

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 5633/DEL/2018 (A.Y 2013-14)
(THROUGH VIDEO CONFERENCING)**

Gulshan Mercantile Urban Cooperative Bank Ltd. 129-130C, New Mandi, Muzaffarnagar, Uttar Pradesh AAAJG0808L (APPELLANT)	Vs	ACIT Circle 1 Muzaffarnagar (RESPONDENT)
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Appellant by	Sh. Anil Kumar Jain, Adv
Respondent by	Sh. Kumar Padmapani Bora, Sr. DR

Date of Hearing	17.11.2021
Date of Pronouncement	17.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 28/06/2018 passed by CIT(A)-Muzaffarnagar for assessment year 2013-14.

2. The grounds of appeal are as under:-

1. "1.The Ld. CIT(A) has erred in confirming the addition of Rs. 2,38,707/- on account of Provision for Standard , sub standard and NPA assets debited to P&L account.
2. The Ld. CIT(A) has erred in confirming the addition of Rs. 5,05,000/- on account of contribution to Gratuity fund.

3. *The Ld. CIT(A) has erred in confirming the addition of Rs. 3200 /- on account of Dividend income received.*
4. *The Ld. CIT(A) has erred in confirming the part addition u/s 14A out of Rs. 75,000 made by the AO. .*
5. *The Ld CIT(A) has erred in confirming the addition of Rs. 84,167/- on account of interest income on NPA .*
6. *The order of the A.O. is against law and facts of the case.*

3. The assessee is a co-operative bank which is engaged in banking activities during the year under consideration. Return of income was filed on 24.09.2013 declaring total income at Rs. 1,34,57,680/-. The Assessing Officer made disallowance of Rs. 2,38,707/- of provisions made for standard assets by the assessee. The Assessing Officer further disallowed payment in respect of provision relating to gratuity contribution amounting to Rs. 5,05,000/-. The Assessing Officer also made addition of Rs. 3200/- as to dividend received from U. P. Cooperative Federation, disallowance u/s 14A amounting to Rs. 75,000, disallowance of Rs. 20,392/- as to prior period expenses and made addition to interest in respect of alleged NPAs amounting to Rs. 84,167/-.

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

5. The Ld. AR submitted that all the issues contested by the assessee in the present appeal are decided by the Tribunal in A.Y. 2009-10 in assessee's own case. Therefore, the same directions may be passed in the present assessment year as well.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A), but submitted that the issues contested herein are identical to that of earlier years which was decided by the Tribunal and there are no new facts in the present assessment year.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the Tribunal in ITA No. 2166/Del./2017 in A. Y. 2012-13, ITA No. 5481 & 5482/Del/2017 A. Y. 2009-10, 3982/Del/2018 A.Y. 2015-16 in assessee's own case vide order dated 30.09.2021 decided all the issues contested herein. As regards to Ground No. 1 relating to addition of Rs. 2,38,707/- on account of Provision for Standard, sub standard and NPA assets debited to P & L account has been withdrawn by the Ld. AR as the same was withdrawn in A.Y. 2012-13 as well. Hence Ground No. 1 is dismissed. As regards to Ground No. 2 relating to addition of Rs. 5,05,000/- on account of contribution to Gratuity fund, the Tribunal held as under:

“11. Assessing Officer has made disallowance of Rs. 1,51,634/- , 2,17,246/-, 5,56,000/- and 4,11,300/- for A.Ys. 2009-10, 2012-13, 2014-15 and 2015-16 respectively on account of contribution made by the assessee bank to LIC on account of gratuity fund on the ground that the same has not been approved by Pr. Commissioner of Income Tax, Muzaffarnagar.

12. It is undisputed fact on record that out of amount of Rs. 2,17,246/- the appellant has paid Rs. 1,62,441/- to one of the employee on his retirement being deductible u/s 37 of the Act.

13. It is also not in dispute that such deductions as claimed by the assessee company is allowable only when the payment is made on behalf of approved fund. Ld. AR for the assessee challenging the impugned order contended inter alia that assessee bank has moved an application to the Pr. Commissioner of Income Tax on 02-01-2009 available at page 26 to 28 of PB who has granted approval with effect from 01.05.2017; that approval was required to be granted from the date of application to be applicable with effect from A.Y.

2009-10 and relied upon the order passed by coordinate bench of Tribunal in case cited as The Ganga Mercantile Urban Cooperative Bank Ltd., Meerut Vs. ACIT, Muzaffarnagar.

14. Identical issue has been decided by the Cooperative Bench of Tribunal in case of the Ganga Mercantile Urban Ltd. (supra) by directing the AO to decide the issue after decision of the Pr. Commissioner of Income Tax on the application of the assessee.

15. We are of the considered view that when application for granting approval for the gratuity trust with the Life Insurance Corporation of India has been filed well within time i.e. 02-01-2009, it is to be allowed from the date of application itself and not prospectively as Ld. Pr. CIT has done in this case.

16. So, following the order passed by Coordinate Bench of Tribunal, we remit this issue back to the AO to decide afresh after getting decision from the Pr. Commissioner of Income Tax on the application of the assessee. Application of the assessee is reportedly pending with Pr. CIT who shall decide the same expeditiously in accordance with law from the date of application and thereafter AO shall decide the issue afresh accordingly. Consequently, Ground no. 4 of A.Y. 2009-10, Ground no. 3 of A.Y. 2012-13, Ground No. 3 of A.Y. 2014-15 & Ground no. 2 of 2015-16 is decided in favour of the assessee for statistical purposes.”

Since, the facts are identical in the present assessment year i.e. A.Y. 2013-14, we are remanding back the issue to the file of the Assessing Officer for deciding the same afresh. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 2 is partly allowed for statistical purpose.

8. As regards to Ground No. 3 relating to addition of Rs. 3200 on account of Dividend income received, the Tribunal held as under:

“17. Aforesaid ground has been raised by the assessee on the identical issue challenging the addition of Rs. 62,315/-, Rs. 3200, Rs. 3200/- & 3200/- A.Y.

2009-10, 2012-13, 2014-15 & 2015-16 respectively by way of disallowance on account of dividend received by the assessee bank from UP Cooperative Federation u/s 80P(4) of the Act.

18. Undisputedly, assessee bank has received dividend income for the years under consideration from the investment made with UP Cooperative Federation. It is also not in dispute that assessee bank is a cooperative bank registered with Reserve Bank of India. When we peruse the provisions contained u/s 80P(4), 80P(2)(d) of the Act, this deduction is not available to the cooperative bank. So, in view of the matter, we find no illegality or infirmity in the findings returned by Ld. CIT(A), hence, Ground No. 5, Ground no. 5, Ground No. 4 & Ground No. 3 A.Y 2009-10, 2012-13, 2014-15 and 2015-16 respectively are decided against the assessee.”

From the perusal of the Tribunal's decision and the relevant facts of the present assessment year i.e. A.Y. 2013-14, it emerges that the facts are identical. Hence, Ground No. 3 is dismissed.

9. As regards to Ground No. 4 relating to addition u/s 14A out of Rs. 75000 made by the AO, the Tribunal held as under:-

“22. Assessing Officer noticed from the P & L account that the assessee has received Rs. 16,34,688/- as exempt dividend income and thereby disallowed an amount of Rs. 1,50,000/- on the basis of guess work being expenses incurred for earning exempt dividend income.

23. Ld. CIT(A) decided this issue by partly allowing the ground in favour of the assessee by returning following findings :-

“11. The facts of the case as well as submission made by the appellant have been considered. The AO has made disallowance of Rs. 1,50,000/- on account of expenses incurred for earning of dividend income. The submission of the AR on this issue has been reproduced as above. Similar issue has been decided by the undersigned in the case of the appellant for AY 2012-13. Vide order in appeal No.42/15-16/MZR dated 06.01.2017.

As the facts are identical in this year also, therefore following the reasoning given the order dated 06.01.2017, the AO is directed to adopt the same principle and recomputed the disallowance on this account. Ground of appeal no. 5 is partly allowed.”

24. Since Ld. CIT(A) has already directed the AO to re-decide this issue in accordance with order passed by CIT(A) in A.Y.2012-13, no ground is left with the assessee to be argued before the Tribunal. So, AO is directed to decide this issue as directed by Ld. CIT(A). This ground is decided accordingly.

25. In view of what has been discussed above aforesaid appeals filed by the assessee are partly allowed for statistical purposes.”

Since, the facts are identical in the present assessment year i.e. A.Y. 2013-14, we are remanding back the issue to the file of the Assessing Officer for deciding the same as per the directions of the CIT(A). Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 4 is partly allowed for statistical purpose.

10. As regards to Ground No. 5 relating to addition of Rs. 84,167 on account of interest income on NPA, the Tribunal held as under:

“20. Assessing officer made addition of Rs. 3,29,241/- on account of interest qua alleged NPA assests out of unrecognized interest income of Rs. 5,94,320/-. It is case of the assessee that the claim of the assessee is on the ground that advances for these accounts were NPA in nature. However, Ld. CIT(A) decided this issue against the assessee by returning following findings:-

“During appellate proceedings also the appellant has not brought any further submission to support the grounds of appeal that the loans have been categorized as NPA in accordance with the guidelines of the R.B.I. The reliance of the appellant upon different decisions of the Hon’ble Tribunals as mentioned in the submission does not help the case of the appellant as the appellant has failed to show that the loans have been

categorized as NPA after following the guidelines of R.B.I. In the circumstances it is held that the AO was justified to make addition of Rs. 3,29,241/-. The same is hereby confirmed. Ground of appeal No. 14 is dismissed.”

21. Perusal of the findings returned by Ld. CIT(A) shows that the assessee has failed to bring on record the evidence to prove the fact that the loans have been categorized as NPA as per guidelines ITA 10 No. 2166 & Ors. of the RBI qua the amounts claimed on account of interest income. This fact has been candidly admitted by Ld. AR for the assessee. So, we remit this issue back to the AO to decide afresh after entertaining evidence to be brought on record by the assessee. Accordingly this ground is also decided in favour of the assessee for statistical purposes.”

From the perusal of the records for the present Assessment Year i.e. A.Y. 2013-14, the facts are identical hence, we are remanding back the issue to the file of the Assessing Officer to decide the same a fresh after taking into account the evidences brought on record by the assessee. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 5 is partly allowed for statistical purpose.

11. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 17th Day of November, 2021

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 17/11/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI