

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.497/Ind/2018
Assessment Year: 2012-13

ACIT Khandwa	<u>बनम/</u> Vs.	M/s. Jila Sahakari Kendriya Bank, Khandwa Raod, Khargone M.P.
(Appellant / Revenue)		(Respondent / Assessee)
PAN: AAATJ 0529 K		
Revenue by	Shri P.K. Mishra, CIT-DR	
Assessee by	Shri Subhash Jain & Milind Wadhvani, ARs	
Date of Hearing	01.02.2023	
Date of Pronouncement	28.04.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 14.03.2018 passed by learned Commissioner of Income-Tax (Appeals)-II, Indore [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 22.12.2017 passed by learned ACIT, Khandwa [**“Ld. AO”**] u/s 143(3) of Income-tax Act, 1961 [**“the Act”**] for Assessment-Year [**“AY”**] 2012-13, the revenue has filed this appeal on following grounds:

- “1. The Ld. CIT(A) has erred in deleting the disallowance made in respect of provisions for time barred interest of Rs. 9,00,39,129/-.

2. *The Ld. CIT(A) has erred in deleting the addition holding that provision of Rs.10,46,65,000/- as claimed by the assessee for time barred interest is allowable u/s 37 of the Act @ 7.5% of business profit.*
3. *The Ld. CIT(A) has erred in deleting the addition of Rs. 53,85,000/- by holding that the claim of Book Balancing is allowable as expenditure u/s 37 of the Act and deliberately ignoring the very fact that the assessee itself has claimed this amount as Provision in the Profit and loss Account.*
4. *The Ld. CIT(A) has erred in deleting the addition of Rs.9,00,39,129/- and Rs. 53,85,000/- holding that these expenditure are allowable in view of the provisions stated u/s 37 of the Income Tax Act, even though these were 'Provisions' not expenditure actually incurred.*
5. *The appellant craves to leave, to add, or otherwise amend the above grounds of appeal."*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee is a registered co-operative society engaged in banking business. The assessee is governed by the provisions of its parent law relating to Co-operative societies as well as Banking Regulations Act. The assessee filed original return of income of the relevant AY 2012-13 on 29.09.2012, which was subjected to scrutiny-assessment u/s 143(3) vide order dated 27.02.2015. Subsequently, the case was re-opened on the footing that the assessee had claimed deduction of (i) "provision for time-barred interest" of Rs. 10,46,69,000/- and (ii) "provision for book-balancing" of Rs. 53,85,000/-, which were not allowable. Hence, the case was re-opened by issuing show-cause notice dated 31.03.2017 u/s 148. Finally, the assessment was completed vide order dated 22.12.2017 u/s 147 read with section 143(3) after making a disallowance of Rs. 9,00,39,129/-. Being aggrieved, the assessee went in first-appeal and succeeded. Now, the revenue has come in this appeal assailing the order of first-appeal. We proceed to adjudicate various grounds in seriatim.

Ground No. 1 and 2:

4. In these grounds, the revenue claims that the CIT(A) has erred in deleting the disallowance of Rs. 9,00,39,129/- made by AO out of “provision for time-barred interest” of Rs. 10,46,69,000/- claimed by assessee.

5. During assessment-proceeding, Ld. AO proceeded on a footing that a deduction of Rs. 10,46,69,000/- claimed by assessee with the caption “provision for time-barred interest” was a provision for contingent liability and therefore not allowable as deduction. Accordingly, when the AO confronted the assessee to submit justification of deduction, the assessee submitted that the said “provision for time-barred interest” is based on confirmed/actual events and that it is made by virtue of NPA guidelines of RBI; therefore allowable as deduction fully. At the same time, the assessee also took support of section 36(1)(viia) which allows deduction of “provision for bad debts”. Ld. AO, however, continued with his understanding that the impugned claim is a “provision for contingent liability”. Ld. AO also made an important observation in Para No. 3.1 of his order *“The amount of Rs. 10,46,69,000/- in respect of time-barred interest has been shown as provision. However, the same is not appearing in the Balance-Sheet. Therefore, this is straight away claimed as expenditure which is not allowable as the same is for contingent nature.”* Finally, Ld. AO accepted assessee’s claim u/s 36(1)(viia) as “provision for bad debts”. As the section 36(1)(viia) allows deduction upto a certain limit, the first limb of which is “7.50% of the eligible income”, the AO made a mathematical working of such 7.50% limit at Rs. 1,46,29,871/-; allowed deduction to that extent; and disallowed remaining excess deduction of Rs. 9,00,39,129/- [Rs. 10,46,69,000 (-) Rs. 1,46,29,871].

6. During first-appeal, the assessee submitted that the impugned claim was in respect of interest income already booked in earlier year on which tax was duly paid but the same became non-recoverable and time-barred during current year; thus it was essentially a reversal of already taxed income. The assessee also explained that it was an actual loss written off in P&L A/c

instead of transfer to any kind of provision/reserve; according to assessee this fact was clearly confirmed by the assessment-order itself wherein the AO has admitted that the impugned sum was not carried to Balance-Sheet. Accordingly, the assessee claimed that it was not covered under “provision for bad-debts” u/s 36(1)(vii) as considered by AO while finalizing assessment; it was an “actual bad-debt” directly allowable u/s 36(1)(vii) read with section 36(2)(v) of the act. In nutshell, the assessee claimed that the AO has wrongly invoked section 36(1)(vii) which is applicable to “provision for bad-debt” instead of granting deduction of “actual bad debt” u/s 36(1)(vii). The assessee also relied upon certain judicial rulings which allow deduction in such a case. Ultimately, the Ld. CIT(A) allowed deduction u/s 37(1) and deleted the disallowance/addition made by AO by holding thus:

“2.9 Thus, in the light of the above facts and circumstances, it is clear that the time barred interest which was claimed by the appellant should be allowed u/s 37 of the IT Act, 1961 instead of 36(1)(vii) because it was already offered for tax in earlier year by the appellant after crediting as interest income in the profit and loss account of earlier year. But, now interest had become non recoverable from borrower being bad debts, hence after taking into account the judicial decisions discussed above, the same is allowable u/s 37 of the act being business expenditure. Therefore, the addition so made by the AO is hereby deleted and these grounds of appeal are allowed.”

7. Before us, Ld. DR representing the revenue assailed the order passed by Ld. CIT(A). Ld. DR submitted that the CIT(A) has merely recorded/accepted the assessee’s version that the impugned “provision for time-barred interest” was a reversal of income already booked/taxed in earlier years without making any enquiry/verification in this regard. Therefore, such a conclusion derived by CIT(A) is baseless and perverse. Ld. DR also submitted that the CIT(A) has allowed deduction u/s 37(1) neglecting the provisions of section 36(1)(vii) as applied by AO; that the order is grossly ambiguous/unclear; and that the relief has been allowed to assessee without exact verification as to why and how it can be allowed u/s 37(1). With these submissions, Ld. DR argued that the CIT(A) has wrongly given relief to assessee; his action must be reversed and the addition made by AO should be upheld.

8. Per contra, Ld. AR heavily relied upon the order passed by Ld. CIT(A) and a written-synopsis filed by him. Ld. AR emphasized that the claim of assessee is perfectly allowable u/s 36(1)(vii) or 37(1). Alternatively, Ld. AR claims (Page No. 3 of the Written-Submission) that the claim of assessee is also saved by “10% of aggregate advances made by rural branches” as prescribed in 2nd limb of section 36(1)(viia), which was not considered by AO while computing permissible limit of section 36(1)(viia).

9. We have considered rival submissions of both sides and perused the orders of lower-authorities. After careful consideration, we observe that not only the order of CIT(A), as frankly admitted by Ld. DR, but also the assessment-order passed by AO is clumsy / unclear and so is the case of assessee’s submissions. There is no detail or basis mentioned by lower authorities from which it can be safely concluded as to what is exact nature of claim of assessee, whether it is an “actual expenditure” or just a “provision/transfer of reserve” and under which provision of law it has to be considered i.e. section 36(1)(vii) or 1st limb of section 36(1)(viia) or 37(1). Now, the Ld. AR has also raised a newer pleading that the claim is saved by 2nd limb of section 36(1)(viia) as narrated earlier. During the course of hearing, we tried to ascertain true position from available documents in the Paper-Book and raised queries to the learned representatives of both sides but could not reach to any definite conclusion. Thus, in such state of unclear findings, simply placing reliance on different alternative sections of income-tax act like section 36(1)(vii) or 1st limb of section 36(1)(viia) or 2nd limb of section 36(1)(viia) or 37(1) is a blind exercise. Needless to mention that each section has its own conditions, calculations and permissible limits; therefore the claim of assessee could be either fully allowable or allowable upto a certain limit but to arrive at such a conclusion, firstly there is a necessity to verify the exact nature of claim from the documents of assessee. Therefore, in this scenario, we think it more appropriate to remand this case back to the file of AO for making a thorough verification on the claim of assessee and come out with a definite conclusion. The assessee

is also directed to supply full details as required by AO. We also make it clear that the AO shall pass order afresh without being influenced by earlier decision. This ground is, thus, allowed for statistical purpose.

Ground No. 3:

10. In this ground, the revenue claims that the CIT(A) has erred in deleting the disallowance of Rs. 53,85,000/- on account of “provision for book balancing” by holding the same as allowable u/s 37(1).

11. Ld. DR drew our attention to the orders of lower-authorities and submitted that the assessee is claiming to have migrated from manual system to CBS (computerized/core banking system) during current year and at the time of such migration, a difference of Rs. 53,85,000/- is claimed to have been discovered in depositors’ accounts. This difference was debited in P&L A/c with the caption “provision for book-balancing” and claimed as deduction. Ld. DR contended that the CIT(A) has allowed deduction u/s 37(1) without finding as to how it was an “expenditure” and how it was allowable under that section. Therefore, according to Ld. DR, the CIT(A) has wrongly allowed relief to assessee.

12. Replying to above, Ld. AR first of all carried us to the assessment-order where the AO has dealt with this issue as under:

*“4. Further, the assessee has debited in P&L account of Rs. 53,85,000/- on account of provision for book-balancing that has been duly shown in the balance sheet and disallowance u/s 36(1)(viii) @ 7.5% has already been disallowed, **hence the deduction is allowable u/s 36(1)(viii) to the assessee. Hence, no adverse inference is drawn in this respect.**”*

13. Ld. AR submitted that the AO has himself allowed deduction to assessee u/s 36(1)(viii) and concluded that no adverse inference is drawn. He further carried us to the last para of assessment-order and demonstrated that there is no addition made by AO in respect of the deduction of Rs. 53,85,000/-. Thus, according to Ld. AR, the factual position is such there is no disallowance/addition made by AO in assessment-order. However, it has

been wrongly carried in first-appeal before Ld. CIT(A). But even then, there was no harm to assessee, because the CIT(A) allowed deduction u/s 37(1). Ld. AR submitted that be it section 36(1)(viii) as per AO or section 37(1) as concluded by CIT(A), there is neither disallowance in assessment-order nor in first appeal. Therefore, the grievance of revenue does not exist at all and this ground deserves to be dismissed.

14. We have considered submissions of both sides. After a careful scrutiny of assessment-order, we find merit in the submission of Ld. AR that there is no disallowance/additon made by AO in assessment-order out of the claim of Rs. 53,85,000/-. Therefore, this grievance has unnecessarily travelled in appellate proceedings. Ld. DR could not rebut such state of affair though dutifully emphasized the ground raised by revenue. In that view of matter, we dismiss this ground being devoid of any substance.

Ground No. 4:

15. These grounds, though separately raised by revenue, are a part of Ground No. 1 to 3 and stand adjudicated in forgoing discussion. Hence, no separate adjudication is required.

Ground No. 5:

16. This is a general ground and no specific pleading is made by revenue. Hence, it does not require any adjudication.

17. Resultantly, this appeal of revenue is allowed partly for statistical purpose.

<i>Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 28/04/2023.</i>
<i>Order pronounced in the open court on/...../2023.</i>

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28.04.2023

Patel/Sr. PS

- Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	

5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	