

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.391/SRT/2019

(निर्धारणवर्ष / Assessment Years: (2013-14)

(Virtual Court Hearing)

The Varachha Co-operative Bank Ltd., 1 st Floor, Affil Tower, L.H. Road, Varachha, Surat-395006.	Vs.	The DCIT, Circle-3(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABAT4356N		
(Assessee)		(Respondent)

Assessee by : Shri Kiran K. Shah, CA

Revenue by : Ms Anupama Singla, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 18/11/2021

घोषणाकीतारीख/Date of Pronouncement: 10/02/2022

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to the Assessment Year (AY) 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short “the ld. CIT(A)”] in Appeal No. CIT(A)-3/10689/2017-18 dated 27.06.2019, which in turn arises out of an order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 [hereinafter refer to as the “Act”].

2. Grounds of appeal raised by the assessee are as follows:

“1. The learned CIT(A) grossly erred in confirming addition of Rs.86,75,856/- on account of mandatory provisions for standard of assets as per the guidelines of RBI, as per para 6 of the appeal order.

2. The appellant reserves right to add, alter and withdraw of any grounds of appeal.”

3. Shri Kiran K. Shah, Learned Counsel for the assessee, at the outset stated that assessee is a Cooperative Bank and has claimed expenses of Rs.86,75,856/- against Provision for Standard Assets as per RBI directions/guidelines and therefore said provision should be allowed.

3. On the other hand, Learned DR strongly opposed the plea taken by the Id Counsel and stated that assessee is not eligible for deduction of provisions made against Standard Assets.

4. We have heard the rival parties and have gone through the material placed on record. The solitary question before us is that whether assessee can claim expenses by making provisions on Standard Assets? Before embarking upon the discussion on the core issue, whether provision made by assessee on Standard Assets is allowed or not, we it thought appropriate to understand the concept of "Provision".

Let us take an example, 'how to write off bad debts'. If an assessee debits an amount of doubtful debt to the profit and loss account and credits the asset account like sundry debtor's account, it would constitute a write off of an actual debt. However, if an assessee debits 'provision for doubtful debt' to the profit and loss account and makes a corresponding credit to the 'current liabilities and provisions' on the liabilities side of the balance sheet, then it would constitute a 'provision for doubtful debt'. In the latter case, the assessee would not be entitled to deduction. Therefore, "provision" is not allowed as an expense in the income tax Act, however, real loss can be allowed. If a bank makes a provision on 'Standard Assets' it does not mean that real loss has occurred in the hands of the bank.

5. Learned Counsel submits before us RBI Directions on presentation of NPA provisions in the balance sheet. We note that Presentation/disclosure is different from computation of tax liability. The nature of expenditure under the Income-tax Act cannot be determined by the manner in which accounts are presented in terms of the RBI Directions. To make the provision on 'Standard

Assets' falls in the definition of disclosure/ Presentation only, as per RBI directions. These provisions are not real losses. Hence, income tax liability is computed based on real income and real expenses. The point to be noted is that the Income-tax Act is a tax on 'real income', i.e., the profits arrived at on commercial principles subject to the provisions of the Act. Thus, we note that a provision for NPA debited to profit and loss account under the RBI Directions is only a notional expense and a real expense. A distinction is often made between an actual liability in *praesenti* and a liability *de futuro*, which for the time being is only contingent. The former is deductible but not the latter.

6. It is now well settled that income tax cannot be levied on hypothetical income. The Hon`ble Supreme Court in CIT v. Shoorji Vallabhdas and Co., (1962) 46 ITR 144 (SC) held as follows: (ITR p. 148)

"... Income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is made about a 'hypothetical income', which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

7. The concept dictated by Hon`ble Supreme Court in the case of CIT v. Shoorji Vallabhdas and Co. (supra) applies to expenses also. That is, real expenses should be allowed to determine the taxable income, and to make a provision for expenses as per assessee`s own wish should not be allowed. If such type of provisions are allowed then in that situation the Indian Government would not be able to collect revenue by way of taxation.

8. Hence, based on this factual position narrated above, we are not inclined to accept the contention of the Ld Counsel in any manner and hence the addition so made by assessing officer is hereby accepted. Hence, the ground of the assessee is dismissed.

9. In the result, appeal of the assessee is dismissed.

Order is pronounced on 10/02/2022 by placing result on notice board.

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

सुरत /Surat / दिनांक/ Date: 10/02/2022

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat