

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

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

I.T.A. No. 537/Kol/2022
Assessment Year : 2014-15

ACIT, Circle-1(2), Jalpaiguri	Vs.	The Jalpaiguri Central Co-operative Bank Ltd. PAN: AAABT 2597 B
Appellant		Respondent

Date of Hearing	26.09.2023
Date of Pronouncement	27.09.2023
For the Assessee	Shri Rip Das, AR
For the Revenue	Shri S. Datta, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the revenue against the order dated 29.07.2022 of Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The revenue has raised the following grounds of appeal:

i. Whether on the facts and circumstances of the case CIT(A) was justified in deleting the additions made on provision of Overdue Interest by failing to appreciate that the assessee has not declared such Provisions for Overdue interest as Bad Debt written off as irrecoverable in its books till 31.03.2014 when the claim has been made that the said interest has been accrued or generated from the bunch of Loans which are already declared as NPAs.

ii. Whether, the Provision for Overdue Interest, is allowable expenditure under Income-tax Act, 1961 in view of the judgement of Hon'ble Supreme Court in the case of Southern Technologies Limited vs. JCIT, Coimbatore (2010)187 Taxman 346 wherein it has been decided that the provision for NPA made in terms of the RBI Directions does not constitute expenses for purpose of sec. 36(1)(vii) of the Income-tax Act, 1961?

iii. That the Department reserves the right to add, delete, review, change or modify any ground in the course of hearing."

2. Brief facts of the case are that the assessee is carrying on banking business as guided by the Banking Regulation Act, 1949 and the assessee filed its return of income by declaring total income of Rs. 51,55,790/- for the A.Y. 2014-15. Thereafter case of the assessee was selected for scrutiny under CASS followed by notices issued u/s 143(2) & 142(1) of the Act. In response to the notices, ld. AR of the assessee appeared from time to time filed various details as asked for. The ld. AO while framing the assessment he disallowed the following amounts of assessee's income as under:

- i. Disallowance of deduction claimed u/s 36(1)(viiia) Rs. 2,69,29,500/-*
 - ii. Disallowance of excess deduction claimed u/s 36(1)(viiia) Rs. 2,03,84,910/-*
 - iii. Disallowance of provision of overdue interest Rs. 6,59,85,103/-*
 - iv. Interest paid to depositors disallowed Rs. 4,32,48,111/-*
 - v. Depreciation disallowed Rs. 5,24,657/-*
 - vi. Law charges disallowed Rs. 2,03,520/-*
- Total assessed income at Rs. (-) 16,24,31,590/-"*

3. Aggrieved by the above order, assessee went in appeal before the CIT(A) where the claim of the assessee was partly allowed by ld. CIT(A) observing as follows:

"5.8 In respect of the disallowance of deduction claimed as aggregate average Rural advance amounting to Rs.2,69,29,500/-, the appellant has claimed that no such deduction had been claimed by it. From the copy of ITR submitted, no such deduction seems to have been claimed. The appellant has stated that it had filed rectification application before the Assessing Officer, which is pending decision. The Assessing Officer is directed to examine the claim and reduce the income, if no such expenditure/deduction had been claimed by the appellant.

5.9.1 The only effective issue pertains to the disallowance of provision of overdue interest, which has been challenged in Ground No.1 of the appeal.

5.9.2 The disallowance has been discussed in Para 3 of the assessment order. The appellant on the other hand, has relied upon

the decision of the Hon'ble ITAT in its own case, on the decision of Hon'ble ITAT, Kolkata in the case of Nadia District Central Co-operative Bank, Hon'ble Delhi High Court Decision in the case of M/s Vasisth Chai Vyapar Ltd, and other decisions. The issue was carefully considered in light of the reasoning given by the Assessing Officer in the assessment order, as well as in the Remand Report and the arguments put forth by the appellant and the decisions relied upon.

5.9.3 Section 36(1)(vi) of the I.T. Act allows deduction in respect of bad debts which is written off in the accounts as irrecoverable. In respect of banks, section 36(1)(viii) permits deduction towards provision for bad and doubtful debts. Such provision not exceeding 7.5% (now increased to 8.5%) of total income and 10% of aggregate average advances made by rural branches are allowed as deduction. Further, for banks, deduction u/s 36(1)(vii) is allowable only in excess of the amount of deduction u/s 36(1)(viii). After the income of cooperative banks became taxable and deduction u/s 80P was withdrawn in respect of Co-operative Banks, they became eligible for such deduction u/s 36(1)(vi).

5.9.4 The appellant has claimed Rs.6.59 crore as overdue interest. The Assessing Officer has disallowed the same by observing that,

- (i) No such deduction is permissible under the income Tax Act.*
- (ii) The appellant has not given proper working of such claim.*
- (iii) The appellant has not written off the amount as irrecoverable.*
- (iv) In the past, the appellant had enjoyed benefit of section 80P on such interest income and no tax had been paid by it.*
- (v) The amount claimed is around 22% of the turnover of the appellant and is a colorable device to reduce the tax liability, particularly as the specific details had not been given.*

In the remand report the Assessing Officer has further analyzed the claim and has allowability in light of various judicial decisions. As per the Assessing Officer, such provision is only notional and not allowable under the I.T. Act.

5.9.5 From the decision of Hon'ble ITAT in the appellant's case in ITA NO. 2804-2806/Kol/2013, dated 11-11-2016. it is seen that the Hon'ble ITAT has allowed the amount u/s 36(viii)(a) of the I.T. Act. The main observation of the Hon'ble ITAT is that a co-operative Bank is eligible to claim this deduction after 2007. However, it is pertinent to note that the Assessing Officer has already allowed deduction u/s 36(1)(viii) (a) of the I.T. Act and further this deduction has an upper

limit of 71/2% of total income before allowing deduction. Hence, the decision of Hon'ble ITAT in its own case is distinguishable on facts.

5.9.6 However, the other decisions relied upon, particularly CIT vs Vasisth Chay Vyapar Ltd. show that when an assessee follows mercantile method of accounting, it is required to show the interest income on Non Performing Assets. But, such interest income being doubtful should not be considered as income. It is when such income is actually realized, then the same should be taxed.

5.9.7 It is true that such deduction is strictly not in accordance with the provisions of I.T. Act, but the essence of this decision that interest calculated on doubtful debts should not be considered income till it is realized, which appears to be prudent business practice.

5.9.8 Hence, the overdue interest would be allowable to the appellant in light of judicial decisions, subject to the proper computation of the same. The appellant should furnish before the AO computation of the interest on NPAs which have been considered doubtful and irrecoverable. The Assessing Officer should ascertain that such interest has been duly included in the total receipt of this year. Further, the appellant should submit details of the exact loans which have been considered NPA and irrecoverable. If any part of the interest is received in any subsequent year, the same has to be offered to be taxed as income of that year on cash basis. The Assessing Officer is directed to give opportunity to the appellant to furnish the complete information and after proper verification, the amount of interest on NPAs for the relevant year is to be allowed as deduction.

6. In effect, the appeal is Partly Allowed.”

4. Feeling aggrieved by the above order, revenue preferred an appeal before this Tribunal. We after going through the impugned order passed by the Id. CIT(A) on the ground taken by the assessee in respect of disallowance of Rs. 6,59,85,103.07/- made by AO on account of provision of overdue interest. The Id. CIT(A) considered the issue by observing in the following manner:

“5.9.8 Hence, the overdue interest would be allowable to the appellant in light of judicial decisions, subject to the proper computation of the same. The appellant should furnish before the AO computation of the

interest on NPAs which have been considered doubtful and irrecoverable. The Assessing Officer should ascertain that such interest has been duly included in the total receipt of this year. Further, the appellant should submit details of the exact loans which have been considered NPA and irrecoverable. If any part of the interest is received in any subsequent year, the same has to be offered to be taxed as income of that year on cash basis. The Assessing Officer is directed to give opportunity to the appellant to furnish the complete information and after proper verification, the amount of interest on NPAs for the relevant year is to be allowed as deduction.”

5. From the perusal of the findings given by the ld. CIT(A) in the impugned order we note that the ld. CIT(A) while partly allowed the ground of the assessee in respect of issue involved with the direction to the ld. AO to verify the particulars in the light of judicial decision and delete the addition if the appellate submissions is factually correct with supporting documents. The said findings given by the ld. CIT(A) is not correct as we note that section 251(1)(a) of the Act does not empower to the Ld. CIT(A) for setting aside the matter to the file of the Ld. AO. The power given to the Ld. CIT(A) in terms of section 251(1)(a) of the Act relates to confirming, reducing, enhancing or annulling the assessment. The relevant portion of the section is extracted as under:

“251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers:

(a) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.”

6. Considering the facts on record, observations made by the Ld. CIT(A) in the appellate proceedings and the findings given thereby, we set aside the above issue to the Ld. AO with a direction to adjudicate the issue involved in accordance with provisions of law after giving reasonable opportunity of being heard to the assessee by calling report in respect of documentary

evidences and details furnished by the assessee. Needless to say, the assessee will co-operate and attend the appellate proceedings before the Ld. AO as and when the notices are issued. In terms of above, the appeal of the revenue is allowed for statistical purposes.

7. In the result, the appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on 27.09.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 27.09.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- ACIT, Circle-1(2), Jalpaiguri.
2. Respondent – The Jalpaiguri Central Co-operative Bank Ltd.,
Temple Street, Jalpaiguri – 735 101.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata