

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH,  
(VIRTUAL HEARING AT KOLKATA)**

**[BEFORE SHRI MAINSH BORAD, ACCOUNTANT MEMBER &  
SHRI SONJOY SARMA, JUDICIAL MEMBER]**

**I.T.A. No. 87/PAT/2019**  
Assessment Year: 2010-11

The Muzaffarpur Central Co-operative Bank Ltd. (PAN: AABAT 7831 Q)	Vs.	ACIT, Circle-2, Muzaffarpur
Appellant		Respondent

Date of Hearing	29.06.2022
Date of Pronouncement	05.07.2022
For the Appellant	Shri Sanjeev Anwar, Advocate
For the Respondent	Shri Ashok Kumar, CIT

**ORDER**

**PER SONJOY SARMA, JM:**

This is an appeal filed by the assessee pertaining to the assessment year 2010-11 against the order of Ld. CIT(A)-1, Jamshedpur dated 28.01.2019 is arising out of assessment framed u/s 143(3)/147 of the Income-tax Act, 1961 dated 25.03.2013.

2. The assessee has raised the following grounds of appeal:

- “1. For that the appellate order passed of the authority below is bad in law and fact.*
- 2. For that the ld. CIT(A) is grossly unjustified in dismissing the appeal without even discussing the legal issues raised with regard to validity of re-assessment proceeding and also on merits of the case.*
- 3. For that the order of ld. CIT(A) is non-speaking and summarily rejecting the grounds of appeal is against the principle of Natural Justice and as such is not sustainable.*
- 4. For that the reopening of assessment u/s 147 of the I.T. Act is illegal and is not in accordance with provisions of law because the return was filed in response to notice u/s 142(1) and all the facts were before the ld. ACIT. Under the circumstances of re-assessment cannot be done when the original return has processed u/s 143(1) and no new facts has been brought on record before re-opening of the assessment.*
- 5. For that there was no tangible material before the ld. ACIT from which he came to the belief that income of the appellant chargeable to tax has escaped assessment.*

6. For that the issuance of notice u/s 148 is wholly without jurisdiction and illegal on the ground that there is no reason to believe that income chargeable to tax has escaped assessment. Thus the consequential assessment made u/s 143(3)/147 cannot be sustained.

7. For that no order whatsoever has been passed on the objections filed on 07.12.2011 and the ld. ACIT has proceeded with the assessment proceeding. This is against the law laid down by the Hon'ble Supreme Court in the case of G.K.N. Driveshaft's (India) Ltd., vs ITO (2003) 259 ITR 19 (SC). Thus the re-assessment order passed u/s 147 is liable to be set aside.

8. For that without prejudice to the grounds taken as above regarding the validity of the proceeding the appellant would humbly submit that the ld. ACIT has grossly erred in not allowing the set off of carried forward losses of earlier years.

9. For that u/s 80P of the Income Tax Act, the whole of the income of a co-operative society engaged in banking business was deductible and no tax was payable till assessment year 2006-07. As the income of the society under the statute was nil, the appellant was not obliged to file return under the provisions of the income Tax Act.

10. For that since the appellant was not obliged to file return u/s 139, the provisions of section 139(3) as well as section 80 would not be applicable to them in the years for which losses have been carried forward.

11. For that the losses have, therefore, been carried forward u/s 72 of the Income Tax Act and should have been to the set off from the current year income.

12. For that the carried forward business losses are the regular business loss incurred during the regular course of banking business and as such should have been allowed to be set off against current year's income.

13. For that in any view, depreciation of earlier years should have been allowed to be set off against the income in view of section 32(2) of the Income Act, 1961.

14. For that the profit & loss account of the appellant reflects credit of Rs. 3,79,54,752/- on account of provisions written back and this has resulted the net profit of Rs. 4,59,13,720/-. The assessment should have been framed after taking net profit of Rs. 79,58,968/- because the corresponding debits of this amount has been disallowable u/s 36(1)(viiia) in earlier years.

15. For that the amount credited to profit & loss account as provisions written back consist of the aid provided by the Central and State Government in lieu of the irrecoverable debt. This amount, though credited in profit & loss account, is actually a capital receipt, not liable to tax under the Income Tax Act, 1961.

16. For that Hon'ble Bombay High Court referring the judgement in the case of southern Technology Ltd. vs JCIT reported in 320 ITR 577 (SC) clearly held that in the assessment of Co-operative Bank the RBI Act would prevail over the other Acts for recognizing income.

