

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos. 373 & 374/Ahd/2020
Assessment Years 2013-14 & 2011-12**

The JCIT(OSD), Circle- 2(2), Ahmedabad (Appellant)	Vs	The General CO.OP Bank Ltd. 10, Shri Sthanakvasi Jain Society, Nr. Railway Crossing Naranpura, Ahmedabad PAN: AAAJT0199D (Respondent)
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**Appellant by : Shri A.P. Singh, CIT/DR &
Shri V.K. Singh, Sr. D.R.
Respondent by : Shri A.P. Nanavaty, A.R.**

Date of hearing : 26-07-2022
Date of pronouncement : 05-08-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These appeals has been filed by the Revenue against the separate orders dated 04.03.2020 passed by the Commissioner of Income Tax (Appeals)-10, Ahmedabad, as against the Assessment order passed under section 147 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment

Years (A.Y) 2011-12 and assessment orders passed u/s. 143 r.w.s. 263 of the Act for the Assessment Year 2013-14.

2. Registry has noted that there is a delay of 40 days in filing appeals by the Revenue before the Tribunal. The appeal is filed before the Tribunal on 26.06.2020 whereas the appeals ought to have been filed on or before 23.05.2020. This period falls under COVID-Pandemic situation, thus following Hon'ble Supreme Court judgment dated 23.3.2020 in suo moto Writ Petition (Civil) No.3 of 2020, vide Hon'ble Supreme Court has extended time limit for filing appeals w.e.f. 15.3.2020. Thus, there is no delay in filing the above appeals and accordingly the appeals are taken for adjudication on merits.

3. The brief facts of the case is that the assessee is Co-Operative Bank under liquidation by virtue of order dated 02/06/2003 passed by Govt. of Gujarat and the banking business of the assessee company has been suspended by Reserve Bank of India. Thus the assessee bank is being managed and administered by official Liquidator.

3.1. In view of Liquidation Section 21(2) of Deposit, Insurance and Credit Guarantee Corporation of India (for short "DICGCI") Act, 1961 which provides that Insurance claim, being amount paid to depositors to the extent of Rs. 1,00,000/- per each depositor, shall have to be paid out of realization of all advances and other assets without making payment of any liability.

4. For the Assessment Year 2011-12, reassessment order u/s. 143(3) r.w.s. 147 of the Act, was passed on 12.12.2018 wherein the A.O. has made an addition of Rs. 3,09,96,840/- treating the income of bank as its “income from other sources”.

4.1 For the Assessment Year 2013-14, assessment order u/s. 143(3) was passed accepting the returned income of Rs. 70,70,720/- . Thereafter the assessment was revised u/s. 263 by the Ld. PCIT-2, Ahmedabad on the ground that the assessee being in liquidation the interest income of the assessee is assessable as “income from other sources” in view of the Hon’ble Gujarat High Court judgment in the case of M/s. Morvi Mercantile Bank Ltd. reported in 104 ITR 568. Further the ld. PCIT held that as the banking license of the assessee is suspended, it cannot claim any loss on realization of nonbanking assets and unabsorbed depreciation. Following the above direction, the Assessing Officer passed assessment order u/s. 143(3) r.w.s. 263 by making disallowance of loss on realization of non-banking assets and unabsorbed depreciation and added as income of Rs. 2,90,00,183/- under the head “income from other sources”.

4. The above assessment orders were subject matter of appeals before the Ld. CIT(A). The Ld. CIT(A) after considering the submissions of the assessee held as follows:

5. The appellant has submitted that the bank is under liquidation availing funds for repayment of unpaid deposits as insurance claim of DICGCI and DICGCI being subsidiary of RBI and Governed by DICGCI Act, 1961 r.w. DICGCI Regulation 1962. This Act statutorily prohibits bank under liquidation to apply funds of realization of advances other than for payment of liability of DICGCI as

to amount paid as insurance claim. This proposition of law is upheld by following decisions:

(i) Deposit Insurance & Credit Guarantee Corporation of India Vs. Ragupathi Ragavan & Others. (SC)

(ii) The Visnagar Nagrik Sahkari Bank Ltd. & Others Vs. Deposit Insurance & Credit Guarantee Corporation of India (GHC)

(iii) Shree Siddhi Vinayak Cooperative Vs. Union of India (GHC)

5.1 Further, the appellant has submitted that Ld. CIT (Appeals)-S, Ahmedabad has considered this issue in the case of The Janta Commercial Cooperative Bank Ltd. in his order no. CIT(A)-3/129/Cir.3(2)/16-17 dated 18-12-2017 and has held 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. 3,65,77,875/- is payable to DICGCI as liability 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. Nil. 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. 2,39,7807-there is surplus of Rs. 29,31,478/- however appellant has disallowed aforesaid depreciation of Rs. 2,39,7807- and has claimed depreciation Rs, 32,8827- and its computation is provided in statement of total income which has been allowed by DC/7". Now the dispute remains as to allowance of loss of unrealised amount of Rs. 18,14,14,7277- 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 I.T. 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 I.T. Act, 1961, such precondition is only for carry forward of business losses u/s. 72(1) of the I.T. 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 BAIRATHI 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 judgment of Supreme Court as well as judgment of Gujarat High Court in the case of Visnagar Nagarik Sahakari Bank Ltd. (Supra) as jurisdictions! 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 Lai Chhadami Jain v/s CIT 190 ITR 1 (SC) r.w. judgment in the case of Smt. Sarla Dew 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,

5. In the result, the appeal is partly allowed."

5.2 He has further pointed out that decision of Supreme Court in the case of Motilal Chhadamilal Jain Vs. CIT 190 ITR 1 (SC) where on Apex Court has clarified "17. We are of the opinion that this contention cannot be accepted. As we have pointed out earlier, the right given to the College to sue the company is only the right to recover part of amount which has already accrued to the assessee. The creation of a charge in favour of the College does not make any difference. It only obliges the company to pay a part of the rent to the College on behalf of the assessee but the existence of a mere obligation is not sufficient to constitute diversion of income. The classic statement of the true principle is set out in Sitaldas Tirathdas' case (supra):

". . . Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Whereby the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation [self imposed and gratuitous] after such income reaches the assessee, the same consequence, in law does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an

obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable. . . " [Emphasis supplied] (p. 374)

In the above passage, it is clear, the expressions 'reaches the assessee' and 'has been received' have been used not in the sense of the income being received in cash by one person or another. What the passage emphasizes is the nature of the obligation by reason of which the income becomes payable to a person other than the one entitled to it. Where the obligation flows out of an antecedent and independent title in the former (such as, for example, the rights of dependants to maintenance or of coparceners on partition, or rights under a statutory provision or an obligation imposed by a third party and the like), it effectively slices away a part of the corpus of the right of the latter to receive the entire income and so it would be a case of diversion. On the other hand, where the obligation is self-imposed or gratuitous (as here), it is only a case of an application of income."

4.1. Thus the Id. CIT(A) following the order dated 17.01.2020 in ITA No. 538/Ahd/2018 passed by the Co-ordinate Bench of this Tribunal wherein it is held that statutory obligation upon liquidation availing insurance claim for deposits and such liability has been fully paid off to DICGCI. Therefore till such obligation all funds realized by bank under liquidation are diverted at source, the assessee has no discretion or authority to apply its income as it wishes. Hence such funds are not available to the assessee as income and therefore such income is not taxable in the hands of the assessee. Thus Ld. CIT(A) deleted the addition made by the A.O. and allowed the assessee appeals.

5. Aggrieved against the same, the Revenue is in appeal before us and raising the following Grounds of Appeal:

1. *The Ld.CIT I A) has erred in law and on facts in holding that the realization of advances and income thereon are diverted at source as the assessee is under statutory obligation to repay DICGCI under DICGCI Act.*
 2. *The Ld CIT(A) failed to appreciate that in the instant case income has been received by the assessee and the payment to DICGCI is merely an obligation to pay it a portion of one's own income which has been received.*
 3. *The Ld CIT(A) failed to appreciate the fact that the assessee had retained a part of its interest income as expenses before payment to DICGCI.*
6. The Ld. Sr. D.R. Mr. V.K. Singh appearing for the Revenue fairly submitted that the issue is covered by the order passed in the case of M/s. Janta Commercial Co.Op Bank Ltd. which has been followed by the Ld. CIT(A). The Ld. D.R. however could not produce any contra judgment in favour of the Revenue.
7. The Ld. A.R. Mr. A.P. Nanavaty appearing for the assessee support the order passed by the Ld. CIT(A) and pleaded to dismiss the appeal filed by the Revenue following Co-ordinate Bench Decision in the case of Janta Commercial Co-op. Bank Ltd.
8. We have heard the rival submissions and perused the materials available on record. We are in complete agreement with the findings of the Ld. CIT(A) in the light of various decisions discussed in the above order. As per this mandatory conditions of Section 21(2) DICGCI Act, till liability of DICGCI is fully paid all funds realized by Bank under liquidation are diverted at source. Entire income of the assessee including interest income and share dividend income are diverted at source and bank under liquidation has no discretion or

authority to apply such funds. Such funds are not available to the assessee as income and therefore such income is not taxable in the hands of the assessee.

8.1. Therefore the grounds raised by the Revenue are hereby rejected and the appeals filed by the Revenue are hereby dismissed.

9. In the result, appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 05 -08-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 05/08/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद