

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.30/GTY/2022
Assessment Year: 2015-16**

Dy. Commissioner of Income Tax, Circle - Shillong	Vs.	Jowai Co-operative Urban Bank Limited 2 nd floor, Merusa Building, lawmusiang, Jowai-793150. Meghalaya (PAN: AAAAJ1503A)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sumit Das, FCA
Respondent by : Shri P. S. Thuingaleng, ACIT

Date of Hearing : 06.06.2023
Date of Pronouncement : 13.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order passed by Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Appeal No. ITBA/NFAC/S/250/2022-23/1044159879(1) dated 27.07.2022 against the rectification order passed by ACIT, Shillong u/s. 154 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 28.01.2021 for AY 2015-16.

2. The sole issue raised by the revenue in this appeal is in respect of deletion of Rs.6,92,300/- added towards provision for depreciation on investment which has been claimed by the assessee in its P&L Account

and also claimed the same as deduction u/s. 37(1) in its computation of total income, thereby claiming the same deduction twice.

3. At the outset, it is noted that the tax effect in the present appeal by the revenue is of Rs.2,13,931/-. However, revenue has preferred this appeal by taking into account the exception category of monetary limit prescribed in the CBDT Circular No. 17 dated 08.08.2019 as it relates to revenue audit objection which has been accepted by the department.

4. Brief facts of the case are that assessee is a Co-operative Urban Bank who filed its return of income on 31.10.2015, reporting total income of Rs.1,28,69,340/-. Assessment was completed u/s. 143(3) of the Act vide order dated 29.11.2017 at Rs.1,67,61,280/- wherein disallowance of Rs.34,70,580/- was made u/s. 36(1)(vii) and of Rs.4,21,352/- u/s. 40(a)(ia) of the Act. Subsequently, Ld. AO found a mistake apparent from record in calculating the total assessed income for which an order u/s. 154 was passed dated 02.02.2021. In this order u/s. 154, further disallowances were which included, *inter alia*, a deduction for an amount of Rs.6,92,300/- claimed on account of provision for depreciation on investments. In this respect, Ld AO noted that the provision was for unascertained liability and an investment is not business asset and therefore, disallowed the same u/s. 37(1) of the Act.

4.1. Subsequent to this rectification, another order was passed u/s. 154 by the Ld. AO dated 12.10.2022 for which a show cause notice was issued on 12.09.2022. In the said notice, Ld. AO noted that "*on perusal of the P&L Account statement and computation of income for AY 2015-16, it was seen that the said amount was deducted twice i.e. once in the P&L Account and again in the computation of income. Subsequently, a*

rectification order u/s. 154 of the Act was passed on 02.02.2021. In this order, the amount of Rs.6,92,300/- was considered instead of Rs13,84,600/-. This is a mistake apparent from records.” Ld. AO thus, passed the order by taking into account the total income as per the earlier order u/s. 154 dated 02.02.2021 for Rs.1,93,29,790/-. To this total income a disallowance of Rs.6,92,300/- was added and the assessed total income was arrived at Rs.2,00,22,090/-. Aggrieved by the disallowance of Rs.6,92,300/- twice, assessee went in appeal before the Ld. CIT(A) who after considering the facts of the case as well as the income and business activities undertaken by the assessee and the judicial precedents, allowed the appeal. Aggrieved, the revenue is in appeal before the Tribunal.

5. Ld. Sr. DR reiterated the factual position which is already narrated above and is not repeated again for the sake of brevity. According to him, such a provision for depreciation on investment is not allowable since the assessee has claimed it as a deduction in its P & L Account as well as while computing the total income. The additions have been rightfully made.

6. Per contra, Ld. Counsel for the assessee submitted that assessee operates within the ambit of Reserve Bank of India (RBI) Directions & Circulars. As per RBI Guidelines, Urban Banks need to maintain Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR) in the form of Government Securities. When such securities are categorised as ‘Available for sale’ (AFS) and ‘Held for Trading’ (HFT), any depreciation in the value of such assets needs to be accounted for by way of provision for depreciation on the said investments. Ld. Counsel also referred to CBDT Instruction No. 17/2008 dated 26.11.2008 which is in respect of “Assessment of banks – Checklist for Deductions”. From this

Instruction, he referred to para (vii) for the claim made by the assessee. According to him, this instruction provides for claiming a deduction towards depreciation in respect of investments which are categorised as AFS or HFT. According to this instruction, investments classified as 'Held to Maturity' (HTM) need not be 'marked-to-market' and are carried at acquisition cost unless these are more than the face value, in which case the premium should be amortised over the period remaining to maturity.

6.1. Ld. Counsel also placed reliance on the decision of Coordinate Bench of ITAT, Jaipur in the case of Integral Urban Cooperative Bank Vs. ITO vide order dated 14.05.2018 as well as of the Coordinate Bench of ITAT, Jodhpur in the case of Nagaur Cooperative Bank Ltd. Vs. DCIT in ITA No. 240/JDH/2013 dated 04.02.2013. Ld. Counsel asserted that claim of the assessee is an allowable claim in terms of CBDT Instruction and considering the fact, assessee being a Cooperative Urban Bank.

6.2. He also referred to the table which has been reproduced in the order of Ld. CIT(A) in respect of categorisation of investment of the assessee as on 31.03.2015 which are held under two categories i.e. HTM and AFS. The details of the said investments are reproduced as under:

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Jowai Co-operative Urban Bank Ltd.,**Categorisation of Investments as on 31.03.2015**

Sl.No	Particular	Face Value	Purchase Price	Outstanding Value
	(a) Held to Maturity			
1	8.26% GOI 2027	300,00,000.00	291,96,000.00	29196000.00
2	8.76% MHSDL 2022	100,00,000.00	100,60,000.00	10000000.00
3	8.28% GOI 2027	300,00,000.00	291,27,500.00	29127500.00
4	8.56% TNSDL 2021	15,00,000.00	15,06,450.00	1500000.00
5	8.40% ASDL 2020	300,00,000.00	293,76,000.00	29376000.00
6	8.88% GUJSDL2022	200,00,000.00	201,70,000.00	20000000.00
7	8.92% KLSDL 2022	120,00,000.00	120,54,000.00	12000000.00
8	8.30% GS 2040	200,00,000.00	196,06,000.00	19606000.00
9	8.24% GS 2018	100,00,000.00	99,13,000.00	9913000.00
10	8.20% GOI 2025	100,00,000.00	100,10,000.00	10000000.00
11	8.32% GOI 2032	60,00,000.00	59,01,000.00	5901000.00
12	8.83% GOI 2041	30,00,000.00	30,73,200.00	3000000.00
13	7.40% GOI 2035	200,00,000.00	190,00,000.00	19000000.00
14	7.80% GS 2020	100,00,000.00	101,35,000.00	10000000.00
15	8.99% MPSDL 2022	65,00,000.00	65,78,000.00	6500000.00
16	7.80% GOI 2021	60,00,000.00	59,22,000.00	5922000.00
17	8.60% KLSDL 2023	45,00,000.00	46,30,500.00	4500000.00
18	8.28% GOI 2032	35,00,000.00	34,00,250.00	3400250.00
19	8.33% GOI 2026	35,00,000.00	34,30,000.00	3430000.00
20	8.90% WB SDL 2022	30,00,000.00	29,19,000.00	2919000.00
21	8.97% GOI 2030	35,55,000.00	36,00,000.00	3555000.00
22	8.24% GOI 2027	16,83,900.00	18,00,000.00	1683900.00
23	9.42% WBSDL 2024	44,70,750.00	45,00,000.00	4470750.00
24	7.16% GOI 2023	45,00,000.00	43,33,500.00	4333500.00
	Total of (a)			2493,33,900
	(b) Available For Sale			
21	6.17% GOI 2023	219,60,000.00	228,00,000.00	21960000.00
22	6.01% GOI 2028	25,00,000.00	25,71,000.00	2500000.00
23	6.13% GOI 2028	50,00,000.00	45,32,500.00	4532500.00
24	6.30% GOI 2023	100,00,000.00	98,15,970.00	9815970.00
25	6.83% GOI 2039	100,00,000.00	8860000.00	8860000.00
	Total of (b)			476,68,470.00
	Total A+B			2970,02,370.00

6.3. Ld. Counsel further asserted that addition has been made twice by way of passing order u/s. 154 of the Act which is not justified.

7. We have heard the rival contentions and perused the material available on record. From the above narrated facts,

we note that the disallowance in respect of provision for depreciation on investments has been made twice by way of passing orders u/s. 154 of the Act. On confrontation of this fact to the Ld. CIT, DR, he did not object on the same. Accordingly, we hold that making the disallowance twice is not justified and the Ld. AO is directed to correct this.

7.1. Further, in respect of the claim made by the assessee, we find that owing to the fact that assessee is a Cooperative Urban Bank which operates within the ambit of RBI Direction & Circulars, is required to make certain investments in government securities. The details of investments made by the assessee are tabulated above along with categories into which the same have been made. Taking into account the CBDT instruction which allows for the claim of depreciation in the investments specific to two categories i.e. HFT and AFS but not for HTM, we are of the considered view that claim of the assessee is to be allowed in accordance with the said CBDT instruction. From the table above in respect of categorisation of investments made by the assessee, we note that assessee's investments are categorised into i.e. HTM and AFS, thus, depreciation in respect of AFS is to be allowed in respect of the claim made by the assessee.

7.2. While arriving at our said views, we do find force from the decision of Coordinate Bench of ITAT, Jaipur and Jodhpur referred above. Accordingly, we direct Ld. AO to allow the claim of the assessee by re-computing the same in accordance with the instruction provided by CBDT as referred above.

8. In the result, appeal of the revenue is partly allowed in terms of our above observation.

Order pronounced in the open Court on 13th June, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 13th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), NFAC, Delhi
 4. CIT,
 5. DR, ITAT, Gauhati Bench, Gauhati
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata