IN THE INCOME TAX APPELLATE TRIBUNAL A BENCH, PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA Nos. 2869 & 2871/PUN/2016
(Assessment Years: 2008-09 & 2012-13)

Asstt. Commissioner of Income Tax, Circle – 2, Kolhapur	Vs.	The Sindhudurg District Co-op. Bank Ltd., A/P : Sindhudurgnagri, Oras, Tal. Kudal, Sindhudrurg – 416812 PAN : AABAT4262F
Appellant		**Respondent**

Appellant by: Shri S.P. Walimbe
Respondent by: None

Date of Hearing: 04.05.2022
Date of Pronouncement: 12.05.2022

O R D E R

Per S.S. Godara, JM

These Revenue's twin appeals for AYs 2008-09 & 2012-13 arise against the CIT(A)-2, Kolhapur's separate orders both dated 06.10.2016 passed in case No. Kop/415/12-13 and Kul/39/15-16 involving proceedings under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short the Act), respectively.

Case called twice. None appears at assessee's behalf. It is accordingly proceeded ex-parte.

2. It transpires that during the course of hearing both these appeals involve Revenue's almost substantive grounds. Its first and foremost substantive grievance in both these appeals challenges correctness of the CIT(A)'s action deleting section 36(1)(viia)(a) disallowance(s) of Rs.45,70,370/-

and restricting the same from Rs.6,03,36,905/- to Rs.83,00,000/-, assessment year wise, respectively. The CIT(A)'s identical detailed discussion to this effect reads as under :

10.4 Grounds 4&5: These two grounds relate to the restriction of deduction u/s 36(1)(viia) and are therefore clubbed together for sake of convenience. I have already discussed the matter earlier in the order. The AO basically restricted the deduction u/s 36(1)(viia) to 7.5% of the total income before set off of losses after comparing the same to the NPA provision. The AO also disallowed a sum of Rs 45,70,370 holding that no such provision has been made by the appellant. On the other hand, the case of the appellant is that he has made the proper provisions to two accounts viz. NPA & BDDR in the P&L A/c totalling to Rs712.67 lakhs and therefore is eligible to claim the same as a deduction uls 36(1)(viaa) to the extent of provisions made as the ceiling imposed by the section, which according to the appellant is Rs 2,985.88 lakhs, is far in excess of the provision. 1 have careful considered the submission of the appellant and the circumstances and reasons for which the impugned additions were made. In this case, one only has to find out the total sum of qualifying amount under section 36(1)(viia) and the total amount of provision made in the books of account and compare the two figures to arrive at the provisions for bad and doubtful debts allowable as a deduction under section 36(1)(viia), Hypothetically, the appellant could have claimed a deduction of Rs. 2985.88 lakhs which is 10% of average aggregate rural advances computed as per Rule 6ABA. The appellant has made provisions of bad and doubtful debts to the extent of Rs. 712.67 lakhs by debit to P&L Alc under head Provisions for NPA at Rs 591.14 lakhs and by debit to P&L A/c under head Provisions for Bad and Doubtful Debts of Rural Advances Rs 75,82,752, from Appropriation Account Rs 45,70,370. Prima facie it therefore appears that the appellant has made provisions in his P&L A/c & balance sheet and claimed a deduction u/s 36(1)(viia) to the extent of the provision. I find that the appellant has debited the provisions for NPA Rs591.14 lakhs and for BDDR Rural Advances Rs 75.82 lakhs in his P&L A/c. Similarly the appellant has debited Rs 45.70 lakhs towards BDDR in the P&L Appropriation account. He has added back the sum of Rs 75.82 lakhs in the total income computation, but not added back the provision of Rs 591.14 lakhs. He has then reduced a figure of Rs 121.53 lakhs from the computation of total income. This is the sum of Rs 45.70 lakhs and Rs 75.82 lakhs. This amount has been claimed as a deduction uls 36(l)(viia). The appellant has not added back nor reduced the figure of Rs 591.14 lakhs in his computation of total income. In effect, the appellant is claiming these three provisions as deductions uls 36(1)(viia).The issue at hand is therefore whether these provisions so made qualify for a deduction or not.

10.4.1 To my mind, the AO has confused himself. The provisions of see 36(1)(viia)(a) state that the deduction is to be limited to the sum of 7.5% of the total income (before deduction under this clause) and 10% of the aggregate average rural advances. This is the ceiling which operates on the total deduction which can be claimed. However it now settled law that the deduction has to be restricted to the provision actually made in the books. It has therefore to be determined whether the appellant has actually made the provisions in his books. From the facts narrated above, it is evident that the provision towards BDDR and towards NPA has actually been made to the extent of Rs 712.67 lakhs and claimed this amount as a deduction u/s 36(1)(viia)(a). The qualifying amount for the deduction is actually Rs 2985.88 lakhs which is evident from the accounts of the appellant. The AO claims that the I" proviso to see 36(1)(viia) bars the appellant from claiming the deduction towards NPA provision as the appellant has claimed a deduction uls 36(1)(viia). The AO has again confused

himself and lost sight of the basic fact that the option is with the appellant whether to claim a deduction under the 1st proviso or under the main sub-section. Once again, the figures are in favour of the appellant. It has been discussed above that the limit set by see 36(1)(viia)(a) in the case of the appellant is bare minimum Rs 2985.88 lakhs (10% of the rural advances). Therefore the limit of 5% imposed by the 1st proviso would be at least 1492.94 lakhs which once again is far in excess of the provisions made and deductions claimed. 1 am therefore of the opinion that the AO has proceeded on misconceived facts as well as a misunderstanding of the legal provisions. At this stage I find that the matter is squarely covered in favour of the appellant by the decision of the Hon 'ble ITAT Pune Bench decision in the case of Nanded District Central Cooperative Bank Ltd (2015) 57 taxmann.com 422 (Pune). It has been held therein that the claim of deduction u/s 36(1)(viia) is to be restricted to the provision made by the appellant in his books. Quoting from the same:-

> *Section 36(I)(viia) of the Income-tax Act, 1961 - Bad debts (Computation of deduction) - Assessment year 2010-11 - Assessee, a co-operative bank, claimed deduction under section 36(1)(viia) in respect of provisions for bad and doubtful debts - Assessing Officer restricted deduction to extent of provision for bad and doubtful debts made in books of account and disallowed balance amount - Whether in terms of section 36(1)(viia), deduction was liable to be restricted to actual amount of provision for bad and doubtful debts in books of account and, therefore, claim of assessee was rightly restricted by Assessing Officer - Held, yes [Para 25]*
>
> *25. Following the aforesaid reasoning in the case of Shri Mahalaxtni Co-op. Bank Ltd. (supra) the claim of the assessee for deduction under section 36(l)(viia) of the Act is liable to be restricted to the actual amount of provision for bad and doubtful debts made in the books of account. As a result, the income-tax authorities have rightly allowed the deduction under section 36(l)(viia) of the Act to the extent of Rs. 5,15,50,000 and not Rs. 15,47,62,700, as contended by the assessee. Thus, on this ground the assessee fails.*

It is evident from the above that the deduction u/s 36(1)(viia) is to be restricted to the amount of provision made in the books of the appellant. This read along with the section itself means that the deduction is to be allowed only if a provision is made by the appellant in his books and the same is to be restricted to the ceiling mandated by see 36(l)(viia)(a) or the 1st proviso to sec 36(1)(viia) at the option of the assessee. From the facts and the entire discussion above, it could be seen that (a) the appellant has made a provision of Rs712.67 lakhs in his books & (b) the same is far below the ceiling in either in see 36(1)(viia)(a) or the 1st proviso to sec 36(1)(viia)(a). In such a situation, respectfully following the decision of the Hon'ble ITAT Pune Bench cited supra, the deduction u/s 36(1)(viia) as claimed by the appellant is to be allowed. The so called excess deduction claimed is therefore deleted and grounds 4&5 allowed to the appellant.

10.5 Ground 6: This is against the denial of deduction of Rs1,37,24,484 being bonus. The facts are already discussed by me earlier in the order. I have carefully considered this ground and find that the matter is squarely covered in favour of the appellant in the decision of the Hon'ble ITAT Pune Bench in the appellants own case for the A Y 2007-08. The Hon'bel ITAT has discussed the matter from paras 11 to 16 in ITA No 617/PN/2011 dated 02/0312012. From a reading of this decision, it is seen that the ITAT has deleted a similar addition made in A Y 2007-08. As the issue is identical on facts in the present year also, the addition is to be deleted. Therefore respectfully following the decision of the Hon'ble ITAT, the addition of Rs 1,37,24,484 is deleted and ground 6 allowed."

3. We have given our thoughtful consideration to Revenue's pleadings and find no merit in its stand. There would be hardly in dispute that a co-operative bank is very much entitled to write off its non performing advances in light of the foregoing statutory provision. The core question herein is indeed that of quantum of the assessee's provision for bad and doubtful debts vis-a-vis the statutory limits wherein the CIT(A) has already indicated corresponding entitlement to be much more than the claim(s) raised as the tax payer's behest. We make it clear that there is no rebuttal in the Revenue's pleadings regarding the assessee's corresponding provision's entitlement amounts. This indeed in addition to the fact that the Revenue has already lost the very substantive grievance in all preceding assessment years. We uphold the CIT(A)'s directions deleting the impugned bad debts disallowance in very terms. This first and foremost substantive grievance is decided in assessee's favour.

4. Next comes the second common issue of bonus disallowance(s) of Rs.1,37,24,484/- with ex-gratia bonus of Rs.36,34,923/- and Rs.2,76,876/- i.e. assessment year wise, respectively. The Revenue's case before us is that once the assessee follows mercantile system of accounting it was very much incumbent on its part to the claim the impugned relief on the very basis than merely making provision followed by its board's resolution passed in the succeeding financial year(s). We note that this particular issue had arisen between the parties in earlier assessment year as well. Learned co-ordinate bench order in ITA No. 617/PN/11 dated 02.03.2012 for AY 2007-08 has rejected the Revenue's identical contentions as follows.

> *"14. In this background, we have carefully considered the rival stands. Firstly, the plea of the Revenue articulated before us that the assessee did not act in pursuance to such Resolution, in our view, is clearly unfounded. In fact, it is nobody's case that the assessee has not paid the amount in question. The*

material on record clearly shows the fact-situation, which is not disputed by the Revenue, that the amounts have been actually paid by the assessee, albeit before the filing of the return. Therefore, the plea of the Revenue that the Resolution has not been acted upon by the assessee merely because there is no entry for the provision in the account books, cannot stand inasmuch as the amounts have been actually paid, albeit, after the close of the year, and such payments are in terms of the said Resolution. Further-more, the absence of a detailed narration of the discussions of the Board Meeting in the Resolution cannot ipso facto lead to the disregarding of the same. No doubt, in the Resolution passed on 17.7.2006 pertaining to the liability for the preceding financial year there is a detailed narration with regard to the discussion/correspondence with the Employees' union, etc. However, it is also to be kept in mind that in the instant year the Resolution dated 13.3.2007 adopts the liability to pay ex-gratia on similar rates as paid by the assessee for the preceding financial year. In-fact, the reference to the bonus/ex-gratia paid in the preceding financial year of 2005-06 is clearly noted in the Resolution dated 13.3.2007 and thereafter, it has been resolved that the bonus/ex-gratia be paid at the same rates in the instant year also. Under these circumstances, in the absence of any other corroborative evidence led by the Revenue, we find that the Board Resolution No 55 dated 13.3.2007 has been merely disbelieved by the Revenue authorities without demonstrating any falsity in the same. Therefore, in so far as the briefness of the Board Resolution No 55 dated 13.3.2007 is concerned, we do not find any merit in the objections raised by the Revenue.

15. The only other aspect to be seen as to whether the Board Resolution No 55 dated 13.3.2007 can be said to have crystallized the liability for exgratia payment to the employees. In our considered opinion, the adoption of the Resolution No 55 by the Board of Directors of the assessee bank on 13.3.2007 invests the assessee with the liability to pay ex-gratia to its employees. The said Resolution having been adopted prior to the close of the previous year relevant to the assessment year under consideration, in our view, implies that the liability towards ex-gratia towards employees crystallized and accrued during the previous year relevant to the assessment year under consideration itself.

16. For the aforesaid reasons, we therefore, deem it fit and proper to set aside the order of the Commissioner of Income-tax (Appeals) and direct the Assessing Officer to delete the impugned addition. Thus, on this aspect, assessee succeeds, as above."

5. The Revenue is very much fair in not bounding in distinction on fact of law in all these assessment years. We thus adopt judicial consistency qua this second issue as well as to reject the Revenue's corresponding substantive grounds in both these appeals. Its latter appeal ITA No. 2871/PUN/2016 in raising these two issues is rejected therefore.

6. The next comes the Revenue's third substantive ground in AY 2008-09 that the CIT(A) has erred in directing the Assessing Officer to allow set off of

brought forward losses/unabsorbed depreciation in A.Y. 2007-08 wherein no such losses remain to be carried forward. The same admitting involves more a reconciliation than any substantive adjudication on our part. We thus restore the Revenue's instant third substantive ground back to the file of Assessing Officer his afresh computation as per law. Ordered accordingly. The Revenue's former appeal ITA No. 2869/PUN/2016 is partly allowed for statistical purpose.

7. The Revenue's former appeal ITA No. 2869/PUN/2016 is partly allowed for statistical purpose and the latter appeal ITA No. 2871/PUN/2016 is dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 12th May, 2022.

Sd/-	Sd/-
(Dipak P. Ripote)	**(S.S. Godara)**
Accountant Member	**Judicial Member**

पुणे / Pune; दिनांक / Dated : 12th May, 2022.
रवि

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Kolhapur
4. The Pr. CIT-2, Kolhapur
5. DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune