

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 3220/DDN/2016 (A.Y 2011-12)
(THROUGH VIDEO CONFERENCING)**

Zila Sahakari Bank Ltd. C/o M/s RRA Tax India, D-28, South Extension, Part-1 New Delhi AAAAZ0137G (APPELLANT)	Vs	ITO Kotdwar (RESPONDENT)
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ITA No. 2906/Del/2016 (A.Y 2011-12)

DCIT Circle-1(4) (1), Aayakr Karyalaya, CISF Building, IDPL Gate No. 2, Veerbhadra Rishikesh (APPELLANT)	Vs	Zila Sahakari Bank Ltd. C/o M/s RRA Tax India, D-28, South Extension, Part-1 New Delhi AAAAZ0137G (RESPONDENT)
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Appellant by	Dr. Rakesh Gupta, Adv & Sh. Deepesh Garg, Adv
Respondent by	Sh. N. C. Upadhyaya, CIT DR

Date of Hearing	26.08.2021
Date of Pronouncement	22.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the order dated 18/3/2016 passed by CIT(A)-Dehradun for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

ITA No. 3220/DDN/2016 (A.Y 2011-12)

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition to the extent of Rs.33,50,000/- u/s 40(a)(ia) out of total addition of Rs. 85,90,674/- on estimate basis without observing the facts and principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition to the extent of Rs.33,50,000/- out of total addition, being the amount of interest actually paid by the bank to their customers on their deposits, is bad in law and against the facts and circumstances of the case.”

ITA No. 2906/Del/2016 (A.Y 2011-12)

1. The Ld. CIT (Appeals) has erred in law and on facts in deleting amount of Rs.52,40,674/- out of disallowance of Rs.85,90,674/- made on account of interest expenses claimed in violation of section 40(a)(ia) without appreciating the facts that disallowance was made in violation of expressed provisions where percentage cannot be applied .

2. The Ld. CIT (Appeals) has erred in law and on facts in deleting the disallowance of Rs. 17,66,068/- holding that the addition has been made without arriving at the satisfaction that the payment had been made in violation of section 194C without appreciating the facts that the assessee has failed to prove its claim that the payments were out of scope of Sec. 194C.

3. The Ld. CIT (Appeals) has erred in law and on facts in deleting the disallowance made by the A.O. u/s 36(l)(viiia) on account of facts that wrong claim was made in the original return and revised return filed after receipt of notice u/s 143(2).

4. The Ld. CIT (Appeals) has erred in law and on facts in deleting the addition made on account of disallowance of expenditure on account of provision for non banking assets which is reimbursable by the government in future without appreciating the fact that such reimbursement is not taken as

income in the year of its receipt.”

3. The assessee is a cooperative bank and deals in banking in the name and style of M/s Zila Sahkari Bank Ltd. During the course of assessment proceedings, the Assessing Officer observed that the assessee has paid/accrued/treated interest on the fixed/term deposits of the public depositors. The assessee was asked to produce the details of interest paid/accrued/created amounting to Rs. 10,000/- or more to a single person by all Branches. The assessee was further asked as to whether any TDS u/s 194A of the Income Tax Act was deducted from such payment. The assessee filed details of depositors from whom Form 15G/15H were received. The Assessing Officer disallowed Rs. 17,67,068/- u/s 40(a)(ia) of the Act. The Assessing Officer further made addition of Rs. 5,33,53,105/- in respect of deduction u/s 36(i)(viiia) as well as made addition of Rs. 1,17,20,000/- towards disallowance from the amount on account of non-banking asset provisions.

4. Being aggrieved by the assessment order, the assessee filed before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards to Revenue's appeal, the Ld. DR submitted that Ground No. 1 relates to deletion of amount of Rs. 52,40,674/- out of disallowance of Rs. 85,90,674/- made on account of interest expenses claimed in violation of Section 40(a)(ia) without appreciating the fact that disallowance was made in violation of express provisions where percentage cannot be applied. As relates to Ground No. 2, the Ld. DR submitted that the said disallowance of Rs. 17,67,068/- was deleted incorrectly by the CIT(A) thereby holding that the addition was made, without arriving at the satisfaction that the payment had been made in violation of Section 194C without appreciating the fact that the assessee fail to prove its claim that the payments were out of scope of Section 194C. As regards to Ground No. 3, relating to deletion of disallowance made by the Assessing Officer u/s 36(1) (a) on account of facts, the Ld. DR

submitted that the assessee made wrong claim in the original return as well as revised return were filed after the receipt of notice u/s 143 (2). As regards to Ground No. 4, the Ld. DR further submitted that the CIT(A) erred in law in deleting the addition made on account of disallowance of expenditure on account of provision for non-banking asset which is reimbursable by the Government of India without appreciating the fact that such reimbursement is not taken as income in the year of its receipt. As regards the assessee's appeal, the Ld. DR submitted that Ground No. 1 of Revenue's appeal is contested which is similar to assessee's appeal.

6. The Ld. AR as relates to Ground No. 1 of Revenue's appeal and Ground No. 1 to 2 of assessee's appeal submitted that the assessee is a Zila Sahkari which has account holders who are placed in remote areas. There are only four to five persons whose PAN Card details were not furnished. But instead of taking cognizance of the said fact, the Assessing Officer as well as the CIT(A) has taken a non-scientific method of estimated disallowance which is not permissible under law. As regards Ground No. 2 to 4 of the Revenue's appeal, the Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT (A) as well as the Assessing Officer has categorically observed that only six persons whose PAN card details were not furnished by the Assessee. The details of all the other persons along with their Form 15-H/15-G and copies of PAN were produced before the Assessing Officer by the Assessee. At the time of assessment proceedings, the Assessing Officer has scrutinized each and every form and discussed with the DGM of the banks who was presented at the time of hearing. As per the Annexure A, attached to the Assessment Order except six persons, the reset of the persons' PAN card details were given to the branches with the forms. In fact, the TDS was made by each branch and filed quarterly returns in Forms 26Q, this fact was not disputed by the Revenue. Thus, the estimation of the additions by the

Assessing Officer is not correct. Therefore, we set aside the order of the CIT(A) and remand back this issue to the file of the Assessing Officer and direct the Assessing Officer to allow the claim of the assessee for the persons whose details are filed by the Assessee. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

8. As regards to Ground No. 1 of the Revenue's appeal is concern the same is in connection with Ground No. 1 and 2 of the assessee's appeal, hence the same findings will follow in the Revenue's appeal for Ground No. 1.

9. As regards to Ground No. 2 of the Revenue's appeal, the CIT(A) has given a categorical finding that the head-wise expenses were given by the assessee but the Assessing Officer has not considered the same and made the additions without any reason. The Assessee has given all the details of advertisement expenses, generator expenses, taxi expenses, computer offline expenses and law charges expenses. The Assessing Officer totally ignored the details provided by the assessee. Therefore, there is no need to interfere with the findings of the CIT(A). Hence, Ground No. 2 of the Revenue's appeal is dismissed.

10. As regards to Ground No. 3 of the Revenue's appeal, the CIT(A) has given a finding that while the addition made to the returned income as per the return filed on 30.09.2011, would not materially affect the determination of income except to the extent of Rs. 20,00,000/- which has been claimed for deduction u/s 36(1)(viiia) in the revised return dated 30.03.2013, the right of the assessee to file the revised return cannot be abridged on the grounds that addition had been made prior to that date in the previous assessment year. Thus, the CIT(A) has given a relief to the assessee to the extent of Rs. 20,00,000/- only and balance addition of Rs. 5,13,53,105 was confirmed. There is no need to interfere with the findings of the CIT(A). Hence, Ground No. 3 of the Revenue's appeal is dismissed.

11. As regards to Ground No. 4 of the Revenue's appeal, the CIT(A) has given a finding that the amount paid to the PACS secretaries by the bank during the year was Rs. 1,87,69,168/- and the amount received as reimbursement from the Government was Rs. 81,10,546/-. Thus, the salary paid by the bank to the PACS secretaries from its own account was Rs. 1,06,58,619/- for which the provision of Rs. 1,10,00,000/- was made by the assessee and the same is reflected in the balance sheet. Thus, the CIT(A) has sustained the addition to the extent of Rs. 3,41,381/-. There is no need to interfere with the findings of the CIT(A). Hence, Ground No. 4 of the Revenue's appeal is dismissed.

12. In result, the appeal of the assessee is partly allowed for statistical purpose and the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 22nd Day of September, 2021.

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 22/09/2021
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI