

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM**

आयकर अपील सं/ I.T.A. No.1052/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2017-18)

State Bank of India (as a successor to Bhartiya Mahila Bank Limited) Financial Reporting & Taxation 3 <sup>rd</sup> Floor, Corporation Centre Madam Cama Road, Nariman Point, Mumbai-400021.	<b>बनाम/</b> Vs.	PCIT-2, Mumbai Room No. 344, Aayakar Bhavan, M. K. Road, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS8577K</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ketan Ved
Revenue by:	Smt. Nilu Jaggi (DR)

सुनवाई की तारीख / Date of Hearing: 25/01/2023

घोषणा की तारीख /Date of Pronouncement: 21/04/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee bank against the order of the Ld. Principal Commissioner of Income Tax-02, Mumbai passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 26.03.2022 for assessment year 2017-18.

2. At the outset, the Ld. AR of the assessee drew our attention to the additional ground of appeal preferred by the assessee wherein it has challenged the validity of AO passing the order in the name of erstwhile Bhartiya Mahila Bank Limited (hereinafter "BMBL"), even though, it was merged with M/s. State Bank of India w.e.f. 01.04.2017 (vide notification dated 22.02.2017). In this regard, it is noted that from 01.04.2017, Bhartiya Mahila Bank Ltd got merged/amalgamated



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with State Bank of India which is an incident happening in subsequent AY 2018-19, but the AO was aware of this amalgamation from a perusal of the assessment order dated 05.12.2019 (i.e. after the amalgamation w.e.f. 01.04.2017). The Ld AR assails the action of AO to have framed the assessment order in the name of M/s. Bhartiya Mahila Bank Ltd. instead of State Bank of India. According to Ld. AR, the AO despite knowing about the fact of amalgamation, he erred in framing the assessment order on 05.12.2019 in the name of M/s. Bhartiya Mahila Bank Ltd , which action of AO is bad in law because Bhartiya Mahila Bank Ltd is not existing in the eyes of law. However, we note that AO has framed the assessment titled **Bhartiya Mahila Bank Ltd; c/o State Bank of India**, therefore, the name of the amalgamated entity i.e. State Bank of India is found to be mentioned at the Title/Caption itself. Moreover we note that AO has referred **State Bank of India**, as *representative assessee* and statutory notice was issued to the successor viz SBI which fact is discernable from the acknowledgement made by him at first page of assessment order dated 05.12.2019 wherein AO observes “*The phrase “assessee bank” in this order shall refer to the erstwhile M/s. Bharatiya Mahila Bank Limited as it stood before amalgamation with M/s. state Bank of India. M/s. State Bank of India shall be referred to as the representative assessee bank for the purpose of this order. Consequently, notices u/s 142(1) were issued to the successor*”. So taking in to consideration the aforesaid action of AO, the legal issue raised by assessee regarding passing of order in name of amalgamated entity on the facts and



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circumstance as noted is rejected and according to us, the case laws cited are distinguishable and so, we proceed to deal with the next legal issue regarding jurisdiction of Ld PCIT.

3. Next legal issue raised by the assessee is against the action of the Ld. PCIT exercising revisional jurisdiction u/s 263 of the Act.

4. Brief facts regarding this issue is that the Ld. PCIT notes that the assessee company had filed the return of income on 30.10.2017 declaring total income of Rs.14,36,43,872/-. Pursuant to the order no. GSR 158(E) dated 22.02.2017, the erstwhile Bhartiya Mahila Bank Limited (in short BMBL) has been merged/amalgamated with the present assessee M/s. State Bank of India w.e.f. 01.04.2017. And assessment was completed on 05.12.2019 at assessed income of Rs.17,06,40,460/-. The Ld. PCIT observes that while he was going through the records, he found that the assessee has claimed an amount of Rs.14,60,92,479/- towards “CBS Implementation Fees” under the head of other Expenses and also noted that in AY. 2015-16 the assessee has made similar claim of Rs.14,97,10,844/- towards CBS implementation fees. The Ld. PCIT acknowledged that Scheduled 18-Notes to the Accounts, and under other disclosures this claim has been disclosed by the assessee. And thereafter, he notes that the AO had called for details of expenses in the notice u/s 142(1) of the Act vide letter dated 04.09.2019 as under: -

“Furnish explanation in respect of such item of expenses and receipts appearing in trading account and profit & loss account, (either by way of excess or reduction) in comparison to last year.”



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5. Pursuant thereto, the assessee had replied vide letter dated 20.09.2019 and requested the AO to refer to Schedule-14 regarding other income and Schedule-16 and operating expenses for comparative analysis of the Annual Report for FY. 2016-17. And the AO thereafter allowed the claim of expenses (CBS fees). So the Ld. PCIT taking note of the aforesaid facts observes and points out the following facts/error.

“On verification of the submission made by the assessee, it is seen from Schedule 16 under Operating Expenses of the P/L account that the CBS expense has reduced in FY. 2015-16 from Rs.21.60 cr to Rs.14.60 cr in FY. 2016-17. The AO has accepted the claim without raising any further queries. He has failed to verify-

1. Whether deduction for an amount of Rs.14,97,10,844/- was allowable considering the observations in the Notes to Account as above, which shows that this was only a provision and not an ascertained liability; &
2. Whether the aforesaid expenses were capital in nature, in which case it could not have been allowed as deduction.”

6. Thereafter, the Ld. PCIT held that the AO failed to have conducted necessary inquiries while framing the assessment order dated 05.12.2019 which omission on the part of AO makes the assessment order erroneous and prejudicial to the interest of the revenue u/s 263 of the Act. And he gave show cause notice to the assessee as to why the ibid amount of Rs.14,60,92,479/- claimed as expenses towards “CBS Implementation Fees” under the head “other expenses” is required to be allowable. Pursuant to the show cause notice, the assessee replied that assessee bank had entered into service



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level agreement for operating lease with Fidelity National Information Services, Inc. (FIS) of Rs.14,60,92,479/- and the same was expenditure incurred for CBS implementation (fees) which has been debited in the profit and loss account, as per the consistent policy adopted by the Bank and duly reflected under the sub-head “other expenses” forming part of Schedule-18 “Operating Expenses” of the Annual Report. It was also brought to the notice of the Ld PCIT that the exact nature of the said expenses was also disclosed separately as a part of note-3 of the “Other Disclosures of the Annual Report” which is as under: -

“3 Core Banking Solution

Bank has entered into service level agreement for operating lease with FIS on 19 November 2013 for all IT solution Including Network, Hardware, Software and Support Services. As per the agreement, ownership and operation of all facilities, network connectivity, network devices, hardware, software, Storage devices, system software and application software would be with FIS. Agreement is valid for a period of 7 years and can be extended further period of 4 (four years). This is a cancellable lease. Bank has recognized Rs. 1460.92 Lacs (Previous Year Rs. 2165.88 Lacs) as CBS implementation Fee in Profit and loss account during the FY 2016-17.

The Bank has Implemented the Application Service Provider (ASP) model of the core banking Solution by a third-party IT vendor, Fidelity National Information Services, Inc. (FIS). Florida, USA which is providing Core banking solutions Including peripheral applications to the bank and all its branches. In accordance with the terms and conditions agreed upon, the IT vendor is required to supply the entire hardware



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(including ATM) and software requirements to the bank and branches for the next seven years. Accordingly, the bank does not own any Hardware/ATM/software relating to its IT requirements as at the year end. The Bank has finalised the Service Level Agreement with FIS. Accordingly, in the absence of any invoice being raised by FIS for the services provided by it till the year end, an estimated provision of Rs. 5.25 crores towards the variable and fixed fee has been provided as at the year end based on the terms and conditions outlined in the SLA.”

7. Therefore, in the light of the aforesaid disclosure, the assessee claimed before the Ld. PCIT that the contract was for a period of seven (7) years from November, 2013, and deduction of Rs.14,60,92,479/- towards CBS implementation fees was debited to the profit and loss account following the consistent accounting principles and the same was correctly claimed deductible in the tax return. Further, according to the assessee, the same has been examined by the AO and allowed by the AO while passing the assessment order dated 05.12.2019. According to the assessee, the action of the AO allowing the expenditure is a plausible view taken after inquiry during the assessment proceedings. According to the assessee, the AO had specifically vide his notice dated 04.09.2019 (Point no. 17 of the notice) called for the details in respect of items of income and expense appearing in the profit and loss account (either by way of increase or reduction) as compared to the last year. In response to this query, BMBL/assessee had vide its letter dated 20.09.2019 (Point no. 18 of the letter) requested the AO to refer to the annual report for



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comparison of items of receipt expenses of the current year vis-à-vis the previous year. (which fact has been acknowledged/recorded by Ld. PCIT himself in his show cause notice). And according to the assessee, the decision of the AO to allow the expenses is in line with that of the decision/ratio of this Tribunal (Bangalore) in the case of Kotak Mahindra Bank Ltd. (ITA. No. 748/Bang/2011 dated 28.12.2021) wherein it has been held that expenditure incurred by an assessee, engaged in banking business, on core banking software is revenue in nature as it only facilitated the bank to carry on its business more profitably without touching the profit-making apparatus (i.e. receiving deposits and lending/investing them for profits). Thus, it was contented that the view adopted by the AO is clearly a possible view, and hence, the impugned action of AO cannot be said to be erroneous and/or prejudicial to the interest of the revenue. Moreover, it was pointed out by the assessee that tax auditor has also not reported this expense under the clause for capital expenditure or contingent in nature, which further shows that the expenses are revenue in nature, incurred towards an ascertained liability in terms of the valid agreement and hence, clearly allowable under section 37(1) of the Act. And the assessee also placed a copy of, the agreement (service agreement) between the assessee and FIS and the salient features of the agreement was also brought to the notice of the Ld. PCIT which has been reproduced from page 13 to 15 of impugned order. It was also again brought to the notice of the Ld. PCIT that as per the service level agreement (in short “SLA”) entered into between Bank and FIS, services were provided by



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FIS to BMBL during the year under consideration and the expenditure incurred by the assessee is for an ascertained liability, based on the event already occurred (i.e. service being rendered by FSI) and not for any contingent event. And according to assessee, the following services were rendered FSI: -

- Deployment and maintenance of data centres with scalable hardware, software, network and security equipment tools;
- Provide a robust and flexible universal banking based CBS, application and software for all delivery channels of the Bank;
- Implementation and Operationalization of an IT policy and IT security policy framework, Obtaining all hardware, software, customization and solutions required to operate, manage and operationalize the above.

**8.** Thus, the assessee claimed before the Ld. PCIT that expenditure/fees for CBS is ascertained liability and not contingent. And therefore, the expenditure is allowable expenditure. However, the Ld. PCIT did not agree and he passed the impugned order by observing as under: -

“5.1 The assessee’s submission in this regard is perused but not found to be tenable. The assessee has claimed deduction of Rs.14,60,92,479/- in profit & loss account against CBS expenses. From the submission of the bank it is clear that the bank has entered into an agreement with M/s FIS Payment Solutions and Services India Pvt Ltd (FIS) in November, 2013, in order to obtain Information Technology Infrastructure, including Core Banking Solutions (CBS). As stated, considering that the contract was for a period of 7 years, a deduction of Rs.



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14,60,92,479/- towards CBS implementation fees was debited to the Profit & Loss account and claimed as deduction.

5.2. In Para 5 of the submission dated 16/03/2022, it is mentioned that assessee has made provision for CBS implementation and fees on estimation basis in absence of any invoices raised by the FIS. For claiming the aforesaid expenditure, the onus was on the assessee to prove that actual services were rendered during the year against which payments were made. In this case, the relevant invoices, showing the actual amount claimed and paid during the year, could have served as proof of actual services rendered. But the assessee, even during proceedings u/s 263 of the Act, has not referred to any invoices having been raised by FIS, and has not been able to establish that services were actually rendered, for which a particular amount was payable or was required to be paid during the year.

5.3 This raises another aspect regarding whether such expenditure claimed is ascertained or contingent expenditure. The assessee has only stated that pursuant to a Service Level Agreement (SLA) with FIS, valid services were rendered by the latter as a part of the Master Agreement for implementation of Integrated Information Technology Infrastructure and, on the basis of the same, expenditure of Rs.14,60,92,479/- was booked towards CBS implementation fees. The assessee has further mentioned that no invoices were raised by FIS for the services provided by it till the year end, and that in the absence of any invoice an estimated provision of Rs.5.2 Crore towards the variable and fixed fee was provided as provided in the year end based on the terms and conditions provided in the SLA. The contract, as stated; was for a period of seven years from



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November, 2013, for which a deduction of Rs.14,60,92,479/- was claimed as per consistent system of accounting followed by the assessee. It can be seen from this that the expenses claimed as above were not ascertained liabilities during the year under consideration, but were purely contingent in nature and not, therefore, eligible to be claimed as deduction.

5.4 Assessee has submitted copy of agreement between assessee and M/s FIS Payment Solutions and Services India Pvt Ltd (FIS) wherein it is mentioned that FIS will be providing network and other equipment and software related to this. On the face of it, the expenses incurred would seem to be capital in nature. Therefore, Assessing Officer, during fresh assessment proceedings, would be required to verify the clauses of the impugned agreement and other relevant details in order to arrive at a conclusion regarding the nature of the expenditure claimed.

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6.1 The submission as above has been considered. The details called for by the Assessing Officer were only general details pertaining to increase/decrease in income/expenditure during the relevant year when compared to the previous year. No specific queries were raised regarding any particular item of expenditure, and the assessee was not required to prove or substantiate its claim to any expense claimed in the Profit and Loss account for the relevant year. In this backdrop, there is no question of any enquiry having been done by the Assessing Officer on the focused issue of allowability of CBS expenses. More important, the assessee, far from making any detailed reply in this matter, had merely mentioned that information regarding expenses find place in the Audit Note. The assessee's claim that mere glance through information contained in the contained in the Audit



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Note constitutes enquiry by the Assessing Officer, cannot at all be acceptable.”

**9.** Thereafter, the Ld. PCIT was pleased to set aside the assessment order passed by the AO dated 05.12.2019 and directed AO to conduct enquiry keeping in mind the observation made by him (supra) to arrive at the correct conclusion as per law. Aggrieved by the aforesaid action of the Ld. PCIT, the assessee is before us.

**10.** We have heard both the parties and perused the records. Since the assessee has assailed the validity of the revisional proceedings invoked by the Ld. PCIT u/s 263 of the Act, let us revisit the settled position of law on the same. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in [Malabar Industries Ltd. vs. CIT](#) [2000] 243 ITR 83(SC) wherein their Lordship have held that twin conditions should be satisfied before jurisdiction u/s 263 of the Act is exercised by the ld. CIT. The twin conditions which need to be satisfied are that (i) the order of the Assessing Officer must be erroneous and (ii) as a consequence of passing an erroneous order, prejudice is caused to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous i.e. (i) if the Assessing Officer's order was passed on assumption of incorrect facts; or assumption of incorrect law; (ii) Assessing Officer's order is in violation of the principles of natural justice; (iii) if the AO's order is passed without application of mind; or (iv) if the AO has not investigated the issue before him. In the circumstances enumerated above the order passed by the Assessing Officer can be termed as erroneous for the purpose of section 263 of



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the Act. It has to be borne in mind that even if the Ld. PCIT/CIT finds that the assessment order is erroneous, he cannot invoke the revisional jurisdiction u/s 263 of the Act without satisfying the requirement of second limb [*i.e. the Ld. PCIT/CIT has to show that due to the erroneous assessment order, prejudice has been caused to the interest of revenue*]. This essential requirement of law needs to be satisfied before the Ld PCIT/CIT invokes revisional jurisdiction. This proposition of law has been laid down by the Hon'ble Supreme Court in the case of Malabar Industries (supra) wherein their Lordship's held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an "erroneous" order passed by the Assessing Officer. Further the Hon'ble Supreme Court held '*that for invoking powers conferred by section 263 of the Act, the CIT should not only show that the AO's order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue*'. At this juncture, one has to understand what is prejudicial to the interest of revenue. Their Lordship explaining about this in the said judgment (Malabar supra) held *that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue*. It was further held that when the Assessing Officer adopts one of the course permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the Ld. CIT does not agree, it cannot be treated as an order prejudicial to the



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interest of the revenue unless the view taken by the Assessing Officer is **unsustainable in law**.

**11.** Keeping the aforesaid legal principle in mind, when we adjudicate the assessee's challenge against the action of the Ld. PCIT to have invoked the revisional jurisdiction u/s 263 of the Act, we note that the Ld. PCIT has alleged no enquiry into the allowability of the claim of deduction of Rs.14,60,92,479/- in the profit and loss account against CBS expenses. When the Ld. PCIT confronted the assessee about this issue, the assessee claimed that the AO had enquired about this claim and the assessee had replied to the same. So according to assessee, on this issue, enquiry was carried out by the AO and based on assessee's reply, no adverse view was taken by AO, who allowed the claim, which is a plausible view [*refer decision/ratio of this Tribunal (Bangalore) in the case of Kotak Mahindra Bank Ltd supra*]. Let us examine this contention of assessee bank. In this regard we note that the AO vide notice dated 04.09.2019 had asked the following question:

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“17 Please furnish explanation in respect of such item of expenses and receipts appearing in trading account and profit & loss account. (either by way of excess or reduction) in comparison to last. The comparative details may be furnished in the following format:

Head of expenses	Expenses during the year	Expenses during the year as % of turnover	Expenses of last year	Expenses of last year as % of turnover	% increase or decrease vis-à-vis last year
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**12.** And the assessee had replied to it, vide letter dated 20.09.2019 as under:



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“18. Please furnish explanation in respect of such item of expenses and receipts appearing in trading account and profit & loss account, (either by way of excess or reduction) in comparison to last year. The comparative details may be furnished in the following format: (Point 17).

Reply: Please refer Schedule-14 – Other income and Schedule-16- Operating Expenses for comparative analysis of the Annual Report for FY. 2016-17.”

**13.** Thus, from the aforesaid query/reply, we note that the AO during the assessment proceedings had requested the assessee to furnish explanation in respect of such items of expenses and receipt appearing in the trading accounts and profit and loss accounts (either by way of excess or reduction) in comparison to last year. And AO also has asked for comparative details in the form of a chart as given above (supra). And in reply, it can be seen that the assessee in-turn had asked the AO to refer Schedule-14 ‘other income’ and Schedule-16 ‘operating expenses’ for comparative analysis of the Annual Report. And it is noted that assessee even did not bother to give the details as asked for in the form of chart. Moreover, as rightly observed by the Ld. PCIT, the details called for by the AO were only general details pertaining to increase/decrease in income/expenditure during the year when compared to previous year. No specific queries were raised by AO regarding this claim of expenditure regarding CBS fees or even other expenses; and the assessee was not asked to prove any expenses it had booked or claimed in the profit & Loss account. And the reply of the assessee to the general query of AO to refer to schedule cannot be



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termed to be enquiry on the issue flagged by Ld PCIT. Merely production of financial notes an audit or reference to it when queried cannot be accepted as enquiry carried out by AO, who was bound by law to act both in the capacity of Investigator & Adjudicator; and failure to do any one duty [either that of Investigator or Adjudicator] can attract the supervisory jurisdiction of Ld PCIT u/s 263 of the Act and in this case, the AO has failed to discharge his duty as an investigator regarding CBS fees/expenditure to the tune of Rs.14.60 cr.

**14.** Moreover, as noted supra, the AO did not raise specific query regarding expenses claimed in respect of CBS to the tune of Rs.14,60,92,479/-; and even during the revisional proceedings in year 2022 before Ld PCIT, the assessee failed to produce the invoice raised by M/s. FIS for the services rendered by it till the year end (31.03.2017) i.e, even after four to five years the assessee was unable to support the expenditure claimed on account of CBS fees/expenditure.

**15.** Therefore, the action of the Ld. PCIT cannot be faulted firstly for non-specific inquiry by the AO as well as the failure on the part of assessee to even produce the invoice relating to the expenditure before the Ld. PCIT. Therefore, we relying on the decision of the Hon'ble Bombay High Court in the case of Jeevan Investment & Finance (P.) Ltd. Vs. CIT (2017) 88 taxmann.com 552 (Bom) (2017) 291 CTR 241 (Bom), find that the AO failed to examine the claim of expense and erred in allowing such an expenses/CBS Fees. In the absence of examination of the claim made by the assessee the finding of Ld. PCIT



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that the order of the AO is erroneous and prejudicial to the interest of the revenue qua the expenditure claimed as CBS Fees is upheld. Therefore, we hold that exercise of the revisional jurisdiction u/s 263 of the Act by the Ld. PCIT is proper and valid. And therefore, we dismiss the appeal of the assessee.

**16.** In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this 21/04/2023.

Sd/-

(OM PRAKASH KANT)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 21/04/2023.

Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

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