

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Shri Pramod M Jagtap, Vice President  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 6/Ahd/2022  
Assessment Year 2017-18**

Shree Kadi Nagarik Sahakari Bank Ltd. Head Office Gunj Bazar, Kadi, TA. Kadi, kadi 382715, Gujarat PAN No: AAAAS8659J (Appellant)	Vs	The ACIT, Mehsana Circle, Mehsana (Respondent)
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**Appellant by : Shri H.V. Doshi, A.R.  
Respondent by : Shri Shramdeep Sinha, Sr.D.R.**

Date of hearing : 23-08-2022  
Date of pronouncement : 26-08-2022

**आदेश/ORDER**

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

The present appeal has been filed by the Assessee against the order dated 20.12.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), against the order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The brief facts of the case is the assessee is a co-operative bank engaged in banking activities under the Reserve Bank of India Act and earning interest from finance. For the Assessment Year 2017-18, the assessee case was taken for scrutiny assessment and assessment was completed u/s. 143(3) on 25.10.2019 disallowing Rs. 5,37,534/- late deposit of employees contribution towards PF and ESI.

2.1. During the appellate proceedings, the assessee claimed additional claim of deduction of Rs. 36,21,925/- in respect of amortization of premium on investment in Govt. Securities. The assessee paid security premium of Rs. 91,97,795/- which was debited to the Profit and Loss account and reflected in the balance sheet as an investment. At the time of filing the Return of Income, the full amount of premium paid was considered as a disallowable expenditure and accordingly added back in the computation of income. It was later the assessee realized that amortization of security premium is an allowable expenditure under the Act. Accordingly, it made an application before the Assessing Officer during the assessment proceedings, relying upon CBDT Instruction No. 17/2008 dated 26.11.2008, which has clarified that amortization of premium is an allowable claim. However the same was not considered by the Assessing Officer while framing the assessment.

3. Aggrieved against the same, the assessee filed an appeal before the CIT(A), NFAC. The Ld. CIT(A) confirmed the addition on account

of late payment of employees contribution towards PF and ESI following the Jurisdictional High Court judgment in the case of CIT vs. Gujarat State Road Transport Corporation reported in 223 taxmann.com 398.

3.1. Regarding the additional claim of deduction in respect of amortization of premium on investment in Govt. Securities, the same was rejected on the ground the assessee itself has not made this claim in the Return of Income. Hence, a fresh claim have been made before the Assessing Officer during the course of assessment proceedings. Therefore, the Assessing Officer was correct in not considering the new claim of the assessee, which was not claimed in the Return of Income, thereby dismiss the appeal filed by the assessee.

4. Aggrieved against the same, the assessee is before us raising the following Grounds of Appeal:

*1. The Ld. CIT(A) has erred in law and facts in confirming the order of AO in making the addition of Rs.5,37,534/- by disallowing the employee contribution of PF being payment made beyond due date prescribed under PF Act without considering the fact that the payment of PF was made before due date of filing of the income tax return.*

*2. The Ld. CIT(A) has erred in law and facts in confirming the action of AO for not considering the application of appellant for fresh claim made before AO during assessment proceedings in respect of deduction of Rs.36,21,925/- in respect of amortization of premium on investment of Govt. securities and CIT(A) has further erred by not considering fresh claim at appellate stage.*

5. The Ld. Counsel for the assessee Mr. H.V. Doshi submitted following the jurisdictional High Court judgment in the case of Gujarat State Road Transport Corporation, the assessee is not pressing ground no. 1 regarding the same, this grounds is dismissed.

5.1. In respect of ground no. 2 namely amortization of premium on investment in Govt. Securities, the Ld. A.R. submitted that though the Assessing Officer has no power in entertaining a new claim other than that filed in the Return of Income, but the Appellate Authorities have every power of entertaining the claims as held by the Hon'ble Supreme Court in the case of Goetz (India) Ltd. vs. CIT (2006) 157 Txamann.com 1 (SC). Thus the Ld. CIT(A) is not following the ratio of the Hon'ble Supreme Court judgment, the matter may be remanded back to the Assessing Officer to consider this issue afresh.

6. The ld. D.R. appearing for the Revenue has no serious objection for remanding the matter for the limited purpose of considering the claim of amortization of premium on investment in Govt. Securities by the Assessing Officer.

7. We have heard the rival parties. The Hon'ble Supreme Court in the case of Goetze (India) Ltd. (cited supra) has held as follows:

*4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the feet on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a*

*claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961.*

7.1. Thus the appellate authorities has the power to entertain the new or fresh claim what is not being claimed in the Return of Income. However the claim being a new one, it requires to be verified by the Assessing Officer whether the same is in accordance with law. Respectfully following the ratio of the Apex Court judgment, we set aside the order passed by the Ld. CIT(A) and restore the issue to the file of the Assessing Officer for the purpose of verification of the claim of deduction of Rs. 36,21,925/- in respect of amortization of premium on investment in Govt. Securities by the assessee. Needless to say that the assessee should make use of this opportunity by producing all the relevant documents in respect of its claim before the Assessing Officer and cooperate to pass the assessment order.

8. In the result, the appeal filed by the Assessee is hereby partly allowed for statistical purpose.

Order pronounced in the open court on 26-08-2022

**Sd/-**  
**(PRAMOD M JAGTAP)**  
**VICE PRESIDENT True Copy**  
**Ahmedabad : Dated 26/08/2022**

**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