

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.72/CTK/2018

(निर्धारण वर्ष / Assessment Year :2010-2011)

Neelachal Gramya Bank,
190/702, Kokila Residency,
Ananta bihar, Airport Area,
PO: Pokhariput,
Bhubaneswar
PAN : AAALN 0450 F

.....Assessee

Versus

DCIT, Circle-2(2), Bhubaneswar

.....Revenue

Shri B.K.Mohapatra, CA/AR for the assessee
Shri M.K.Gautam, CIT-DR for the Revenue

Date of Hearing : 21/09/2022
Date of Pronouncement : 21/09/2022

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the CIT(A)-1, Bhubaneswar, dated 03.11.2017 passed in I.T.Appeal No.0538/14-15, for the assessment year 2010-2011, on the following grounds :-

1. *That the Order of the learned Commissioner of Income Tax (Appeals)-I, Bhubaneswar {"CIT(Appeals) dated 03.11.2017 in enhancing the assessment and dismissing the appeal, is against the principles of natural justice, contrary to facts, arbitrary, excessive, erroneous and bad, both in the eye of law and on facts.*
2. **Disallowance u/s. 14A Rs. 2,01,724/-**
 - a. *That on the facts and in the circumstances the case, the order of the learned CIT (Appeals) in confirming the disallowance of*

Rs.2,01,724/- u/s.14A of the Act is contrary to facts, arbitrary and erroneous and bad, both in the eye of law and on facts.

- b. That the assessee having already added sum of Rs.34,581/- u/s. 14A of the Act in the computation of income (returned income), Rule 8D is not applicable and the sustaining of the addition of Rs. 2,01,724/- u/s.14A of the Act is unjustified, arbitrary, contrary to facts, erroneous and bad in law.*
- c. The appellant's computation of the aforesaid Rs.34,581/- u/s. 14A of the Act is based on its books of accounts and is worked out in a reasonable and fair manner, the learned lower authorities have mis appreciated/misconstrued the same and the disallowance u/s.14A of the Act is incorrect, arbitrary, erroneous and bad in law.*
- d. That the learned CIT(Appeals) holding that the aforesaid Rs.34,581/- has no reasonable basis is incorrect, contrary to facts, arbitrary and erroneous and bad, both in the eye of law and on facts.*

3. Disallowance under 'Deduction on Audit Fees - Rs. 15,00,000/-

- a. That the learned CIT (Appeals) has misconstrued/mis-appreciated the facts and the confirming of disallowance of Rs. 15,00,000/- under audit fees is contrary to facts, arbitrary, erroneous and bad, both in the eye of law and on facts.*
- b. That on the facts and in the circumstances of the case, the assessee having booked a Liability of Rs. 15,00,000/- towards audit fees and expenses for the accounting year 2009-10, the confirming of disallowance of Rs. 15,00,000/- by the learned CIT(Appeals)by holding that said Rs. 15,00,000/- is merely a provision without any bills or vouchers is unjustified, is contrary to facts, erroneous and bad, both in the eye of law and on facts.*
- c. That the learned AO having misconstrued/mis-appreciated the facts and on irrelevant considerations, presumptions, conjectures and surmises, without any material evidence on record and having made addition of Rs. 15,00,000/- under Audit Fees and the said confirming of disallowance of Rs. 15,00,000/- is contrary to facts, erroneous and bad, both in the eye of law and on facts.*
- d. That both the lower authorities have failed to appreciate that as against the Liability of Rs.15,00,000/- towards audit fees, the actual amount paid in the accounting year 2010-11 towards audit fees and expenses being Rs. 15,00,000/-the addition/disallowance of Rs.15,00,000/- is unjustified, arbitrary, contrary to facts, excessive, erroneous and bad in law.*

- e. Without prejudice to Ground (a) and (d) above, in any case, in the alternative, the actual amount paid of Rs.15,00,000/- in the accounting year 2009-10 towards audit fees and expenses ought to be allowed.

4. **Disallowance of Contribution to Recognised Gratuity Fund**
Rs. 1,21,62,000/-

- a. That the learned CIT (Appeals) has misconstrued/mis-appreciated the facts and the confirming of disallowance of Rs.1,21,62,000/- under payment to LIC Gratuity Fund is contrary to facts, arbitrary, erroneous and bad, both in the eye of law and on facts.
- b. That the learned CIT (Appeals) has failed to appreciate that the payment in respect of the said of Rs.1,21,62,000 having been made to LIC (an approved Gratuity Fund) any disallowance u/s.43B of the Act.
- c. That the learned CIT (Appeals) has misconstrued/mis-appreciated the facts that the payment of Rs.1,21,62,000/- made to LIC is not an approved Gratuity Fund and thereby the confirming of disallowance of the said Rs.1,21,62,000/- is unjustified, arbitrary, contrary to facts, erroneous and bad in law.

5. **Disallowance under Other provisions (Pay arrears)-**
Rs.1,63,26,134/-

- a. That on the facts and in the circumstances the case, the order of the learned CIT (Appeals) in confirming the disallowance of Rs.1,63,26,134/- Under 'Other provisions relating to estimated Liability towards staff and sub-staff for pay revision and arrears as per 9th Bipartite and per-Court orders is contrary to facts, arbitrary, erroneous and bad, both in the eye of law and on facts.
- b. That on the facts and in the circumstances of the case, the assessee having made a fair estimate of Liability towards staff and sub-staff for pay revision and arrears as per 9th Bipartite and per-Court orders, the sustaining of the addition/ disallowance of Rs.1,63,26,134/- is unjustified, arbitrary, contrary to facts, excessive, erroneous and bad in law.

6. **Enhancement and Addition under "Other provisions" -**
Rs.1,44,77,000/-

- a. That on the facts and in the circumstances of the case, the order of the learned CIT(Appeals) dated 03.11.2017 in making addition of Rs. 1,44,77,000/- under "Other provisions" by

enhancing the assessments is contrary to facts, against the principles of natural justice, arbitrary, excessive, erroneous and bad, both in the eye of law and on facts.

- b. That on the facts and in the circumstances of the case, the order of the learned CIT(Appeals) dated 03.11.2017 in enhancing the assessments by Rs. 1,44,77,000/- in respect of the following:

i. Exgratia to deceased employee	Rs.1,15,00,000/-
ii. 'Provision for fraud"	<u>Rs. 29,77,000/-</u>
Total	Rs.1,44,77,000/-

is on mis-appreciation of facts, against the principles of natural justice, arbitrary, excessive, erroneous and bad, both in the eye of law and on facts.

- c. That the Learned CIT(Appeals) has mis-appreciated/ / misconstrued the facts and the addition/disallowance of the following of Rs. 1,44,77,000/-:

i. Exgratia to deceased employee	Rs.1,15,00,000/-
ii. 'Provision for fraud"	<u>Rs. 29,77,000/-</u>
Total	Rs.1,44,77,000/-

is on mis-appreciation of facts, against the principles of natural justice, arbitrary, excessive, erroneous and bad, both in the eye of law and on facts.

- d. That on the facts and in the circumstances of the case, the aforesaid Rs.1,15,00,000/- in respect of Exgratia to deceased employee' being fully allowable under the Act ought not have been added/ disallowed.
- e. That on the facts and in the circumstances of the case, the aforesaid Rs.29,77,000/- in respect of write off of loss due to 'fraud" being fully allowable under the Act ought not have been added/ disallowed.
- f. That without prejudice to Grounds ("a" to "e") above, the Learned Assessing Officer after examination and verification having allowed the said sum of Rs.1,44,77,000/-, the learned CIT(Appeals), is not justified and has erred in holding that Rs.1,44,77,000/- is not allowable

7. **Denial of claim of deduction u/s. 80P of the I.T.Act**

- a. That on the facts and in the circumstances the case, the sustaining of the disallowance of claim of deduction of Rs.12,38,49,656/- u/s.80P of the IT Act by the learned CIT(Appeals) is arbitrary, erroneous, bad, both in the eye of law and on facts and legally untenable.

- b. *That the learned CIT(Appeals) holding that, the assessee is not eligible for deduction u/s.80P of the IT Act is arbitrary, erroneous and bad in law.*
 - c. *That the lower authorities holding that the assessee is a "co-operative bank" and hence deduction u/s. 80P of the IT Act is not admissible is contrary to facts and the express provisions of law, arbitrary, erroneous, bad in law and legally untenable.*
 - d. *That the assessee does not fall under the purview of Section 80P(4) of the I.T.Act and therefore the denial of claim of deduction u/s.80P of the I.T Act by the lower authorities is arbitrary, erroneous, bad, both in the eye of law and on facts and legally untenable.*
 - e. *That the CBDT Circular relied on by the learned CIT(Appeals) is contrary to the express provisions of law and cannot be applied in the assessee's case.*
 - f. *Without prejudice to Ground (e) above, in any case, CBDT Circular is neither binding on the assessee nor on the appellate authority ought not be applied in the case of the assessee.*
 8. *Without prejudice to Ground (2) to (7) above, in any case, even after making the disallowances, the deduction u/s.80P of the Act ought to have been to that extent and accordingly, the 'NIL' total income as per returns of the assessee ought to be accepted.*
 9. *That the appellant craves leave to add, supplement, modify the grounds herein-in-above before or at the time of hearing of the appeal.*
2. Ld. AR before us has not argued ground Nos.1, 8 & 9, which are general in nature, therefore, the same are not required separate adjudication.
3. **Ground No.2** is with regard to confirming the disallowance made u/s.14A of the Act to the extent of Rs.2,01,724/-.
- 3.1 It was submitted by the Id. AR that the assessment year is 2010-2011 and the AO at page 13 of his order has made the disallowance by invoking the provisions of Section 14A r.w.rule 8D. It was submitted that

the assessee itself had made a disallowance of Rs.34,581/- but the AO had adopted half-percentage of the average value of the investment and determined a disallowance of Rs.2,36,305/- and after reducing the expenses disallowed by the assessee at Rs.34,851/- made an addition of Rs.2,01,724/-. It was submitted that in view of the decision of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd., reported in (2017) 394 ITR 449 (SC)/(2017) 247 Taxman 361 (SC) as rule 8D has not been brought in effect during the relevant assessment year, no disallowance could be made in the hands of the assessee.

3.2 In reply, Id. CIT-DR vehemently supported the order of the AO and CIT(A). It was submitted that the investment in the mutual funds and shares was to an amount of Rs.7,24,58,000/-, and it could not be said that there was no expenses involved. It was submitted that the assessee has earned an exempt income of Rs.7,03,354/-. It was submitted that 0.5% was a reasonable amount. It was submitted that various benches of the Tribunal has been upholding the disallowance even at 1% percentage. It was submitted that the order of the CIT(A) is liable to be upheld.

3.3 We have considered the rival submissions.

3.4 As has been held by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd (supra), in the assessment year 2010-2011 as the provisions of rule 8D had not been made workable, no disallowance to be made under Section 14A r.w.r.8D as a computation machinery was not available. Thus, the addition made by the AO and as confirmed by the CIT(A) under Section 14A r.w.r.8D stands deleted.

4. **Ground No.3** relates to disallowance under Deduction on Audit Fees Rs.15,00,000/-.

4.1 It was submitted by the Id. AR that the AO had disallowed the said amount on the ground that it was a provision. The Id. AR drew our attention to page 15 of the assessment order. It was submitted that before the due date of filing of return the assessee has already paid Rs.16,17,336/-. It was the submission that this provision made itself was low. It was the prayer that the addition as made by the AO and as confirmed by the CIT(A) is liable to be deleted.

4.2 In reply, Id. CIT-DR submitted that this is only a provision and the provision is not allowable as an expenditure. It was the submission that the order of the Id. CIT(A) and that of the AO is liable to be upheld.

4.4 We have considered the rival submission.

4.5 As it is noticed that the assessee has paid the audit fees of Rs.16,17,336/- before the due date of filing of the return and it has also been recognised by the AO in the assessment order, we are of view that the addition of Rs.15 lakhs made on the ground that it is a provision, is not called for. In the circumstances, the addition made by the AO and as confirmed by the CIT(A) under the head Deduction on Audit Fees stands deleted.

5. **Ground No.4** is with regard to the disallowance on contribution to the recognised Gratuity Fund of Rs.1,21,62,000/-.

5.1 It was submitted by the Id. AR that the assessee had made a payment of Rs.1,21,62,000/- to LIC Gratuity Fund being LIC Master

Policy. Ld. AR drew our attention to LIC Master Policy at page 135-139 of the paper book. It was submitted that the AO disallowed Rs.1,21,62,000/- on the ground that the LIC Master Policy was not a recognised gratuity fund. Ld. AR drew our attention to page 14 of the assessment order. It was the submission that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in the case of Textool Co. Ltd. Tools, reported in [2013] 35 taxmann.com 639 (SC)/263 CTR 257 (SC), wherein it has been held that the assessee is entitled to deduction u/s.36(1)(v) of the Act in respect of payments made directly to LIC towards employees' group gratuity fund.

5.2 In reply, the Id. CIT-DR submitted that the disallowance has rightly been made by the AO and confirmed by the CIT(A) as the same is not approved gratuity fund. It was the submission that the LIC Master Policy was taken in the name of Nilachal Gramin Bank Employees Gratuity Trust. It was the submission that this is not an approved fund.

5.3 We have considered the rival submissions.

5.4 As it is noticed that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in the case of Textool Co. Ltd. (supra), respectfully following the provisions laid down by the Hon'ble Supreme Court, the addition as made by the AO and as confirmed by the CIT(A) in respect of contribution to LIC master policy in respect of the gratuity fund stands deleted.

6. **Ground No.5** is relating to disallowance under other provisions being Pay Arrears.

6.1 It was the submission that the AO had disallowed the provision relating to the arrears of pay in respect of four months being from April to July 2010. It was submitted that the computation sheet has been produced before the AO and the arrears provision for the employees and sub-staff for a total amount of Rs.12,65,27,546/- was shown. The computation was for a period of 31 months being from November, 2007 to July, 2010. On the ground that the computation included a period beyond the Financial Year 2009-2010 relevant to assessment year 2010-2011, the AO disallowed the provision in respect of April, May, June & July, 2010. It was the submission that the liability is crystalized and in view of the decision of the Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd., reported in [2000] 245 ITR (SC), no disallowance was called for in the hands of the assessee.

6.2 In reply, Id. CIT-DR submitted that this is only a provision and as it was a provision no allowance of the same was liable to be done. It was submitted that the amount has not been crystalysed. It was further submission that no evidence has been produced to show that the amounts have been paid to the employees.

6.3 We have considered the rival submissions.

6.4 As it is noticed that the computation of the revision of pay has been made by the assessee for 31 months and the same has been accepted by the AO for a period of 27 months, obviously the computation is on scientific basis, it is not an unascertained liability. The liability has crystalised. In these circumstances, in line with the principle laid down by

the Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. (supra), the disallowance of the provisions for pay arrears as made by the AO and as confirmed by the CIT(A) stands deleted.

7. **Ground No.6**, is with regard to enhancement and addition under the head other provisions to an extent of Rs.1,44,77,000/-.

7.1 It was submitted that this amount consisted of two figures, one is ex-gratia to the deceased employee to an extent of Rs.1,15,00,000/- and the second is provision for fraud to the extent of Rs.29,77,000/-. The Id. CIT(A) has enhanced the assessment by making the disallowance on the ground that these were only provisions. It was the submission that the ex-gratia to the deceased employee were in respect of such employees, who are deceased during the relevant assessment year. It was the submission that the amounts were crystallised during the relevant assessment year on the demise of the employee and the same has been paid out during immediately succeeding assessment year.

7.2 In regard to provision for fraud, it was submitted that on the basis of any claim of fraud the provision is made by the assessee and the same is investigated. Once the investigation is done and the fraud stands proved then to such extent recovery would be made and to that extent if the recovery is not possible the same set off from the provision for fraud. It was the submission that when the fraud alleged was not proved, automatically the provision was also reduced in respect of the said fraud alleged. It was the submission that the provisions has to be made when a fraud is alleged, failing which a true and fair picture of the assessee's

financial stand would not be clear. It was the further submission that this provisions of fraud is made on the basis of the Circular issued by the controlling bank being NABARD. Therefore, the Id. AR submitted that the same is liable to be allowed.

7.3 In reply, Id. CIT-DR submitted in respect of provision of ex-gratia to deceased employee that the same has been paid in the subsequent year and if at all is to be allowed it could be considered in the year of payment. In respect of provision for fraud, it was the submission that the provision is made on an allegation; obviously the amount is not crystalised. If at all a deduction is called for, the deduction may be granted in the year in which the amount is quantified and the payment is made on the ground of such fraud.

7.4 We have considered the rival submissions.

7.5 In respect of the issue of ex-gratia to the deceased employee, admittedly, the employee had expired during the relevant assessment year. On the demise of an employee, the ex-gratia due to him is automatically computed. The amount is crystalised immediately on the demise of an employee. In fact, on the demise of an employee attempt is made to mitigate the financial loss to the family of employee at the earliest. This is but a social responsibility. Therefore, it cannot be said that this amount has not been crystalised nor can it be said that it is liable to be allowed only in the year of payment. This being so, in view of the provision of the Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. (supra) as the amount has been crystalised, we are of the

view that the said amount is an allowable expenses. Thus, the addition as made by the Id. CIT(A) for enhancement of provision with regard to ex-gratia to the deceased employee for the relevant assessment year stands deleted.

7.6 Coming to the issue of provision for fraud, at the outset, it is noticed that the said amount is not crystalised in any manner whatsoever. The provision is made on the basis of allegation. This allegations needs to be verified. It needs to be proved. An attempt for recovery must be made from the persons, who have committed the fraud. Where the fraud amount is recovered is not known. Obviously, it cannot be said that the liability is crystalised. In these circumstances, in respect of provision for fraud, we find strength in the submission of the Id. CIT-DR that the same is allowable in the year in which the amount has been written off from the books of accounts on account of fraud. Thus, the disallowance as made by the CIT(A) under the head provision for fraud would have to be verified and consequently, it is restored to the file of AO for verification as to the amount that is liable to be allowed on actual determination on account of fraud. Accordingly, ground No.6 is partly allowed for statistical purposes.

8. **Ground No.7** is with regard to denial of claim of deduction u/s.80P of the I.T.Act.

8.1 It was submitted by the Id. AR that the assessee is a cooperative society doing business of retail banking. It was the submission that the assessee is entitled to deduction u/s.80P of the Act.

8.2 On this point, it was submitted by the Id. CIT-DR that the issue is squarely covered by the decision of the coordinate bench of the Tribunal in assessee's own case for the assessment year 2012-2013 in ITA No.420/CTK/2016, order dated 19.03.2018, wherein the coordinate bench of the Tribunal has in paras 7 to 9 held as follows :-

7. *We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The sole matrix of the issue involved in this case as to whether the assessee is a co-operative Bank or Society and consequently whether the deduction u/s.80P is available to the assessee. On perusal of the assessment order, we find that the Assessing Officer has not dealt on the claim of the assessee being not a co-operative Bank but denied the deduction relying on the provisions of section 80P(4) of the Act. Whereas the CIT(A) has dealt on the issue and the submission of the assessee and relied on judicial decisions and upheld the action of the Assessing Officer. The CIT(A) while considering the issue held that the assessee is a Regional Rural Bank, which is deemed to be a co-operative society as per the provisions of RRB Act and for the purpose of Income Tax Act and since the main function of the assessee is involved in the banking business and, therefore, not entitled for deduction u/s. 80P of the Act. The CIT(A) has followed the decision of Indore Bench of the Tribunal in the case of Vidisha Bhopal Kshetriya Gramin Bank vs ACIT, in ITA No.215 & 216/Ind/2011 for the assessment year 2007-08 and 2008-09, wherein, it has been held that the RRBs are not entitled to deduction u/s.80P of the Act from the assessment year 2007-08. Whereas the assessment year involved in the present case is 2012-13.*

8. *However, Id A.R. of the assessee relied on various judicial decisions particularly in the case of Pandiyan Grama Bank vs ACIT in ITA No,1941/Mad/2009 for the assessment year 2007-08 order dated 13.8.2010, wherein, the contention of the assessee was accepted that it is to be treated as co-operative society in view of the provisions contained in RRB Act, 1976 and the Tribunal decided the issue in the context of revision proceedings u/s.263 of the Act and the decision was prior to issue of CBDT circular No.6/2010 dated 20.9.2010.*

9. *We find that Section 80P(4) debar any co-operative bank other than a primary agricultural society or a primary co-operative agricultural and rural development bank from the provisions of section 80-P which allows deduction to a co-operative society. The Co-operative bank has been defined under the Explanation to section 80P(4) of the Act.*

9. Further, the CIT(A) has relied on the decision of Indore Bench of the Tribunal in the case of M/s. Vidisha Bhopal Kshetriya Gramin Bank vs ACIT in Ita No.215 & 216/Ind/2011 for AYs 2007-08 and 2008-09 order dated 18.6.2012 and the CBDT Circular No.6/2010 (supra). We as a judicial precedence, respectfully following the decision of the Tribunal and the CBDT Circular (supra) upheld the order of the CIT(A) and dismiss the ground of appeal of the assessee.

8.3 In reply, Id. AR submitted that the facts for the relevant assessment year were different and the issue should be reconsidered.

8.4 We have considered the rival submission.

8.5 As it is noticed that the issue in respect of claim of deduction u/s.80P is squarely covered by the decision of the coordinate bench of the Tribunal in assessee's own case for A.Y.2012-2013, respectfully following the findings recorded therein by the Tribunal, the denial of claim of deduction u/s.80P of the Act by the AO and the confirmation of the same by the Id. CIT(A) stands upheld. This ground of assessee is dismissed.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 21/09/2022.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 21/09/2022

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Neelachal Gramya Bank,
190/702, Kokila Residency,
Ananta bihar, Airport Area,
PO: Pokhariput,
Bhubaneswar

2. प्रत्यर्थी / The Respondent-
DCIT, Circle-1(2), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack