

**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. 88 /PAT/2019**

Assessment Year: 2010-11

The Muzaffarpur Central Co-operative Bank Ltd. (PAN: AABAT 7831 Q)	Vs.	DCIT, 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 the 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 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.*
- 5. 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)(viia) of the I.T. Act. The provision for bad and doubtful debts as claimed is profit & loss account is therefore allowable in full.*

*6. For that it is humbly prayed that directions may kindly be given for adjustment of determined loss after giving effect of appellate orders to the orders for A.Y. 2010-11 and 2011-12.*

*7. For that other grounds, if any, will be urged at the time of hearing.”*

3. Brief facts of the case are that the original return was filed on 18.01.2013 for the A.Y. 2012-13 declaring Nil income. The case of the assessee was selected for scrutiny through CASS and notice u/s 143(2) dated 12.08.2013 was issued in response to the said notice, AR appeared and submitted copy of auditor's report for the previous year 2011-12. During the assessment proceeding, while taking over the charge from the predecessor, the Assessing Officer issued another notice u/s 142(1) upon the assessee along with the questionnaire requiring the assessee to furnish information details as stated therein. In response to the same, the AR of the assessee submitted requisite documents / information as called for. The assessee is a Co-operative bank and derives its income from banking business. During the course of assessment proceedings various aspects of the business of the bank were examined. The AO asked the assessee to explain as to why the provision made during the year on account of overdue interest and standard assets of Rs. 97,78,712/- and Rs. 5,27,999/- respectively as they are not actual expenditure allowable u/s 36 of the I.T. Act. The AR of the Act explained that the provisions were made in course of rules and guidelines issued by the RBI/NABARD. The submissions made by the assessee were not acceptable to AO because the assessee could not prepare its account as per the norms provided by the RBI and NABARD but it cannot override the Income Tax Act. As per the schedule 15 of the audit report, provisions made during the year on account of overdue interest and standard assets are of Rs. 97,78,712/- and Rs. 5,27,999/- respectively. These amounts have actually not been expended/spent hence such provision cannot be debited to the P & L A/c. Accordingly, the same totaling to Rs. 1,03,06,711/- is disallowed and being added to the total income of the assessee.

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

5. 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 issue 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.

6. 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 – DCIT, Circle-2, Muzaffarpur.
3. CIT(A)
4. CIT ,
5. DR, ITAT, Patna

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By Order