

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 905/Bang/2019
Assessment Year : 2012-13

M/s. Railway Co-operative Bank Ltd., Sheshadri Iyer Road, Mysuru. PAN – AAAAT 0822 A	Vs.	ACIT, Circle – 1(1), Mysuru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. S. V. Ravishankar, Advocate
Respondent by	:	Shri. Priyadarshi Mishra, Addl.CIT(DR)(ITAT), Bengaluru

Date of hearing	:	22.09.2021
Date of Pronouncement	:	22.09.2021

ORDER

PER SHRI B.R. BASKARAN, AM :

The assessee has filed this appeal challenging the order dated 16th March, 2015 passed by Ld CIT(A), Mysore and it relates to the assessment year 2012-13. The grounds urged by the assessee give rise to the following two issues:-

- (a) Disallowance of AGM expenses
- (b) Disallowance of provision for Bad and Doubtful debts claimed u/s 36(1)(vii) of the Act.

2. The assessee is carrying on banking business. The AO completed the assessment of the year under consideration, inter alia, by making above said two disallowances and both the disallowances came to be confirmed by LD CIT(A). Hence the assessee has filed this appeal before us.

3. We heard the parties and perused the record. The first issue relates to the disallowance of AGM expenses. The AO noticed that the assessee has claimed a sum of Rs.25,44,912/- as general body expenses and the same included a sum of Rs.20,24,925/-, being expenses incurred to buy sweets for the meeting. The AO took the view that the expense incurred on purchase of sweets is exorbitant and not incidental to the business of the assessee in terms of sec. 37(1) of the Act. Accordingly, he disallowed the above said sum of Rs.20,24,925/-. The Ld CIT(A) confirmed the disallowance by observing as under:-

“...However, the appellant could not substantiate its claim with documentary evidences even during the appellate proceedings, therefore this ground is not allowed.”

3.1 The Ld A.R submitted that the assessee has furnished all the details before the AO and the AO has disallowed the claim for the reason that the expenditure is exorbitant and is not incidental to the business of the assessee. Accordingly he submitted that the reasoning given by Ld CIT(A) for confirming disallowance is against the facts available on record. He further submitted that the AO had made identical disallowance in an earlier year, but it has been allowed by Ld CIT(A). He also submitted an identical issue was remanded to the file of AO by the Tribunal in the case of M/s The Mysore Co-op Bank Ltd vs. Addl CIT (ITA No.904/Bang/2019 dated 23.7.2021) with the direction to allow the deduction to the extent of supporting bills produced before the AO.

3.2 The Ld D.R, on the contrary, submitted that the matter may be restored to the file of Ld CIT(A), since the assessee has claimed to have furnished bills before the AO.

3.3 Having heard rival submissions on this issue, we are of the view that this issue requires fresh adjudication at the end of Ld CIT(A), since the Ld CIT(A) has confirmed the disallowance on a different reasoning,

which according to Ld A.R is against the facts available on record. Further the Ld A.R also claims that an identical claim has been allowed by Ld CIT(A) in another year. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to his file for adjudicating it afresh.

4. The next issue contested by the assessee relates to the disallowance of Provision for bad and doubtful debts claimed by the assessee u/s 36(1)(viiia) of the Act. The assessee claimed a sum of Rs.15,72,361/- u/s 36(1)(viiia) of the Act towards provision for bad and doubtful debts. The AO took the view that the assessee has not debited the profit and loss account with "Provision for bad and doubtful debts". Accordingly, he disallowed the same by observing that the assessee has not created any provision in the books of account for the above said amount. The Ld CIT(A) confirmed the same by observing that the Ld A.R, who appeared before him, did not press the ground relating to this disallowance.

4.1 The LD A.R appearing before us submitted that the authorised representative, who appeared before Ld CIT(A), has actually made oral submissions on the above said ground. He then signed the order sheet entry without actually perusing what is written there. Accordingly the Ld A.R submitted that the assessee has actually pressed this ground before Ld CIT(A). He submitted the assessee has filed before the Tribunal an affidavit obtained from the earlier counsel, who has stated that he has actually pressed the ground before Ld CIT(A). The Ld A.R further submitted that the assessee has actually made provision for bad and doubtful debts in Profit and Loss account for a lower amount and hence the claim u/s 36(1)(viiia) is allowable to the extent of provision so created. He submitted that the tax authorities have not examined the financial statements of the assessee and accordingly prayed that the matter may be restored to the file of Ld CIT(A) for adjudicating this ground afresh.

4.2 We heard Ld D.R and perused the record. The claim made by the assessee u/s 36(1)(viiia) is allowable to the extent of provision amount debited to the profit and loss account for bad and doubtful debts. When an assessee has created provision for bad and doubtful debts, in our considered view, there is no reason for not pressing the ground relating to claim u/s 36(1)(viiia) of the Act before Ld CIT(A). It is the submission of Ld A.R that the provision for bad and doubtful debts is created for a lesser amount and hence the deduction u/s 36(1)(viiia) is allowable to the extent of the provision so created. We have noticed that the AO has disallowed the claim for the reason that the assessee has not created any provision for bad and doubtful debts, which fact is being disputed by the assessee. In any case, this ground has not been adjudicated by Ld CIT(A). Accordingly, we are of the view that this ground requires adjudication by LD CIT(A). Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to his file for adjudicating it afresh by duly considering the financial statements, information and explanations that may be furnished by the assessee.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMEBR

Bangalore,
Dated : 22.09.2021.
/B. Venugopal/

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Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.