer on this account was deleted.

4.4.3 The contention of the Assessing Officer and the submission of the appellant has been considered. From the details filed by the appellant, it is apparent that an addition of Rs. 18,00,00,000/- was made as interest on overdue deposits in the A.Y. 2013-14 i.e. the year under consideration u/s 143(3) which was challenged by the appellant before CIT(A) and CIT(A) vide order dated 31.01.2017 in appeal no. 238/2016-17(new appeal) and appeal no. 204/2015-16(old appeal) vide order dated 31.07.2017 has discussed this issue in para 6.4 and deleted the addition made by the Assessing Officer relying upon the decision of A.Y. 2009-10, 2010-11 & 2011-12. The relevant para 6.4 of the order is reproduced as under:-

"6.4 Interest on overdue deposits Rs. 18.00 crores:-

This ground of appeal is directed against disallowance of claim of Rs. 18.00 crore in respect of interest on overdue deposits. The assessee submitted that earlier the bank was accounting for interest on overdue deposits at the time of renewal of such deposits. Since the A. Y. 2009-10 the bank has consistently accounted for such interest on overdue deposits by making a provision at the rate of saving bank deposits and the balance overdue interest in accounted for at the time of renewal. This is as per the RBI circular. It is submitted that there is no change in the method of accounting but it

*is only change in accounting policy as guided by the RBI which has been followed by the assessee consistently since the A. Y. 2009-10. It was submitted that due to this change, the assessee has claimed sum of Rs. 18 crore as an allowable deduction as per RBI circular in the computation of income. AO observed that the amount of provisions created pertains to unascertained liability which has not crystallized and only a provision has been made at the savings bank interest rate whereas the actual outflow could be more. AO observed that the RBI guidelines lay down an advisory for treatment of provisions for the safety of customers, but it no way stipulates that the profits have to be decreased to that extent for taxation purposes. In view of the above, Rs.18 crores was disallowed. Identical disallowance was made by the AO in A.Y. 2009-10 and A.Y. 2010-11 in which Ld CIT (A) vide orders dated held as under:*

*"5.5.4 There is no dispute that interest is liable to be paid by the appellant to the depositors on these time deposits. Therefore, it is clear that above liabilities are definite liabilities. The appellant submitted that it has accounted for interest on overdue deposits at the rate of saving bank deposits and the balance overdue interest is accounted for at the time of renewal as per the RBI Circular. Therefore, it is clear that the above liabilities at the rate of savings bank deposits are ascertained liabilities crystallized during the debited in the accounts at the rate of saving account deposits cannot be lower than the liability at the time of renewal.*

*5.5.5. The assessee is a nationalized bank and governed by Banking Regulations Act, 1974. The assessee is bound to act as per RBI Circular. The RBI Circular No. DBOD No. Leg.BC.34/09.07.005/2008-09 dated 22.08.2008 in para 2 (xi) says:-*

*"(xi) Interest on savings bank accounts should be credited on regular basis whether the account is operative or not. If a Fixed Deposit Receipt matures and proceeds are unpaid, the amount left unclaimed with the bank will attract savings bank rate of interest."*

*Further, the above RBI circular is neither inconsistent nor contrary to the provisions of the I.T Act. There is no dispute that the appellant debited the liability on account of overdue deposits at the rate of savings bank deposits as per RBI Circular in a bonafide manner. It is also fact that there is no change in the method of accounting but only change In accounting policy as guided by the RBI.*

*5.5.6 Hon'ble Supreme Court of India in Bharat Earth Movers Ltd. Vs CIT [245 ITR 428] held that if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirement are satisfied, the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any"difference if the future date on which the liability shall have to be discharged is not certain. The above principle was also followed by Hon'ble Supreme Court in Metal Box Co. of India Ltd. Vs Their workmen [73 ITR 53] and Calcutta Co. Ltd. Vs. CIT [37 ITR 1 ]. In view of the above factual and legal position as the liability determined as per RBI*

*circular are definite and ascertained liability, therefore, allowable under the provisions of the Act. As such this ground is decided in favour of the appellant."*

*The ground is exactly the same and the facts and circumstances are identical to the issue decided in A.Y. 2009-10, 2010-11 and 2011-12. I am therefore inclined to follow the order of Ld CIT (A) in these years and allow the interest on overdue deposits. The disallowance may be deleted."*

*4.4.4 During the course of appellate proceedings, the appellant was asked to produce the copy of order of CIT(A) of A.Y. 2009-10, 2010-11 & 2011-12 on which the CIT(A) has relied and the status of this appeal before Hon'ble ITAT. In response, the appellant has submitted the copy of these orders and from this, it is gathered that the order of CIT(A) in A.Y. 2009-10 was challenged by the appellant in ITA No. 6795 & 6796/Del./2013 which was disposed off by Hon'ble ITAT Delhi Bench vide order dated 27.12.2016 by making following observations in para 14 of the order and restored back this matter to the file of the Assessing Officer with the following observations. Relevant para 14 of this order is reproduced below:-*

*"14 Having heard both the parties on this issue, we find on record that the assessee bank had made a provision of Rs.83.00 crores in respect of interest on overdue deposits at the rate of saving bank interest on time deposits. The assessee bank has followed the RBI Circular No. DBOD No.Leg.BC.34/09.07.005/2008-09 dated 22.08.2008. Instruction No. (xi) of the above RBI circular reads as under:*

*"(xi) Interest on saving bank accounts should be credited on regular basis whether the account is operative or not. If a fixed Deposit Receipt matures and proceeds are unpaid, the amount left unclaimed with the bank will attract savings bank rate of interest."*

*This issue has been discussed in detail by the Id. CIT(A) in his order. The assessee Bank is covered by the Banking Regulation Act, 1949*

*and it has to follow the directions of Reserve Bank of India which regulates all the banks operation in India. The books of accounts are to be maintained as per directions of the Reserve Bank of India and financial results of the banks are il'.o prepared by the banks as per the prescribed norms fixed by RBI. The deserve Bank of India has considered in its circular that interest should be paid at the rate of saving banks interest rate on overdue deposits. Accordingly, the assessee bank has made the provision of Rs.83.00 crores as on the date of balance sheet, i.e., 31.03.2009. No such provision is proved to have been made \* by the assessee bank prior to this circular. However, the AO has observed that. the assessee failed to identify the customers to whom such interest is payable and for which period and that the statutory auditors of the bank have qualified that the bank has changed the method of account. The Id. AR submitted that it is not the change in the method of accounting, but it was the change in accounting policy which is necessary to follow the guidelines of RBI in preparing the financial statement. The Id'. CIT(A) has also accepted the view taken by the assessee and relied on a decision as is applicable to this case. However, the claim of assessee, in our opinion is not acceptable until it is ascertained that the actual payment of the provision has been made to the customers or not. We, therefore, restore this issue to the file of AO for the limited purpose to verify whether actual payment of the provision has been made to the customers or not and to decide the same accordingly as per law. Needless to say, the assessee shall be given reasonable opportunity of being heard. Accordingly, ground No. 3 of Revenue's appeal for A.Y. 2009-10 is allowed for statistical purposes."*

*4.4.5 Subsequent to this restoration, the Assessing Officer vide order u/s 254/250/143(3] of the Act dated 27.03.2017 has allowed the*

*claim of the appellant by observing the following in para 2 of the order :-*

*Allowance of provision for interest on overdue term deposits: while examining the said ground of appeal*

*payment of the provision has been made to the customer or not.*

*In view of the above directions, notice dated 20.03.2017 was issued to the assessee which was replied on 21.03.2017. the same is examined. The assessee has submitted the following document in the support of their claim:*

- i. Region-wise detail of interest on overdue term deposit.*
- ii. Branch-wise detail of interest on overdue term deposit for Regional Office, Agra.*
- iii. Deposit policy of the Bank*
- iv. The depositor education and awareness fund scheme (DEAF), 2014 of Reserve Bank of India.*
- v. Certificate in Form no. 1 issued by the Auditor which shows that the Bank has transferred the DEAF scheme along with interest.*

*Perusal of Deposit policy and DEAF scheme shows that bank is, in any case liable to pay interest on overdue*

*liability which has been paid in subsequent years. Accordingly, the claim of the assessee is allowed."*

*4.4.6 From the above, it is apparent that this issue has already been decided in favour of the appellant by CIT(A) vide order dated 31.01.2017 and in response to by Hon'ble ITAT order dated 27.12.2016 by Assessing Officer's order dated 27.03.2017,*

*subsequently passing the Rectification order u/s 154 dated 26.04.2016 which is a subject matter of appeal.*

*In this light, as on merit, the appellant has already got relief vide the order of CIT(A) dated 31.01.2017, the appellant is entitled to get relief on the MAT provisions also since this has been treated as ascertained liability by the Assessing Officer himself vide order dated 27/12/2016. In this light, the Assessing Officer is directed to recalculate the book profit of the appellant.*

*{5} Ground No. 3, 4, 5 & 6 are general in nature and do not require any separate adjudication.*

*{6} In the result, the appeal is allowed.”*

5. We find that in assessment year 2009-10 the matter was restored by the Tribunal to the file of the Assessing Officer. The Assessing Officer in his order dated 27/03/2017 passed in compliance to the order of the Tribunal, has allowed the claim of the assessee of interest on overdue deposits. In the circumstances, when the Assessing Officer himself has accepted the claim of the assessee in assessment year 2009-10, then action of the assessing officer in rectifying the assessment order and making addition on the same ground in assessment year 2013-14 i.e. present assessment year, is not justified. We accordingly, uphold the order of the Learned CIT(A) on the issue in dispute. The ground of the appeal raised by the Revenue is dismissed.

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

Order pronounced in the open court on 27.08.2021.

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Dated: 27.08.2021

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-  
**(O.P KANT)**  
**ACCOUNTANT MEMBER**

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	27.08.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	