17. For that the provisions for bad and doubtful debts has been made according to the guidelines of RBI, it would have on overriding effect over the provisions of section 36(1)(viiia) of the I.T. Act. The provision for bad and doubtful debts as claimed is profit & loss account is therefore allowable in full.

18. For that other grounds, if any, will be urged at the time of hearing."

3. Brief facts of the case are that the assessee is a Co-operative bank and derives income from banking business. The assessee filed its return of income for the A.Y. 2010-11 on 26.10.2010 declaring at Rs. Nil. However, the AO on perusal of return of income has observed that during the year, the assessee has earned profit to the tune of Rs. 4,58,70,123/-. However, it has been set off against the loss occurred in previous year. Further, it was found that the assessee has not filed its return of income for A.Y. 2007-08 and the returns of income for A.Y. 2008-09 and 2009-10 were filed belatedly on 09.08.2010. Therefore, in terms of section 80 read with section 139(3) of the Act, the losses would not be allowed to be carried forward. Due to the above facts, a notice u/s 148 of the Income-tax Act was issue to the assessee on 04.02.2013 to make requisite compliance. In response to the same, the assessee filed submission that the return of income filed the A.Y. 2010-11 dated 26.10.2010 may be treated as return in response to notice u/s 148 of the Act. Soon after notices u/s 143(2) and 142(1) were issued upon the assessee for compliance, in compliance to the notices, the AR of the assessee appeared and filed written submission the case was discussed and it was found that the assessee has carried forward its losses occurred during the previous year. Since the return of previous years were not filed within the time allowed u/s 139(1) of the Act, therefore, the assessee is not entitled to carry forward its losses and adjust the same from the income generated during the year. Accordingly, the same is not allowed. Further in respect of depreciation, the figures were not provided by the assessee, therefore, it was not considered. The AO computed the income of the assessee as under:

<i>“Profit earned as per return of income</i>	<i>Rs. 4,58,70,123/-</i>
<i>Add: depreciation for separate consideration</i>	<i>Rs. 45,311/-</i>
	<i>Rs. 4,59,15,434/-</i>
<i>Less: depreciation as allowable</i>	<i>Rs. 88,908/-</i>
	<i>Rs. 4,58,26,526/-”</i>

4. Aggrieved by the above order, the assessee preferred an appeal before the Id. CIT(A), Jamshedpur.

5. The appeal of the assessee was dismissed by the Id. CIT(A) without going into the merits of the case and no discussion has been made on the issue raised by the assessee

and dismiss the appeal of the assessee without considering the merits of the case. The ld. CIT(A) while dismissing the appeal of the assessee observed as under:

*“In view of the above and upon due consideration of all facts on record, very much including the above reproduced written submission of the appellant, I find no merit in the grounds of appeal. Hence, all grounds are dismissed. In other words, all actions of the AO are upheld.”*

6. At the time of hearing, the ld. counsel for the assessee submitted that since the ld. CIT(A) did not decide the appeal of the assessee without going into merits of the case and no discussion has been made in respect of issue raised before the ld. CIT(A) and as such the issue raised in the instant appeal made by set aside to the file of ld. CIT(A). The ld. DR was fair enough not to oppose the submission made by ld. AR. We therefore under the given facts and circumstances of the case are of the considered view that since the order of ld. CIT(A) passed without going into merits of the case and no discussion has been made on the issue raised before ld. CIT(A). We in the interest of justice set aside the instant impugned order and remitted it back to the file of ld. CIT(A) for deciding the issues raised before us by way of speaking order. We also direct the assessee in remain vigilant in receiving the notices of hearing of the ld. CIT(A) and should not request for any adjournment unless otherwise required for reasonable cause and, if necessary, should file all relevant documents so as to facilitate the ld. CIT(A) for passing the speaking order. Needless to mention that the assessee should be given proper opportunity of being heard.

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

Order is pronounced in the open court on 05 July, 2022.

Sd/-

(Manish Borad)  
Accountant Member

Sd/-

(Sonjoy Sarma)  
Judicial Member

Dated: 05.07.2022

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant– The Muzaffarpur Central Co-operative Bank Ltd., Sadar Hospital Road, Muzaffarpur, Bihar – 842 001.
2. Respondent – ACIT, Circle-2, Muzaffarpur.
3. CIT(A)
4. CIT ,
5. DR, ITAT, Patna

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata