

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 2580 & 2581/Kol/2019
Assessment Years: 2007-08 & 2008-09

Bangiya Gramin Vikash Bank NH-34, BMC House P.O. Chuanpur, Berhampore Murshidabad - 742101 [PAN : AAALB0462D]	Vs	Asstt. Commissioner of Income Tax, Circle - 42, Murshidabad
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Soumitra Choudhury & Shri Pranabesh Sarkar, Advocate
Revenue by :	Shri Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 02/03/2023
घोषणा की तारीख /Date of Pronouncement: 15/03/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeals are directed at the instance of the assessee against the separate orders of the learned Commissioner of Income Tax (Appeals) - 12, Kolkata (hereinafter the "ld. CIT(A)") even dated 26/09/2019, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), for Assessment Years 2007-08 & 2008-09.

2. The assessee has raised the following grounds of appeal for the Assessment Year 2007-08:-

"1. For that on the facts of the case, the order passed by the Ld. CIT(A)-12, Kolkata is completely arbitrary, unjustified and illegal and without any jurisdiction.

2. For that on the facts of the case, the Ld. C.I.T. (A) was wrong in not considering the merit of the case, therefore, the order passed by the Ld. C.I.T. (A) is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, the Ld. C.I.T. (A) was wrong in not considering the facts that in reopening the assessment u/s. 148 (r.w.s. 147)

which is mere change of opinion and against requirement of law, as such his finding is completely arbitrary, unjustified and illegal.

4. For that on the facts of the case, the A.O. was wrong in treating the status as A.O.P. which is confirmed by the Ld. CIT(A), therefore, the order should be quashed.

5. For that on the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the disallowance of carry forward loss set off of brought forward losses amounting to Rs.3,52,68,36,000/- which is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs. 1,52,02,200/- under head "provision for fraud" which is completely arbitrary, unjustified and illegal.

7. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.99,00,000/- as provision for Gratuity which is completely arbitrary, unjustified and illegal.

8. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition Rs.6,000/- from the head 'Contingencies' which is completely arbitrary, unjustified and illegal.

9. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.5,000/- as expenses for penalty which is allowable expenditure u/s. 37, therefore, the order of the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

10. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.

The assessee has raised the following grounds of appeal for the Assessment Year 2008-09:-

"1. For that on the facts of the case, the order passed by the Ld. CIT(A)-12, Kolkata is completely arbitrary, unjustified and illegal and without any jurisdiction.

2. For that on the facts of the case, the Ld. C.I.T. (A) was wrong in not considering the merit of the case, therefore, the order passed by the Ld. C.I.T. (A) is completely arbitrary, unjustified and illegal.

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3. For that on the facts of the case, the A.O. was wrong in treating the status as A.O.P. which is confirmed by the Ld. CIT(A), therefore, the order should be quashed.

4. For that on the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the disallowance of carry forward loss set off of brought forward losses amounting to Rs.2,05,51,01,000/- which is completely arbitrary, unjustified and illegal.

5. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.8,00,000/- under head "provision for fraud" which is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.2,00,000/- under head "provision for dacoity" which is completely arbitrary, unjustified and illegal.

7. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.49,000/- as expenses for penalty which is allowable expenditure u/s. 37, therefore, the order of the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

8. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition Rs.4,000/- from the head 'Provision for Contingencies' which is completely arbitrary, unjustified and illegal.

9. For that on the facts of the case, Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.384,000/- from the head 'Provision for FBT' which is completely arbitrary, unjustified and illegal.

10. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal."

3. We first take up the appeal for Assessment Year 2007-08. Brief facts of the case are that the assessee is a Regional Rural Bank and declared loss of Rs.22,65,00,000/- in the return filed for Assessment Year 2007-08 on 31/10/2007 and claimed brought forward loss to be set off at Rs.352,68,36,000/-. Return was processed u/s 143(1) of the Act on 07/03/2008. Based on an information about the amalgamation of five banks

with the assessee bank and claiming set off of brought forward loss, the case of the assessee was reopened by issuing notice u/s 148 of the Act. Reasons for initiation of proceedings was provided to the assessee and during the course of the reassessment proceedings, the claim of set off of brought forward loss was examined. The Id. Assessing Officer was of the view that provisions of Section 72AA of the Act applies to the banking companies and do not apply to Regional Rural Banks and further provisions of Section 72AB of the Act, through which brought forward of loss on account of amalgamation of cooperative societies came into effect from 1st April, 2008. Therefore, the assessee is not eligible to claim the brought forward loss of five banks merged with it. Further, the Id. Assessing Officer made 1/5th disallowance of the provision for fraud and also disallowed provisions for gratuity at Rs.99,00,000/- for not being paid during the year. With other minor disallowances the loss was assessed at Rs.20,13,86,800/-.

3.1. Aggrieved the assessee preferred appeal before the Id. CIT(A) but failed to succeed. The Id. CIT(A) observed that benefit of set off u/s 72AB of the Act is *w.e.f.* 1st April, 2008, and, therefore, not allowable for Assessment Year 2007-08. Reopening proceedings were also held to be valid and for the remaining disallowances assessee failed to get any relief.

4. Aggrieved the assessee is now in appeal before the Tribunal.

5. The Id. Counsel for the assessee, reiterated the submissions made before the Id. CIT(A), placed in the paper book from pages 1 to 13. Reference also made to the gazette notification dt. 21/02/2007 issued by Ministry of Finance as well as notifications issued by Reserve Bank of India in order to prove that assessee is eligible for the set off and carry forward of accumulated loss of erstwhile five rural Banks merged with it. As far as the other disallowances are concerned it is submitted that they are merely ad

hoc in nature and are not in accordance with law. Reliance placed on the following decisions:

- *Catholic Syrian Bank Ltd. vs. CIT reported in 343 ITR P-270 (SC)*
- *Allahabad Bak vs. DCIT reported in 137 ITD P-290*
- *United Bank of India vs. ACIT in ITA No. 75/Kol/2018; order dt. 28/02/2020*

5.1. On the other hand, the ld. D/R vehemently argued supporting the orders of both the lower authorities.

6. We have heard the rival contentions and perused the material on record placed before us.

7. Ground Nos. 1, 2 & 3, raised by the assessee, challenge the reopening of assessment proceedings by issuance of notice u/s 148 of the Act. We notice that the return of the assessee was processed u/s 143(1) of the Act. There was specific information of amalgamation of erstwhile five Rural Banks with the assessee bank. Proper reasons were recorded before selecting the case for scrutiny. Based on this specific information, reopening was initiated which, in our view is valid. Thus, ld. CIT(A) has rightly held the re-assessment proceedings as valid. Hence, no interference is called for. Accordingly, Ground Nos. 1, 2 & 3, raised by the assessee are dismissed.

8. Through Ground No. 4, validity of the assessment order is challenged stating that ld. Assessing Officer was wrong in treating the status as A.O.P. We fail to find any merit in this ground because in the assessment order also the ld. Assessing Officer has mentioned the status as Regional Rural Bank and since no other submissions were made on this ground before us, we fail to find any merit in this ground raised by the assessee and the same is accordingly dismissed.

9. Ground No. 5 relates to disallowance of carry forward loss/set off of brought forward losses amounting to Rs.352,68,36,000/-. We observe that

five Regional Rural Banks, namely, Gaur Gramin Bank, Mallabhum Gramin Bank, Murshidabad Gramin Bank, Nadia Gramin Bank and Sagar Gramin Bank, which were existing up to 20/02/2007, were merged with the assessee i.e., Bangiya Gramin Vikash Bank, *w.e.f.* 21/02/2007, by the Gazette Notification No. S.O. 259(E), dt. 21/02/2007 issued by the Ministry of Finance. Before us there is no dispute the above stated five rural banks were merged with the assessee bank and similarly there is no dispute to the quantum of brought forward losses which were appearing in the books of above stated five rural banks as on the date of merger. The issue for consideration is whether the assessee is eligible to claim brought forward/set off of the accumulated losses of the five rural banks. Both the lower authorities have stated that the assessee is a cooperative society and provisions for claim of such type of losses on account of amalgamation is provided u/s 72AB of the Act, which was brought in by the Finance Act, 2007 and effective from 01/04/2008. The Id. Assessing Officer denied the benefit of set off u/s 72AA of the Act by observing that the assessee is not a banking company. For better understanding of the issue we need to go through the provisions of Section 72AA of the Act, which reads as under:-

“72AA. Notwithstanding anything contained in sub-clauses (i) to (iii) of clause (1B) of [section 2](#) or [section 72A](#), where there has been an amalgamation of—

- (i) one or more banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 (10 of 1949)⁹⁸; or*
- (ii) one or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) or both, as the case may be; or*
- (iii) one or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central*

Government under section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972),
the accumulated loss and the unabsorbed depreciation of such banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies shall be deemed to be the loss or, as the case may be, allowance for depreciation of such banking institution or amalgamated corresponding new bank or amalgamated Government company for the previous year in which the scheme of amalgamation was brought into force and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

Explanation. – For the purposes of this section, –

- (i) "accumulated loss" means so much of the loss of the amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies, would have been entitled to carry forward and set off under the provisions of [section 72](#), if the amalgamation had not taken place;
- (ii) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)⁹⁹;
- (iii) "banking institution" shall have the meaning assigned to it in sub-section (15) of section 45 of the Banking Regulation Act, 1949 (10 of 1949)⁹⁹;
- (iv) "corresponding new bank" shall have the meaning assigned to it in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or, as the case may be, clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);
- (v) "general insurance business" shall have the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972)⁹⁹;
- (vi) "Government company" means a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013)⁹⁹, which is engaged in the general insurance business and which has come into existence by operation of section 4 or section 5 or section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);
- (vii) "unabsorbed depreciation" means so much of the allowance for depreciation of the amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies which remains to be allowed and which would have been allowed to such banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies, if the amalgamation had not taken place."

9.1. In the above provision, Clause (i) states that where there has been an amalgamation of one or more banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 the accumulated loss and the unabsorbed depreciation of such banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies shall be deemed to be the loss or, as the case may be, allowance for depreciation of such banking institution or amalgamated corresponding new bank or amalgamated Government company for the previous year in which the scheme of amalgamation was brought into force and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

9.2. Further we observe that Section 45(7) of the Banking Regulation Act, 1949, provides that, the scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modifications or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf: Provided that different dates may be specified for different provisions of the scheme. Also, a banking company means any company which transacts the business of banking in India. We find that the said merger of five rural banks with the assessee bank has been carried out under the directions of the Central Government after consultation with the National Bank for Agriculture and Rural Development (NABARD), Govt. of West Bengal and United Bank of India. This notification came into force on 21/02/2007. Another notification has been issued by the Reserve Bank of India (RBI) on 21/01/2010 bearing no. RPCD. CO. RRB.No.

7812A/03.05.100/2009-10, which directs the inclusion of the assessee bank in the second schedule of the RBI Act, 1934. On going through all these details as well as the provisions of Banking Regulation Act as well as provisions of section 72AA of the Act, we are of the considered view that case of the assessee falls u/s 72AA of the Act since it is a banking company doing the business of banking and the amalgamation of the five rural banks has been brought into force under the directions of Central Government vide the notification *supra* and since the quantum of loss is not in dispute and also the assessee company having filed the return before the due date prescribed u/s 139(1) of the Act, the Id. Assessing Officer erred in not allowing the claim of accumulated brought forward loss of the five rural banks which were merged with the assessee bank during the Financial Year 2006-07 and, therefore, the assessee has rightly claimed the set off of brought forward losses to the tune of Rs.352,68,36,000/- in the income tax return furnished for Assessment Year 2007-08. Accordingly, Ground No. 5, raised by the assessee is allowed.

10. As regards Ground No. 6, which relates to disallowance of provision for fraud, we notice that the assessee has claimed the provision for fraud at Rs.7,60,11,000/- and Id. Assessing Officer without mentioning any reason and doubting the type of expenditure has observed that the total expenditure for the year is Rs.16,18,68,000/- out of which 1/5th is to be disallowed i.e., Rs.1,52,02,200/-. This finding of the Id. Assessing Officer has been affirmed by the Id. CIT(A). We, however, failed to find any merit in this finding since the same is merely an ad hoc disallowance without giving any reason for the said disallowance and ignoring the fact that this is a regular feature of the assessee bank to make provision for fraud and the actual expenditure incurred are cleared from the balance appearing in the

account of provision for fraud. Thus, this finding of the Id. CIT(A) is set aside and the ground raised by the assessee is allowed. Accordingly, Ground No. 6 is allowed.

11. Ground No. 7 relates to disallowance on payment of gratuity at Rs.99,00,000/-. Both the lower authorities have denied the claim stating that the assessee has not made any payment. We, however, fail to find any merit in this finding since the payment of gratuity is an ascertained liability and it has been held time and again and also clarified that the Central Board of Direct Taxes (CBDT) that provisions for payment of gratuity that has become payable during the previous year is allowable. Our view is further fortified by the decision of this Tribunal in the case of *DCIT, CIR-I, KOLKATA, Kolkata v. M/s Reliance Jute Mills International Ltd., Kolkata. ITA 897/KOL/2014; Assessment Year 2008-2009*. Accordingly, Ground No. 7 raised by the assessee is allowed.

12. Ground No. 8 is disallowance of expenditure of Rs.6,000/- for provision of contingencies. This being an adhoc disallowance and ignoring the fact that banking companies are required to make provisions for true and fair financials of the bank, ought to be allowed as an expenditure. Hence, we set aside the findings of the Id. CIT(A) on this issue and allow this ground. Accordingly, Ground No.8 of the assessee is allowed.

13. Ground No. 9 relates to disallowance of expenditure of Rs.5,000/- treated by the Id. Assessing Officer as penalty in nature. We, however, for lack of information about the nature of penalty and whether it does not fall under explanation (1) to Section 37 of the Act, confirm the disallowance and dismiss the ground raised by the assessee. Accordingly, Ground No. 9 raised by the assessee is dismissed.

14. Ground No. 10 is general in nature.

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15. In the result, appeal of the assessee for Assessment Year 2007-08 is partly allowed.

16. Now, we take the assessee appeal for Assessment Year 2008-09.

17. Ground Nos. 1 & 2 are general in nature and need no adjudication.

18. Ground No. 3 is similar to Ground No. 4 raised for Assessment Year 2007-08 and we taking consistent view, dismiss this Ground.

19. Ground No. 4 relates to disallowance of carry forward loss/brought forward losses amounting to Rs.205,51,01,000/-. Since this issue has already been dealt by us while dealing Ground No. 5 for Assessment Year 2007-08, and as we have allowed the claim under the provisions of Section 72AA of the Act, we are inclined to hold that the assessee is eligible to set off of brought forward losses of the erstwhile five rural banks. Thus, Ground No. 4 is allowed.

20. Ground No. 5 relates to disallowance of provision for fraud of Rs.8,00,000/-. This being an ad hoc disallowance and as we have dealt the identical issue while adjudicating Ground No. 6 for Assessment Year 2007-08, we taking a consistent view, delete the said disallowance and allow this ground of the assessee.

21. Ground No. 6 relates to disallowance for provision for dacoity at Rs. 2,00,000/-. The ld. Assessing Officer failed to make any specific finding on this issue and has just disallowed the claim treating it as a provision. However, looking into the fact that the assessee company has claimed to have incurred actual expenditure in case of fraud and dacoity as and when it happens making provisions for such expenditure should not be disallowed. Thus Ground No. 6 is allowed.

22. Ground No. 7 is regarding disallowance of expenditure of Rs.49,000/- being penalty in nature. In absence of any specific details about

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the nature of penalty, we fail to find any merit in this ground raised by the assessee. Accordingly, Ground No. 7 is dismissed.

23. Ground No. 8 is disallowance of expenditure of Rs.4,000/- for provision of contingencies. This again being an ad hoc disallowance and ignoring the fact that banking companies are required to make provisions for true and fair financials of the bank, ought to be allowed as an expenditure. Hence, we set aside the findings of the Id. CIT(A) and allow this ground. Accordingly, Ground No.8 of the assessee is allowed.

24. In the result, appeal of the assessee for Assessment Year 2008-09 is partly allowed.

25. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the Court on 15th March, 2023 at Kolkata.

Sd//

**(RAJPAL YADAV)
VICE PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 15/03/2023

SP SP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल / Guard file.

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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata