

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 992/Kol/2019
Assessment Year : 2010-11

ACIT, Circle-1, LTU, Kolkata	Vs.	M/s United Bank of India (PAN: AAACU 5624 P)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

C.O. No. 6/Kol/2022
(Arising out of ITA No. 992/Kol/2018)
Assessment Year : 2010-11

M/s United Bank of India (PAN: AAACU 5624 P)	Vs.	ACIT, Circle-1, LTU, Kolkata
Cross- Objector		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	25.08.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	29.09.2022
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Chowdhury, Advocate
For the Respondent/ राजस्व की ओर से	Shri Deba Sonowal, CIT

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

This is the appeal preferred by the revenue and the cross objection by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-23,

Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 29.01.2018 for the AY 2010-11.

2. The common issue raised in all the grounds of appeal by the revenue is against the order of Ld. CIT(A) allowing the provisions for liability of Rs. 264.00 crores as against the order of AO, wherein the AO disallowed these provisions by holding that the impugned provisions for liability were crystallized in the next financial year and was also discharged during the next financial year i.e FY 2010-11.

3. Facts in brief are that the assessee had charged to the profit and loss account the provisions created on the account of wages revision amounting to Rs. 264.00 crores which according to the AO were not allowable as the wages revision agreement was signed on 27.04.2010 which was beyond the FY 2009-10 and thus liability was crystallized in FY 2010-11 which is relevant to AY 2011-12. The AO also noted upon perusal of Note No. 2 to the 'Computation of total income' that the said liability was stated to have been paid before filing return of income for FY 2010-11. According to the AO the said liability was neither crystallized nor discharged off till the end of FY 2010-11 as on 31.03.2009. The said provisions of Rs. 264.00 crores were not liable to be allowed during the year and were required to be added back to the book profit of the assessee. The AO also observed that the said provisions for wages revision were not covered u/s 43B of the Act and therefore could not be allowed on this account also. Accordingly a show cause notice was issued on the assessee which was replied by the assessee by submitting that the said liability was ascertained one and was charged to the profit and loss account during the AY 2010-11 after crystallization on the basis of advanced negotiations with the unions of employees and was ascertained on the basis of bipartite agreement however the contentions of the assessee was rejected by the AO and an amount of Rs. 264.00 Cr was added to the book profit in the assessment framed vide order dated 27.12.2017.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by holding and observing as under:

“Decision: I have carefully considered the written submissions of the appellant company and the findings of the AO in the assessment order. From the details submitted I find that the pay scale revision agreement between the IBA and Workmen Union was imminent as negotiations were in progress and it had reached an advanced stage. During the relevant year the negotiations had reached the final stages and an understanding was reached between IBA and the Workmen Union and Officers’ Associations on wage revision. Although the final agreement was executed in the month of May, 2010 but from the discussions and data available in public domain it is noted that the management of the Bank had reasonably worked out the best estimate for the pay scale revision. In view of the foregoing I therefore find substantial merit in the appellant’s claim that the provision for salary arrears of Rs.264 crores debited during the year was provided on reasonable basis and in the nature of an ascertained liability. Merely because the agreement was signed after the end of the financial year does not alter the fact that the liability of Rs.264 crores provided in the books was a best estimate computed on available data and reasonable basis.

It is noted that a similar issue was also involved in the case of Allahabad Bank Vs ACIT (supra) wherein also the assessee Bank, who was a member of the same Indian Bank Association, had provided for the salary arrears for the period 01.11.2002 to 31.03.2005 in the books of FY 2004-05. The AO however disallowed the claim holding that the agreement between IBA and the Workmen Union was signed in May 2005. The Hon’ble Tribunal allowed the deduction claimed in respect of salary arrears holding as follows:

“18. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the Salary and Wage Revision -Agreement entered into by the assessee-Bank with its Staff and Officers earlier had already/expired on 31.10.2002 and, therefore, the new revision., was due right from 01.11.2002. The liability on account of salary arrears thus had already accrued and the issue that is required to be considered is whether it was possible to ascertain or quantify the same with reasonable certainty in the year under consideration. In this regard, it is observed that the negotiations between Indian Banks Association and Employees’ Union had already taken place and the final understanding was almost reached during the year under consideration, which is evident from the fact that the final agreement for revision was entered into in the month of May, 2005 itself, i.e. immediately after the end of the year under consideration. The fact that the revision was finally settled with 13.25% in May, 2005 also goes to show that the provision made by the assessee for such revision at 13% in the year under consideration was a liability, which could be ascertained with reasonable certainty.

19. In support of the Revenue’s case on this issue, the id. D.R. has relied on -the decision of the Hyderabad Bench of this. Tribunal in the case of Andhra Pradesh Gramin Vikas Bank. It is, however, observed that the same is distinguishable on facts, inasmuch as, the liability on account of salary arrears in the said case had arisen as a result of proceedings held on 24.07.2010, i.e. much later than the closure of the relevant year under consideration and this being the undisputed position, the Tribunal held that the said liability having neither arisen nor discharged during the relevant year was not allowable as deduction.

20. *In the case of IBP Company Limited (supra), the fact situation involved, on the other hand, was similar to the case of the assessee inasmuch as, the Pay Scale and other benefits of the Officers- were due for revision w.e.f. 1st August, 1997 and the exercise to revise the same was already in progress. The basis of such revision was ultimately accepted by the Government and it was on this basis that the assessee-company had worked out the liability in respect of the same. In these facts and circumstances, it was held by the Coordinate Bench of this Tribunal that the provision for increase in salaries and wages made by the assessee on the basis of Bureau of Public Enterprise „Guidelines in assessment year 1989-90 was not for contingent liability and the reasonable provision for such liability was required to be taken into account for arriving at the commercial profit. In arriving at this conclusion, the Tribunal relied on the decision of the Hon'ble Supreme Court in the case of Bharat Earth Movers Limited -vs.- CIT reported in 245 ITR 428, wherein it was held by the Hon'ble Apex Court that if a business liability has definitely arisen in the accounting year, the deduction should be allowed, although the liability may have to be quantified and discharged at a future date. It was held that what should be certain is the incurring of the liability which should be capable of being estimated with reasonable certainty though the actual quantification may not be possible. It was held that if these requirements are satisfied, the liability is not a contingent one but it is a liability in present. In our opinion, the ratio of these judicial pronouncements is dearly applicable to the facts of the present case and respectfully following the same, we uphold the impugned " order of the ld. CIT(Appeals) allowing the claim of the assessee for deduction on account of provision for salary arrears. Grounds No. 1 & 2 of the Revenue's appeal are accordingly dismissed."*

On perusal of the above it is noted that in the above appeal of Allahabad Bank, which pertained to assessment year 05-06, the wage revision agreement was signed in May-2005. In the impugned appeal also the agreement has been signed in May-2010-i.e. after the end of the financial year.

The Hon'ble tribunal has held that such provision made-with reasonable certainty would not be contingent liability. Therefore, respectfully following the judgment of the Hon'ble ITAT, Kolkata in view of the material available on record; I hold that the provision for salary arrears being provided on reasonable and best estimate basis was deductible from the business profits. The Ld. AO is therefore directed to delete the impugned disallowance of Rs. 264 crores. This ground of appeal of the appellant is therefore allowed."

5. The Ld. D.R strongly relied on the order of AO by submitting that the liability crystallized in the next financial year as the agreement for wage revisions was signed in the next year and therefore the order of the AO need to be restored.

6. The Ld. Counsel for the assessee, on the other hand, submitted before us that the issue is squarely covered by the decisions of Co-ordinate Benches in the several decisions under similar facts and circumstances which were cited before us during the hearing and therefore following the ratio laid down in the said decision the appeal of the revenue may kindly be dismissed by upholding the order of Ld. CIT(A).

7. After hearing the rival parties and perusing the material on record, we find that the assessee has provided for by way of provisions for wages revision amounting to Rs. 264.00 crores in respect of which the negotiations had already happened between Indian Bank Associations and the bank and wage revision was finally signed on 27.04.2010. According to the assessee, the provisions have been created and provided in the books of accounts on the basis of negotiations reached between Indian Bank Associations and Reserve Bank of India and therefore there was a reasonable concrete basis for ascertaining the provisions for liability and thus have to be allowed as expenses pertaining to the current assessment year. We note that the similar issue has been decided by the Co-ordinate Bench of ITAT, Kolkata in the case of Bangiya Gramin Vikash Bank vs. CIT in ITA No. 877/Kol/201 for AY 2010-11 wherein the wages revision agreement/settlement was signed on 27.04.2010 and entered into by a management of 46 banks represented by the All India Bank Employees Association, National Confederation of Bank Employees, Bank employees 'Federation of India, Indian National Bank Employees'; Federation and National Organization of Bank Workers and the provisions created on the basis of said memorandum of settlement was allowed by the Co-ordinate Bench. Similarly the said decision by the Co-ordinate Bench has been upheld by the Hon'ble Calcutta High Court in IA No:GA/1/2018 (OLD No. GA/595/2018) in ITAT/60/2018 in the case of PCIT vs. Bangiya Gramin Vikash Bank in IA No:GA/2/2018 (OLD No. GA/596/2018) in ITAT/60/2018 dated 23.11.2021. Similarly the issue is also covered by the decision of Co-ordinate Bench in the case of Allahabad Bank vs. ACIT in ITA No. 2175/Kol/2009 for AY 2005-06 wherein also the wages revision signed after the relevant financial year has ended wherein the provisions for wages revision was charged/provided. In this case also, the negotiations were going between the Union of Staff and Officers of Banks and the Bank and finally the agreement was signed in the subsequent year. The Co-ordinate Bench has taken note that the estimate of provisions charged to the profit and loss account were provided on the basis of the concrete negotiations which have happened

during the financial year and finally materialized by signing the agreement of wages revision and thus allowed the issue in favour of the assessee.

8. We note that facts of the above cases as decided by the co-ordinate Benches are materially same to the case of the assessee wherein also the negotiation for wages revision was done between IBA and Workmen Union which was finally signed in the month of April, 2010 after closing of financial year whereas the substantial and concrete negotiations had already happened during the year and thus the assessee provided the arrears of salary amounting to Rs. 264.00 crores on reasonable and concrete basis. The Ld. CIT(A) also followed the decision of Co-ordinate Bench in the case of Allahabad Bank (supra) while allowing the appeal of the assessee. Therefore we do not find any infirmity in the order of Id CIT(A). Accordingly, the revenue's appeal is dismissed by upholding the order of Ld. CIT(A).

9. At the time of hearing, the Id. Counsel for the assessee did not press the issue raised in the cross-objection and therefore the cross-objection of the assessee is dismissed as not pressed.

10. In the result, the appeal of the revenue is dismissed and the cross-objection of the assessee is also dismissed as not pressed.

Order is pronounced in the open court on 29th September, 2022

Sd/-
(Sanjay Garg /संजय गर्ग)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 29th September, 2022

SB, Sr. PS

*I.T.A. No.992/Kol/2019
CO No. 6/Kol/2022
Assessment Year: 2010-11
M/s United Bank of India*

Copy of the order forwarded to:

1. Appellant- ACIT, Circle-1, LTU, Kolkata
2. Respondent – M/s United Bank of India, 16, Old Court House Street,
Dalhousie, Kolkata-700001
3. Ld. CIT(A)- 23, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata