

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 289/Kol/2022**  
**Assessment Year : 2017-18**

Dakshin Dinajpur District Central Co-Operative Bank Limited	Vs.	PCIT, Siliguri
PAN: AAAJD 0642 H		
Appellant		Respondent

Date of Hearing	29.03.2023
Date of Pronouncement	26.06.2023
For the Assessee	Shri Sumit Ghosh, Advocate & Shri Souradeep Majumdar, Advocate
For the Revenue	Shri P.P. Barman, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

The instant appeal was filed by the assessee against the order passed by the ld. PCIT, Siliguri in respect of A.Y. 2017-18. The impugned order is originated against the order dated 24.12.2019 passed by ACIT, Circle-3(2), Malda passed u/s 143(3) of the Act. The assessee has raised the following grounds of appeal:

- 1. FOR THAT the impugned order dated 22.03.2022 passed u/s 263 of the Income Tax Act, 1961 is arbitrary and capricious in nature;*
- 2. FOR THAT the Ld. PCIT/Siliguri expressed no confidence upon the procedure adopted by the authority below in course of assessment, wrongly observed that the AO failed to call for details to verify the claim, as such ordered to re-do the assessment, having no such power as a revisional authority;*
- 3. FOR THAT the Ld. PCIT/Siliguri erred in holding that the authority below failed to obtain details of population criteria in respect of rural branch, particularly of village Patiram, Dist-Dakshin Dinajpur and thereby resulted in underassessment of income, prejudicial to the*

*interest of revenue without appreciating that the AO duly obtained information/clarifications and upon verification allowed the claim, which having found inadequate by the Ld. PCIT/Siliguri, gathered some more information from the website but for that reason the assessment order cannot be revised;*

*4. FOR THAT the Ld. Assessing Authority finding that the 'Miscellaneous Expenses' accumulated to the tune of Rs.24,92,301/- are actually petty expenses incurred at all branches and head office comprising of refreshment, cleaning, xerox, postage, internet bills, staff welfare etc., as such not found it prudent for verification but the Ld. PCIT/Siliguri erred when observed that the same only contains 212 entries totalling to Rs.6,87,183.60 which is far below the total claim, without appreciating the fact that being voluminous, so the appellant produced few as sample for the purpose of test checking, having the entire documents readily in possession but for no or less material on record revision does not lie;*

*5. FOR THAT the assessee created a provision of overdue interest suspense of Rs.5,46,00,829.25 in respect of Non-Performing Assets (NPA), being such provision of overdue interest as settled is taxable only in the year of receipt and cannot be assessed on accrual basis, as also found by the Ld. PCIT/Siliguri 'may be allowable' but such observation cannot be a ground for revision;*

*6. FOR THAT the break-up of interest received against certain customers shown at negative and reduced from gross interest received worked out to be Rs.1,28,25,191/- being the revised data as provided by Tata Consultancy Services (TCS) later on, furnished, verified and allowed by the Ld.AO but subsequent non-availability of the same in the departmental file/records, cannot induce the Ld. PCIT/Siliguri to set aside the assessment order for the purpose of fresh assessment order, only to decide its allowability again by further verification;*

*7. FOR THAT the Ld. PCIT/Siliguri erred in law when directions were given for further verification without going deep into the matters and/or submissions made before Ld. AO regarding alleged 'change in accounting policy for claim of provisions for interest on NPA' and 'overdue interest of Rs.2,66,86,495/- not included in gross receipts', as such when clarifications were given on such counts all*

*along on the same factual aspect, so direction for further verifications by fresh assessment is unjustified and unwarranted;*

2. Brief facts of the case are that the assessee is a co-operative bank filed its return of income for A.Y. 2017-18 on 07.11.2017 by declaring total income as Nil and subsequently to it, assessee has revised its return of income. The case of the assessee was selected for complete scrutiny under CASS and the assessment was completed by the AO on 24.12.2019 by an order u/s 143(3) by accepting the revised return filed by the assessee. On verification of the order passed by the AO, the Id. PCIT viewed that the AO has not called for details as to verify the claim of the assessee about the deduction and allowed the claim of assessee without examining the facts of the case. Therefore, the Id. PCIT issued a notice u/s 263 of the Act which is reproduced here under:

*"2. Verification of the assessment records indicated that the Assessing Officer failed to verify the deduction made under section 36(1)(viii) to the tune of Rs. 9,40,080/- and deduction u/s 36(1)(viii) on account of aggregate average advances made by Rural branches to the tune of Rs. 40,27,976/-. Verification of rural branches by examining the population criteria as mentioned in the Act in the Income Tax Act in the explanation to the Clause 36(1)(viii).*

*3. Further, details of the item under Other Expenses i.e. "Miscellaneous Expenses" to the tune of Rs. 24,92,301/- neither provided by the Assessee nor called for by the Assessing Officer at the time of assessment proceedings. Similarly, in respect of the "interest suspense" claimed to the tune of Rs. 5,46,00,829/- in the other expenses heading of the ROI, the Assessee in via Point No. 3 of his response filed dated 10/12/2010 submitted hereunder:*

*"Provisions of overdue Int. Suspense: In the case of nationalized Banks, when an advance stops generating income, no interest is debited to Customer's account. However, in case of Co-operative Banks, even if an account is identified and declared NPA, the interest income receivable therefrom is credited to the Profit and Loss*

*Account of the Bank and to neutralize the effect of the credit, correspondingly, interest suspense account is debited to the Profit and Loss Account. The result being that, any income neither adds to the Profit of the Bank nor is any expenditure ultimately added to the Profit and Loss Account of the Bank. The debit neutralizes the credit. The interest suspense account appears in the liabilities side of the Balance Sheet and correspondingly, the interest receivable account appears in the asset side of the Balance Sheet. This is why we have not added back the provision for interest suspense amounting to Rs7546600823/25 in the computation of total income. The details of overdue interest are uploaded."*

*It is apparent from the reading of the above submission of the Assessee that the Assessee has created provisioning of interest receivable account. The said provision relates to corresponding interest received amount of Rs. 546600829.25 which is shown as received. Therefore, the said provisioning is related to non actual expense and cannot De a provision. Hence, allowing the said provisioning has <sup>5</sup>rested 9m assessment being erroneous and prejudicial to the interest of revenue.*

*4. Further it is seen from the assessment records that following queries were*

*Raised by the Assessing Officer vide his letter bearing No ITBA/AST/F/17/2019-20102217(1) dated 12/12/2019, the same are reproduced hereunder:*

*1. In the breakup of interest income received, against certain customers, the interest Income is shown at a negative and the same has been reduced from the gross Interest received. Such amounts work out to Rs. 1,28,25,191/-. You are hereby required to clarify why the interest income is negative in the cases and why the same is excluded in the gross receipts admitted.*

*2. On verification of the claim of Provisions for interest on NPAs, it is seen that the claim has been made for the first time and no such claim was made in the earlier years. You are hereby required to furnish the reasons for change in accounting policy along with documentary evidence of due approvals and procedures. Further, from the breakup of details of overdue interest, it is seen that the overdue Interest claimed includes an amount of Rs. 2,66,86,495/-*

*which has not been included in the gross receipts. Kindly clarify and submit a note on allowability of the same.*

*3 Further on the issue of Provision for interest on NPAs, you are hereby required to furnish the details of interest as per Provisions of Sec. 43D of the Act, i.e., details of such interest not received for more than 6 months.*

*4. Further, a note on applicability of the provisions of section 14A on the investments made to earn exempt income may be furnished.*

*From the assessments records available there appears to be no reply with regard to the above points no. 1, 2, 3 & 4 respectively of the above referred letter dated 12/12/2019 from the assessee and the details are not on record. In view of the above, the assessment order passed u/s 143(3) of the Income Tax Act, 1961 for A.Y. 2017-18 on 24.12.2019 is erroneous and prejudicial to the interest of revenue.”*

4. In response to said notice, assessee filed its reply vide its submission dated 08.02.2022 along with certain enclosures. However, after considering the submission of the assessee, ld. PCIT viewed that the order dated 24.12.2019 passed by the AO was erroneous and prejudicial to the interest of revenue and partly set aside the impugned order dated 24.12.2019 and direct the AO to frame the assessment order afresh after considering the observation made by the ld. PCIT in the impugned order dated 22.03.2022.

5. Aggrieved by the order of ld. CIT(A), assessee filed a appeal before the Tribunal. At the time of hearing, ld. counsel for the assessee vehemently argued and took to our attention in the paper book filed before us on 22.11.2022 containing almost 40 pages. The ld. counsel contended that the requisite of ld. PCIT as alleged in his order was already covered in the case of assessee vide its submission dated 08.02.2022 along with the enclosures which was placed before the ld.

PCIT at the time of hearing. He further contended that the submission which was placed before the Id. PCIT on 08.02.2022 has contained all the necessary information as cited by the PCIT and explained by the assessee in its submission which is placed hereunder:

(a) *Aggregate average advance made by rural branches of the Assessee: The issue being the AO has not called for details to verify the claim of the Assessee about the deduction and allowed deduction to the extent of Rs. 940080/- u/s 36(1)(viiia) and Rs. 4027976/- towards profit of rural branches as claimed by Assessee. The Assessee, vide its submission dt: 08/02/2022 mentioned that out of seven its seven branches, four branches namely (i) Tapan, (ii) Kumarganj, (i) Hili and (iv) Patiram respectively are "rural branches" situated in rural areas of the district Dakshin Dinajpur. In this connection, the definition of "Rural Branch" defined u/s 36(1)(viiia) of the Income Tax Act 1961 is mentioned as under "rural branch means a branch of a scheduled bank or a non scheduled bank situated in a place which has a population of not more than ten thousand according to just preceding census of which the relevant figures have been published before the first day of the previous year in this regard, the population of the four branches of the Assessee viz. Tapan, Kumargjan, Hili and Patiram respectively are enquired with respect to the Census, 2011 data available in the website of the Office of the Registrar General & Census Commissioner, India ([www.censusindia.gov.in](http://www.censusindia.gov.in)) & the details are as under:*

Sl No	Name of village	District	Population as per census, 2011
1	Tapan	Dakshin Dinajpur	2796
2	Hili	-do-	2185
3	Patiram	-do-	12462
4	Kumarganj	-do-	3920

*As evident from the above, the Village Patirarh., Dist. Dakshin Dinajpur having population 12462 (i.e. more than 10000) does not fulfil, the population criteria laid u/s 36(1)(viiia) of the Income Tax Act, 1961, therefore deduction in respect of the same is not allowable and the claim of the assessee is not tenable. Therefore, failure to obtain details of the population criteria by the AO has*

resulted in under assessment of income & hence prejudicial to the interest of revenue.

(b) *Miscellaneous Expenses of Rs. 2492301.44: The issue being that the details regarding claim of Rs. 2492301.44, the details of which are not available on record, neither was called for by the AO. The assessee vide its reply dated 08.02.2022 made its submission as under:*

*“The Ld. Assessing Officer has not called for any details of miscellaneous expenses during the course of assessment. Miscellaneous expenses includes petty expenses which are incurred at branch and Head Office level like refreshment, cleaning, Xerox, postage, internet bill, staff welfare etc. since this individual amount is very small in nature and has wide range, all the expenses have been clubbed into miscellaneous expenses in the profit/loss account. The details of the Misc Expenses have been attached for your ready reference.*

*In this connection, the enclosed details regarding miscellaneous expenses incurred during the F.Y. 2016-17 are checked and it is observed that the same contains total 212 entries totaling to Rs. 687183.60 which is way below the amount claimed in the Profit & Loss A/C of the Assessee in the ITR filed for A.Y. 2017-18, i.e., Rs 2492301.44. In absence of further details or submission from the Assessee, the deduction claimed and accepted by AO of Rs. 2492301.44 is erroneous and has resulted in underassessment of income, hence is prejudicial to the interest of revenue.*

(c) *Provision for interest suspense: The Assessee created a provision of overdue interest suspense of Rs 5,46,00,829.25 and claimed the same as a deduction against the profit during the F.Y. 2016-17 relevant to the A.Y. 2017-18. Reliance is placed by the Assessee on PCIT vs Solapur District Central Co operative Bank Ltd (2019) 261 Taxman 476 (Bom) (HC) which inter alia speaks that the provision for overdue interest will be taxable only in the year of receipt and held that amount transferred to Overdue Interest Reserve by debiting the interest received in Profit & Loss account in respect of non-performing assets (NPA) cannot be assessed on accrual basis.*

*In this connection, vide submission of the Assessee vide its letter dt: 08/02/2022 the Assessee referred to is submission before the A.O. vide his letter dt: 18/12/2019 & the same is reproduced hereunder:*

*“we may inform you that none of the account as mentioned in your letter has any transaction in the ledger account during the year 2016-17. We may inform you that the bank debits the interest in those NPA account under INTEREST RECEIVABLE AND credit INTEREST RECEIVED ACCOUNT. The provision for overdue interest has been created by the interest receivable account in the same year (when repayment is comes from that account, partly account is credited by cash/bank and “INTEREST RECEIVED” account is debited since it was earlier credited by interest receivable account. This amount has been credited in the banks CGL (Central General Ledger) head “INTEREST RECEIVABLE ACCOUNT). Thus the interest receivable is also reduced by the same amount in the year of receipt. In view of the above, it is quite clear that the assessee has not received and interest from its current overdue interest account which is shown under the head interest received account. So the provision of Rs. 5,46,00,829.25 from the profit and loss account is allowable as business expenditure and would be taxed only on receipt basis in the year of receipt.*

*In view of the above basis of provisioning against NPA accounts may be allowable, however the A.O. may verify the quantum of deduction with respect of books of accounts maintained by the Assessee during the course of Assessment.*

*(d) Negative Interest Income of Rs. 1,28,25,191/-: The issue being in the break p of interest income received, against certain customers, the interest income is shown at a negative and the same has been reduced from the gross interest received. Such amount worked out to Rs. 1,28,25,191/-. The Assessee did not reply to the query and the details are not available on record. Assessee vide his submission dated 08.02.2022 stated that they have furnished the revised data before the AO vide its letter dated 16.12.2019 regarding interest income. However the same is not available in the records, therefore the allowability of the same may be verified at the assessment stage.*

*(e) Change in accounting policy for claim of provisions for interest on NPA: issue being provisions for interest on NPAs being claimed for the first time in A.Y. 2017-18 leading to change in accounting policy. In reply to the same, the assessee vide its submission dated 08.02.2022 stated that the bank has created provision of Rs. 1,17,89,396/- in the F.Y. 2015-16. The deduction claimed u/s 36(1)(viii) has been made in the ITR filed for the A.Y. 2017-18. However it was earlier claimed in A.Y. 2016-17 and the same was allowed vide assessment order passed u/s 143(3) of the Income Tax Act, 1961 for the A.Y. 2016-17. The same may be verified at the assessment stage.*

*(f) Overdue of Rs. 2,66,86,495/- not included in gross receipts: in reply to the query raised, the assessee vide its submission dated 08.02.2022 differed with the amount enquired for Rs. 2,66,86,495/- stating the figure is erroneous since the overdue interest of Rs. 5,46,00,829.25 has been included in gross receipts during the year and the same amount of provision has been also created under overdue interest reserve account. Further, verification may be done by the AO to reconcile the exact allowable amount.*

*(g) Provision for interest on NPAs as per provision u/s 43D: The assessee made submission vide its letter dated 08.02.2022 that section 43D is applicable to the Co-operative Bank w.e.f. A.Y. 2018-19 which is accepted.*

*(h) Applicability of section 14A on investments made to earn exempt income: As per the profit & loss account of the assessee, it does not have any exempt income, therefore section 14A is not applicable in this case.”*

6. The ld. AR further contended that the assessee almost covers all the issues raised by the ld. PCIT during the assessment proceedings itself and all the documents were verified by the AO. The ld. counsel further mentioned that the assessee filed in its written submission before the PCIT dated 08.02.2022 to clarify all the details how the assessment order was not erroneous and prejudicial to the interest of

revenue. On the other hand, ld. DR vehemently argued and relied on the order passed by the ld. PCIT.

7. We have heard the rival submission of the parties and perusal of the impugned order as well as material available on record. We find that the assessee has already explained all the queries made by the ld. PCIT in his revisionary order on the various issues vide its submission dated 08.02.2022 which the assessee has placed before the ld. PCIT at the time of revisionary proceeding. However, the ld. PCIT did not consider the same and viewed that the assessment order passed by the ld. AO was erroneous and prejudicial to the interest of revenue, therefore, he direct the AO to frame the fresh assessment. In the present assessment order, ld. AO passed the order after detailed submission rendered by the assessee before him and duly accepted the same. However, doing so mere non-mentioning of specific reason for accepting explanation of the assessee by the AO in assessment order could not be a reason to invoke revisionary power u/s 263 of the Act. We respectfully relied on the order of co-ordinate bench of ITAT Mumbai Bench in the case of Reliance Payment Solutions Ltd. vs PCIT-8 (2022) 136 taxmann.com 277 (Bombay-Trib.)

*“As long as the action of the Assessing Officer cannot be said to be lacking bona fides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for Commissioner (Appeals) observations regarding accepting the explanation "without appropriate evidence", there is nothing to question the bona fides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer. Merely because the Assessing Officer did*

*not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".*

8. Considering the above discussion, the ld. PCIT has invoked section 263 which is beyond the jurisdiction.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26.06.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 26.06.2023

*Biswajit*

Copy of the order forwarded to:

1. Appellant- Dakshin Dinajpur District Central Co-Operative Bank Limited, Co-Op Building, Balurghat, Dakshin Dinajpur-733101.
2. Respondent – PCIT, Siliguri.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata