

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH, JODHPUR

BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

ITA. No. 293/JODH/2016
Assessment Years : 2012-13

The Central Co-operative Bank Ltd., 52, Balaji Market, Near Suchana Kendra, Bhilwara	Vs.	DCIT, Circle, Bhilwara
PAN/GIR No.: AAAAT8126B		
Appellant		Respondent

Assessee by : Sh. Sunil Porwal (CA)
Revenue by: Smt. Sanchita Kumar (CIT-DR)

Date of Hearing : 11/08/2021
Date of Pronouncement : 31/08/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT (A), Ajmer dated 22.06.2016 for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal:

"1. *The Id. CIT(A) has erred in sustaining the order passed by the Id. AO which is bad in law and on facts and the various additions made were not justified.*

2. *The Id. CIT(A) has erred in sustaining the addition of Rs. 1,03,36,161/- out of arrears of salary provided for by the appellant. The entire addition so sustained is bad in law and bad on facts.*

3. *The Id. CIT(A) has erred in not giving specific finding with regard to the allowability of provision made for NPA accounts amounting to Rs.6,50,824/- which was apparently allowable. The appellant pray that such claim may be directed to be allowed in view of specific provision u/s 36(1)(vii).*

4. *The interest charged u/s 234B, 234C and 234D is bad in law and bad on facts."*

2. At the outset, the Id. AR submitted that the assessee does not wish to press Ground No. 3 of its appeal. Hence, the same is dismissed as not pressed.

3. Regarding Ground No. 1 and 2, the Id. AR submitted that the Registrar Co-operative Societies, Jaipur vide order no. 46(5)/SAVIRA/Bank-2/2009 part – 2 dated 10.02.2012 has directed the assessee to apply terms & conditions for staff/officers of the Central Co-operative bank Ltd., Bhilwara as per 14th pay agreement execution. Accordingly, it was agreed to pay arrears w.e.f. 01.01.2009 & the detail of such payments / provisions are as under:-

Head of provision	Total provision made for the year	Amount paid	Period of payment
(a) Arrear of salary	Rs.1,50,00,000/-	1,99,91,560/- (Total Rs.1,78,49,606 + Rs.21,41,954/- for P.F. contribution of employer)	01.01.2009 to 31.03.2012

(b) Surrender leave	Rs. 12,00,000/-	Rs. 9,07,239/-	01.01.2009 to 31.03.2012
(c) Bonus & exgratia payments	Rs. 8,50,000/-	Rs. 7,41,300/-	01.01.2009 to 31.03.2012

4. It was submitted that out of above provisions pertaining to period F.Y. 2011-12 and earlier years w.e.f. 01.01.2009, an amount of Rs. 1,99,91,560/- for salary arrears, Rs. 9,07,239/- for surrender leave payment and Bonus & ex-gratia of Rs. 7,41,300/- have been paid as per vouchers enclosed. The A.O. has just denied the claim of assessee for such provisions for the reason that the agreement letter is signed by the concerned management and staff on 16.04.2012 & the actual payments are not made by the assessee in the A.Y. 2012-13.

5. It was submitted that no care for following facts & legal aspects has been considered. It was submitted that the assessee though follows "Mercantile System of Accounting" where the income & expenses accrued / due theory applies. But it is a matter of "Determination & Crystallization of Liability" as "Going Concern" of business is more important in "Business Expediency" even if such "Mercantile Accounting" follows. In support, reliance was placed on Delhi SMCC Construction India Ltd. V/s ACIT (2013) 38 taxman.com 146 (Del) where it was held that expenses of earlier years allowable in current year if crystallized during the year and the decision of Hon'ble Rajasthan High Court in case of M/s Chambel Fertilizers And Chemicals Ltd. V/s JCIT Range-2, Kota (D.B. Appeal No. 52/2018 dated 31.07.2018) where it was held that to understand when the liability "Crystallized", when the liability is "Determined" is more important.

6. It was submitted that to understand the legal situation in the present facts, the following documents / government orders need to be considered:

- (1) Copy of minutes of Board of Directors dated 11.04.2012
- (2) Intimation to Registrar Co-operative Society for implementation of 14th Pay Commission
- (3) Copy of directions & letter dated 10.02.2012 of Registrar co-operative society, Jaipur
- (4) Applicability of arrear payment w.e.f. 01.01.2009
- (5) Copy of minutes of administrator (Collector) of Central Co-operative Bank Ltd. dated 11.04.2012
- (6) Copy of agreement letter signed by staff & concerned management dated 16.04.2012

7. It was submitted that according to all such sanctions, documents, the 14th Pay commission was applicable after the conclusion of 13th Pay Commission and accordingly, the arrears were to be paid w.e.f. 01.01.2009. Since the liability though pertains to prior period but "Crystallized" & "Determined" during the year hence it is an ascertained liability for the year & has to be allowed in the year irrespective of year of payment. In the instant case, it was submitted that it is clear that the liability of such payments of arrears have arisen in F.Y. 2011-12 (A.Y. 2012-13) & all the facts were before the A.O. / Ld. CIT(A) to deduce the facts.

8. It was submitted that the Ld. CIT(A) has considered only such part which pertains to the year under consideration & has allowed a

deduction of Rs. 67,13,839/- out of total addition of Rs. 1,70,50,000/- made by the AO. It was submitted that the addition so sustained by the Id CIT(A) amounting to Rs 1,03,36,161/- may thus be set-aside and necessary relief be provided to the assessee.

9. Per contra, the Id. CIT/DR drawn our reference to the findings of the Assessing Officer and submitted that no doubt, the Registrar, Co-operative Society has directed the assessee to fulfill the wage compromise agreement. However, the agreement between the labour and the assessee management was only signed on 16.04.2012 and even no payments were made by the assessee during the financial year relevant to assessment year 2012-13. It was accordingly submitted that it was a case of provisions towards arrear of salaries which has not crystallized during the year under consideration and has been rightly disallowed by the Assessing Officer.

10. It was further submitted that the Id. CIT(A) on further examination has held that the amount of Rs. 67,13,839/- pertains to the impugned assessment year and the same was allowed by him and the balance addition of Rs. 1,03,36,161/- was confirmed. It was accordingly submitted that there is no infirmity in the order so passed by the Id. CIT(A) and therefore, the grounds taken by the assessee be dismissed.

11. Before we proceed to examine the rival contentions, it would be appropriate to refer to the findings of the Id. CIT(A) which are contained at para 4.1, 4.2 and 4.3 of his order which reads as under:-

"4.1 This ground of appeal relates to addition of Rs. 1,70,50,000/- made by the AO for disallowing the provision made by the appellant for payment of arrear of salary, surrender leave, bonus etc. The addition was made by the AO on the ground that the agreement between the management and staff was signed on 16.04.2012 and the actual payments were not made by the assessee in the A.Y 2012-13.

4.2 The appellant has filed following written submission on this issue:

"1. That the learned Deputy Commissioner of Income tax Circle, Bhilwara erred in law and facts in disallowing the provision made for payment of Arrear of Salary, surrender leave, Bonus and Exgratia made as per prior approval from the Registrar co-operatives Societies/Board of Directors of the Bank, and thus made the addition of Rs.1,70,50,000/- which is against the principles of natural justice and without considering the following submission/evidence submitted during the Course of assessment proceedings.

- i) Copy of resolution for adoption of fourteenth pay agreement and copy of sanction letter from Registrar Co-operative Societies for the same.*
- ii) Copy of order of surrender leave from Registrar Co-operative Society.*
- iii) Copy of Board resolution for Bonus/ Exgratia.*
- iv) Proof for payment of Arrear of salary Rs. 1,99,91,560/- which includes Rs. 1,43,50,000/- pertains to period up to AY 2012-13.*
- v) Proof of payment of surrender leave of Rs. 9,29,576/- against the provision of Rs. 12.00 lacs.*

vi) *proof of payment of Bonus and Exgratia Rs. 7,41,300/- against the provision of Rs. 8,50,000/-.*

In view of above addition made by the learned Deputy Commissioner of Income tax Circle Bhilwara deserves to be deleted.

(ii) *The assessee has further submitted as under:-*

"In continuation to our submission dated 14/06/2016 and as discussed we are please to submit employee wise working sheet of arrear of salary of Rs. 1,99,91,560/- out of this arrear amount pertain to period 01/04/2011 to 31/03/2012 of Rs. 67,13,839/- for which we are also enclosing herewith employee wise working sheet of arrear of salary.

Therefore, we hereby pray that kindly allow above said amount in the year of assessment and give suitable direction to learned AO to allow remaining amount of arrear in the year of payment i.e. in the next year and oblige."

4.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen from the details filed by the appellant vide letter dated 22.06.2016 that out of the total arrear of salary of Rs. 1,99,91,560/-, salary of Rs. 67,13,839/- pertain to the period 01.04.2011 to 31.03.2012. The employee-wise working sheet of arrear salary pertaining to the period 01.04.2011 to 31.03.2012 has also been filed by the appellant. As the salary of Rs. 67,13,839/- pertain to the previous year relevant to A.Y 2012-13, hence, it is held that this is a quantified and crystallized liability pertaining to A.Y 2012-13. Therefore, for the purpose of computing income of AY. 2012-13, the arrear salary of Rs. 67,13,839/- pertaining

to previous year relevant to A.Y 2012-13 has to be allowed as deduction. Accordingly, out of the total addition of Rs. 1,70,50,000/- made by the AO, addition of Rs. 67,13,839/- is deleted and the remaining addition of Rs. 1,03,36,161/- (Rs.1,70,50,000– Rs.67,13,839) is hereby confirmed.”

12. We have heard the rival contentions and perused the material available on record. It is noted that out of total provision for arrears of salary of Rs. 1,99,91,560/-, the Id CIT(A) has allowed the claim towards provision for leave salary of Rs. 67,13,839/- for the reason that the same is quantified and crystallized liability pertaining to A.Y 2012-13. The Revenue is not in appeal against allowability of said provision of Rs 67,13,839/- and the same has thus attained finality.

13. The limited issue therefore for consideration before us is allowability of remaining provision towards arrears of salary amounting to Rs 1,03,36,161/- and for that, what is relevant to determine is what is the relevant point of time the liability of the assessee towards arrears of salary has actually crystallized and not the year to which such arrears of salary pertains. Where the liability has crystallized during the financial year relevant to impugned assessment year, it shall be allowed in the hands of the assessee irrespective of the year to which it pertains. However, where the liability has crystallized during the subsequent financial year, it shall be eligible for allowance in the subsequent assessment year even though a part of it pertains to the year under consideration. The principle of crystallization of liability is inherent in the mercantile system of accounting and has been well

accepted by the Courts while allowing the claim towards the expenses and has been understood to mean where the liability has become due and payable. In other words, where the other person can make a lawful claim against the assessee and in the event of default, the matter may be agitated before the appropriate legal forum.

14. In the instant case, if we look at the sequence of events, we find that there are directions issued by Registrar, co-operative societies on 10.02.2012 to implement 14th pay commission recommendations, thereafter, following such directions, the Board of Directors of the assessee co-operative bank passed a resolution on 11.04.2012 for implementing the 14th pay commission recommendations, thereafter, an agreement has been executed between the assessee co-operative bank and its employees and staff members on 16.04.2012 towards implementation of the 14th pay commission recommendations and finally, major payments towards arrears of salary have happened during November 2012. We therefore find that the liability of the assessee co-operative bank to implement 14th pay commission recommendation arose on adoption of resolution at its meeting of the Board of Directors read along with execution of agreement with its employees and staff members. Prior to these two significant events which happened during the financial year 2012-13, it cannot be said that the assessee cooperative bank has decided to implement and enforce 14th pay commission recommendation in respect of its employees and on same analogy, prior to these two significant events, even the employees were not having any legally enforceable claim to implement 14th pay commission recommendation against the assessee co-operative bank.

Therefore, the crystallization of liability to pay arrears of salary and other payments towards surrender leave, bonus and ex-gratia etc. as per 14th pay commission recommendation arose during the financial year 2012-13 relevant to subsequent assessment year 2013-14 and not during the current financial year 2011-12 relevant to impugned assessment year 2012-13. The assessee co-operative bank therefore shall be eligible to claim the same in the subsequent assessment year 2013-14 and not in the impugned assessment year.

15. It may be that these two significant events have happened within a month of close of the current financial year 2011-12 and being significant in nature and happened prior to finalization and audit of the financial statements for the current financial year, the assessee co-operative bank by way of prudence and as may be advised by its auditors decided to provide for such liability in the financial statements, however, the same doesn't necessary meant and understood to mean that in all such cases, where liabilities and provisions are provided basis significant event subsequent to close of the financial year will result in crystallization of liability and allowable during the same financial year. The AO is well within his jurisdiction to examine all such claims and the assessee is required to justify such claims and demonstrate with reasonable verifiable evidence that such liability has crystallized during the year under consideration.

16. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the grounds so taken by the assessee co-

operative bank for allowability of claim of arrears of salary of Rs 1,03,36,161/- is hereby dismissed.

17. Ground No. 4 is regarding charging of interest u/s 234B, 234C & 234D. No specific argument has been taken before us and in any case, charging of interest being consequential in nature, the ground does not require any separate adjudication.

In the result, the appeal of the assessee is dismissed in light of aforesaid directions.

Order pronounced in the open Court on 31/08/2021.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Vikram Singh Yadav)
Accountant Member

Jodhpur

Dated:- 31/08/2021.

*Ganesh Kumar

Copy of the order forwarded to:

1. The Appellant- The Central Co-operative Bank Ltd., Bhilwara
2. The Respondent- DCIT, Circle, Bhilwara
3. CIT
4. CIT(A)
5. DR, ITAT, Jodhpur.
6. Guard File { ITA No. 293/Jodh/2016 }

By order,

Asst. Registrar