

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" B " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 596/AHD/2019
निर्धारण वर्ष/Asstt. Years: 2014-15

The Pragati Co-op. Bank Ltd., Opp. Padshahs Pole, Relief Road, Ahmedabad-380001. PAN: AAFT2391M	Vs.	Pr.C.I.T.-5, Ahmedabad.
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आयकर अपील सं./ITA No.597/AHD/2019
निर्धारण वर्ष/Asstt. Years: 2014-15

Shree Laxmi Co-op. Bank Ltd. Sanskrit Building, Old High Court, Navrangpura, Ahmedabad. PAN: AAAAS2683R	Vs.	Pr.C.I.T.-5, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by	:	Shri A.P. Nanavaty, A.R
Revenue by	:	Shri Aarsi Prasad, CIT.D.R

सुनवाई की तारीख / **Date of Hearing** : **12/11/2021**
घोषणा की तारीख / **Date of Pronouncement**: **30/11/2021**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned two appeals have been filed at the instance of the different Assessee against the separate orders of the Learned Principle Commissioner of Income Tax, Ahmedabad, arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

First, we take up the assessee's appeal bearing ITA No. 597/AHD/2019 for A.Y. 2014-15 in the case of Shree Laxmi Co-op. Bank Ltd .

2. The only issue raised by the assessee is that the learned PCIT erred in holding that the order passed by the AO under section 143(3) of the Act is erroneous insofar prejudicial to the interest of Revenue.

3. The facts in brief are that the assessee in the present case is a cooperative bank and under liquidation. The assessee for the year under consideration has filed its return of income declaring total income at Rs. NIL after adjusting its profit of Rs. 21,64,079.00 against the brought forward losses. The income declared by the assessee was accepted by the AO in the assessment framed under section 143(3) of the Act vide order dated 29-08-2016.

3.1 However, the learned PCIT found that the bank is under the process of liquidation with effect from 18-10-2001. Furthermore, the losses incurred by the assessee in the earlier years for ₹ 9,13,97,708.00 was not available for carry forward from the assessment year 2013-14. Thus, the income generated by the assessee for Rs. 21,64,079.00 was not eligible for set-off against the losses which has resulted under statement of income. Thus, the learned PCIT proposed to hold the order of the AO as erroneous insofar prejudicial to the interest of revenue.

3.2 The assessee in response to such show cause notice submitted that it has availed the insurance claim from the DICGCI against the deposits from the public to the extent of ₹1 lakh only. According to the DICGCI Act 1962, the amount realized by the assessee has been diverted to DICGCI by overriding title. Therefore, the income generated by the assessee does not belong to it.

3.3 The assessee alternatively contended that it is eligible to set off the loss of the earlier years against its income of the current year under the provisions of section 72 of the Act.

3.4 However, the learned PCIT disagreed with the contention of the assessee by observing that the business activities of the assessee have been directed to be wound up with effect from 18 October 2001. Therefore, the income generated by the assessee in the year under consideration is not the income from the business activities. Rather, such income relates to the income from other sources. Thus, the assessee was not entitled to set off income from other sources against the brought forward business losses. But, the AO without necessary verification has allowed the set off the income from other sources against the brought forward business losses in the assessment framed under section 143(3) of the Act. Accordingly the learned PCIT concluded that the order passed by the AO is erroneous insofar prejudicial to the interest of revenue.

4. Being aggrieved by the order of learned PCIT, the assessee is in appeal before us.

5. The learned AR before submitted that the income generated by the assessee in the year under consideration has been diverted to DICGIC by overriding title. Therefore, there is no question of any income in the hands of the assessee despite

the set off the income of the assessee is not allowed under the provisions of section 72 of the Act.

6. On the other hand, the learned DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. An assessment order can be referred as erroneous insofar prejudicial to the interest of revenue provided the twin conditions being erroneous insofar prejudicial to the interest of revenue have been satisfied. If the order is erroneous but not prejudicial to the interest of revenue and vice versa, the assessment cannot be said as erroneous insofar prejudicial to the interest of revenue under the provisions of section 263 of the Act. In holding so we draw support and guidance from the judgment of Hon'ble Supreme Court in the case of Malabar industrial Co. Ltd. VS CIT reported in 243 ITR 83 wherein it was observed as under:

6. A bare reading of this provision makes it clear that the pre-requisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied with twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1).

7.1 Before we go into the discussion whether the income of the current year is eligible to set off against the brought forward business loss, we note that there was the specific contention raised by the assessee before the learned PCIT that the income of the assessee has been diverted by overriding title of DICGCI. This fact can be verified from the submission of the assessee before the learned PCIT which reads as under:

Alternatively, It is further stated that such interest income is diverted by overriding title... and bank is entitled to retain liquidation expenses of rs.13,38,884/- and balance amount of Rs.22,87,592/- is payable to DICGCI.....

7.2 However, the learned PCIT has not addressed the contention raised by the assessee before him. Thus, in the absence of any finding of the learned PCIT under section 263 of the Act, we can safely presume that the contention of the assessee is correct i.e. overriding title of DCGCI over the income of the assessee. Additionally, at the time of hearing the Id. DR has not controverted the arguments advanced by the Id. Counsel for the assessee.

7.3 Where the income of the assessee has been diverted due to overriding title of DCIGCI, the same cannot be brought to tax as held by the Hon'ble Supreme Court in the case of Associated Power Co. Ltd vs. CIT reported in [1996] 218 ITR 195 (SC) with respect to diversion of income due to overriding title by observing as under:

"The application of the doctrine of diversion of income by reason of an overriding title is quite inapposite. The doctrine applies when, by reason of an overriding title or obligation, income is diverted and never reaches the person in whose hands it is sought to be assessed."

7.4 We also find that in the identical facts and circumstances in the case of Janta Commercial Cooperative Bank in ITA No.538/Ahd/2018 corresponding to A.Y. 2013-14, the coordinate bench of the Tribunal decided the issue in favour of the assessee by observing as under:

"6. On perusal, it is noticed that the assessee, a cooperative bank, was directed to be wound up as on 02.06.2003 vide order of Government of Gujarat under Cooperative Society Act, 1961. Consequently, the Board of Director of Bank was superseded and official liquidator being an official of cooperative department of Government of Gujarat was appointed to administer realization of assets and repayment of liabilities. Bank under liquidation was also authorized to approach Deposit Insurance and Credit Guarantee Corporation Ltd. (DICGCI) being subsidiary of Reserve Bank of India for the purposes of reimbursement of insurance claim of deposit with bank under liquidation within the limit of Rs.1 Lakh or less and accordingly DICGCI has paid bank under liquidation Rs.3,65,71,875/- which was utilized for the purpose of repayment of depositors to the extent of Rs.1 Lakh. However, according to DICGCI Act, bank was authorized to realize its assets and advances coercively and whatever proceeds are realized, bank could utilize such proceeds for repayment of liabilities of depositors and other liabilities. In view of the aforesaid mandate available by virtue of DICGCI Act, a deficit of Rs.1,05,461/- arose in the hands of the assessee in the process of recovery and repayment. Under the circumstances, it was the case of the assessee before the CIT(A) that bank under liquidation shall not have any taxable income till the liability of DICGCI is fully paid off due to diversion of income at source.

7. The CIT(A) has examined the issue threadbare and has recorded a finding in favour of the assessee for non-applicability of Section 139(3) of the Act in the circumstances which reads as under:

"4. **DECISIONS:** I have considered the facts of the case and the argument of the appellant carefully. All three grounds are taken together for adjudication. The factual matrix as per para-3 above have been kept in mind while deciding the issue.

It is undisputed fact that Bank is under liquidation with effect from 28/03/2003 and administration of bank is in hands of official of cooperative department of Govt. Of Gujarat for the purpose of realising advances under various legal methods provided in Gujarat Cooperative Societies act. 1962. Bank retains part of the staff when bank was in operation as identity and history of advances can be known from such staff only. Bank has also availed insurance from DICGCI and an amount of Rs. 3,65,71,875/- is payable to DICGCI as of deposit insurance claim as at 31/03/2014. After the above judgement of Ragupathi Ragavan(Supra) bank has repaid Rs.3,65,71,875/- to DICGCI and present liability to DICGCI is Rs. Nill. During the year appellant bank has earned interest of Rs. 40,75,681 /- and share dividend of Rs. 69,245/- after meeting all expenses including depreciation of Rs. 2,39,180/- there is surplus of Rs. 29,31,478/-however appellant has disallowed aforesaid depreciation of Rs. 2,39,180/- and has claimed depreciation Rs. 32,882/- and its computation is provided in statement of total income which has been allowed by DOT. Now the dispute remains as to allowance of loss of unrealised amount of Rs. 18,14,14,727/- against income of current year and as claimed said interest and dividend are taxable under Income from other sources and not part of business income and such setoff has to be allowed u/s. 71 of the IT. act, 1961 being intra head setoff of losses. DCIT has justified such disallowance u/s. 139(3) being precondition of filing of return of income within due date. However plain reading of sec. 139(3) of the IT.act, 1961, such precondition is only for carry forward of business losses u/s. 72(1) of the IT.act,1961 and such legal situation has been upheld in the case of PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD. V/S. CIT (2015 378 ITR 718 (CAL) as well as CIT V/S. BRITISH INSULATED CALENDER'S LIMITED 202 ITR 354 (BOMBAY) AND ACIT V/S. SANJAY BASRATHI GEMS LTD 84 TAXMANN.COM 138 (JAIPUR). Under the circumstances, we agree with the submission of assessee for setoff of loss against current year income and assessee shall not have right of carry forward of business loss u/s. 72(1) of the I.T. act, 1961.

While considering alternative plea of diversion of income at source, I have gone through judgement of Supreme Court as well as judgement of Gujarat High Court in the case of Visnagar Nagarik Sahakari Bank Ltd. (Supra) as jurisdictional High Court has upheld statutory obligation upon banks under liquidation availing insurance claim for deposits and in fact such liability has been fully paid off to DICGCI and therefore till such obligation all funds realised by bank under liquidation are diverted at source entire income of assessee based on observation in the case of Moti Lal Chhadami Jain v/s CIT 190 ITR 1 (SC) r.w judgement in the case of Smt Sarla Devi K. v/s. CIT 222 ITR 211 (Kerala) and associated. Power Company Ltd. 218 I T R 195 (SC.) therefore entire interest income and share dividend income is diverted at source and bank under liquidation has no discretion or authority to apply such funds as it wishes and hence such funds are not available to appellant as income and therefore such income is not taxable in the hands of appellant. In view of facts and ratio laid down in the case laws (supra), **ground No.1 & 2 are allowed.** As appellant has not made any submissions on capital nature of receipts subsequent to liquidation as per contention raised in ground No.3. In view of lack of factual submissions as regards capital nature of receipts in the event of liquidation, I am unable to deal with such ground, therefore, ground No.3 is hereby dismissed."

The order of CIT(A) is self explanatory.

8. We are in complete agreement with the findings of the CIT(A) noted above in the light of various decisions noted above. We thus decline to interfere."

7.5 In view of the above, we conclude that the amount of interest in dispute is not an income of the assessee and therefore the same cannot be made subject matter

of tax in the hands of the assessee. Once the income cannot be brought to tax, there cannot be any prejudice to the revenue under the provisions of section 263 of the Act. Thus we quash the order of the Id. PCIT passed under section 263 of the Act. Hence, the ground of appeal of the assessee is allowed.

7.6 In the result, the appeal of the assessee is allowed.

Coming to the ITA 596/Ahd/2019 for A.Y. 2014-15 in the case of The Pragati Co-Op. bank Ltd.

8. At the outset, we note that the issues raised by the assessee in this ground of appeal is identical to the issues raised by the assessee in ITA No. 597/AHD/2019 for the assessment year 2014-15. Therefore, the findings given in ITA No. 597/AHD/2019 shall also be applicable for the year under consideration i.e. AY 2014-15. The appeal of the assessee for the assessment 2014-15 has been decided by us vide paragraph No.7 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for in the above mentioned case shall also be applied for the year under consideration i.e. AY 2014-15. Hence, the ground of appeal filed by the assessee is allowed.

9. In the result both the appeals of the assessee **are allowed.**

Order pronounced in the Court on 30/11/2021 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
30/11/2021