

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 504/Jodh/2018**  
Assessment Year: 2010-11

Asstt. Commissioner of Income  
Tax, Pali

**(Appellant)**

Vs. M/s Rajasthan Marudhara Gramin  
Bank (earlier MGB Gramin Bank),  
900/751, Milkman Colony, Pal  
Road, Jodhpur, HO: Tulsi Tower,  
9<sup>th</sup> B. Road, Sardarpura, Jodhpur  
[PAN: AABAM 0917E]

**(Respondent)**

**I.T.A. Nos. 517 to 521/Jodh/2018**

Assessment Years: 2007-08, 2010-11, 2011-12, 2013-14 & 2012-13

M.G.B. Gramin Bank  
(Through Successor Rajasthan  
Marudhara Gramin Bank),  
HO: Tulsi Tower, 9<sup>th</sup> B. Road,  
Sardarpura, Jodhpur  
342003 (Raj.)

[PAN: AABAM 0917E]

**(Appellant)**

Vs. Asstt. Commissioner of Income  
Tax, Pali

**(Respondent)**

**Cross Objection No. 13/Jodh/2018**

(In ITA No. 453/Jodh/2018)

Assessment Year: 2009-10

M.G.B. Gramin Bank  
(Through Successor Rajasthan  
Marudhara Gramin Bank),  
HO: Tulsi Tower, 9<sup>th</sup> B. Road,  
Sardarpura, Jodhpur  
342003 (Raj.)

[PAN: AABAM 0917E]

**(Appellant)**

Vs. Asstt. Commissioner of Income  
Tax, Pali

**(Respondent)**

Appellant by	:	Sh. Goutam Chand Baid, C.A.
Respondent by	:	Sh. Lovish Kumar, CIT-DR & Sh. S. M. Joshi, JCIT-DR
Date of Hearing	:	19.10.2023
Date of Pronouncement	:	10.11.2023

**ORDER**

**Per Bench:**

This bunch of appeals and cross objection has been filed by the Revenue and assessee against the separate orders of the Id. Commissioner of Income Tax (Appeals)-1, Jodhpur.

2. The Revenue has raised the following grounds of appeal in ITA No. 504/Jodh/2018:

- "1. *The CIT(A) has erred in law and in facts in deleting the disallowance of provision for wage revision of workman Rs. 9,10,42,530/- ignoring the fact that payment were made in F.Y. 2010-11 and neither the quantum for provision of wage revision had been finalized nor any kind of payment was made till the end of the F.Y. 2009-10.*
2. *The appellant craves leave to add, amend or alter any or all the grounds of appeal on or before the date the appeal is finally heard for disposal."*

**Grounds of appeal in ITA No. 517/Jodh/2018:**

- "1. *That on the facts and in the circumstances of the case, the CIT(A)-1, Jodhpur erred in sustaining the assessment order framed invoking the provisions of section 147/148. Initiation of reassessment proceeding u/s 148 is without any belief of escapement and on surmise and therefore assessment framed on such belief liable to be quashed. Assessment so framed may kindly be declared void ab initio.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining the assessment order framed in the name of MGB Gramin Bank without bringing the successor on record. Assessment order framed u/s 143(3) in the name MGB Gramin Bank is void ab initio as MGB Gramin Bank cease to exist at the time of framing assessment and as such assessment was framed on non existing person. Assessment so framed may kindly be declared void ab initio.*
3. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining disallowance of Rs. 38,01,442/- being Provision for Standard Assets allowable on provision basis as per the provisions of section 36(1)(viiia) on the finding that Hon'ble ITAT in the assessee's own case in appeal against order u/s 263 for AY 2010-11 in ITA No 143/Jodh/2015 dated 19/05/2017 held that same is not allowable.*

*In ITA No 143/Jodh/2015 dated 19/05/2017 ground about allowability of Provision for Standard Assets has not been decided by the Hon'ble ITAT.*

4. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining disallowance u/s 14A for Rs.12,30,236/- Disallowance made invoking provision of rule 8D may kindly be deleted as Rule 8D is not applicable for AY 2007-08.*

### **Grounds of appeal in ITA No. 518/Jodh/2018:**

- “1. *That on the facts and in the circumstances of the case, the Id. CIT(A)1, Jodhpur erred in sustaining the assessment order framed in the name of MGB Gamin Bank without bringing the successor on record. Assessment order framed u/s 143(3) r.w.s. 263 in the name MGB Gramin Bank is void ab initio as MGB Gramin Bank cease to exist at the time of framing assessment and as such assessment was framed on non existing person. Assessment so framed may kindly be declared void ab initio.*
2. *That on the facts and in the circumstances of the case, the Id. CIT(A) 1, Jodhpur erred in sustaining disallowance of Rs.56,70,000/- being Provision for Standard Assets allowable on provision basis as per the provisions of section 36(1)(viiia) on the finding that Hon'ble ITAT in the assessee's own case in appeal against order u/s 263 for AY 2010-11 in ITA No 143/Jodh/2015 dated 19/05/2017 held that same is not allowable. In ITA No 143/Jodh/2015 dated 19/05/2017 ground about allowability of Provision for Standard Assets has not been decided by the Hon'ble ITAT.*
3. *That on the facts and in the circumstances of the case, the Id. CIT(A) 1, Jodhpur erred in sustaining disallowance u/s 14A for Rs.1,12,75,366/-.”*

### **Grounds of appeal in ITA No. 519/Jodh/2018:**

- “1. *That on the facts and in the circumstances of the case, the Id. CIT(A)1, Jodhpur erred in sustaining the assessment order framed in the name of*

*MGB Gamin Bank without bringing the successor on record. Assessment order framed u/s 143(3) r.w.s. 263 in the name MGB Gramin Bank is void ab initio as MGB Gramin Bank cease to exist at the time of framing assessment and as such assessment was framed on non existing person. Assessment so framed may kindly be declared void ab initio.*

2. *That on the facts and in the circumstances of the case, the Id. CIT(A) 1, Jodhpur erred in sustaining disallowance of Rs. 2,76,46,332/- being Provision for Standard Assets allowable on provision basis as per the provisions of section 36(1)(vii) on the finding that Hon'ble ITAT in the assessee's own case in appeal against order u/s 263 for AY 2010-11 in ITA No 143/Jodh/2015 dated 19/05/2017 held that same is not allowable. In ITA No 143/Jodh/2015 dated 19/05/2017 ground about allowability of Provision for Standard Assets has not been decided by the Hon'ble ITAT.*
3. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining disallowance of Rs. 50,00,00,000/- being Floating Provision Towards Advances allowable on provision basis as per the provisions of section 36(1)(vii) on the finding that Hon'ble ITAT in the assessee's own case in appeal against order u/s 263 for AY 2010-11 in ITA No 143/Jodh/2015 dated 19/05/2017 held that same is not allowable. In ITA No 143/Jodh/2015 dated 19/05/2017 ground about allowability of Provision for Standard Assets has not been decided by the Hon'ble ITAT.*
4. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining disallowance u/s 14A for Rs.15,45,459/-."*

### **Grounds of appeal in ITA No. 520/Jodh/2018:**

- "1. *That on the facts and in the circumstances of the case, the Id. CIT(A)1, Jodhpur erred in sustaining the assessment order framed in the name of MGB Gamin Bank without bringing the successor on record. Assessment order framed u/s 143(3) in the name MGB Gramin Bank is void ab initio as MGB Gramin Bank cease to exist at the time of framing assessment and as such assessment was framed on non existing person. Assessment so framed may kindly be declared void ab initio.*

2. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining disallowance u/s 14A for Rs.89,43,659/-."*

### **Grounds of appeal in ITA No. 521/Jodh/2018:**

- “1. *That on the facts and in the circumstances of the case, the Id. CIT(A)1, Jodhpur erred in sustaining the assessment order framed in the name of MGB Gramin Bank without bringing the successor on record. Assessment order framed u/s 143(3) in the name MGB Gramin Bank is void ab initio as MGB Gramin Bank cease to exist at the time of framing assessment and as such assessment was framed on non existing person. Assessment so framed may kindly be declared void ab initio.*
2. *That on the facts and in the circumstances of the case, the Id. CIT(A) 1, Jodhpur erred in sustaining disallowance of Rs. 2,47,29,991/- being Provision for Standard Assets allowable on provision basis as per the provisions of section 36(1)(viiia) on the finding that Hon'ble ITAT in the assessee's own case in appeal against order u/s 263 for AY 2010-11 in ITA No 143/Jodh/2015 dated 19/05/2017 held that same is not allowable. In ITA No 143/Jodh/2015 dated 19/05/2017 ground about allowability of Provision for Standard Assets has not been decided by the Hon'ble ITAT.*
3. *That on the facts and in the circumstances of the case, the Id. CIT(A) 1, Jodhpur erred in sustaining disallowance u/s 14A for Rs.12,98,420/-."*

### **Grounds of appeal in C.O. No. 13/Jodh/2018:**

- “1. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining the assessment order framed in the name of MGB Gramin Bank without bringing the successor on record. Assessment order framed u/s 143(3)r.w.s 263 in the name MGB Gramin Bank is void ab initio as MGB Gramin Bank cease to exist at the time of framing assessment and as such assessment was framed on non existing person. Assessment so framed may kindly be declared void ab initio.*

2. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining disallowance of Rs. 75,00,000/- being Provision for Standard Assets allowable on provision basis as per the provisions of section 36(1)(viiia) on the finding that Hon'ble ITAT in the assessee's own case in appeal against order u/s 263 for AY 2010-11 in ITA No 143/Jodh/2015 dated 19/05/2017 held that same is not allowable. In ITA No 143/Jodh/2015 dated 19/05/2017 ground about allowability of Provision for Standard Assets has not been decided by the Hon'ble ITAT.*
3. *That on the facts and in the circumstances of the case, the Ld. CIT (A) 1, Jodhpur erred in sustaining disallowance u/s 14A for Rs.11,50,589/- out of Rs.58,05,476/- disallowed by ld. AO.*
4. *The appellant crave liberty to add, amend, alter, modify, or delete any of the ground of appeal on or before its hearing before your honour."*

3. The facts are taken from ITA No. 517/Jodh/2018 in respect of Assessment Year 2007-08 as a lead case for the purpose of discussion. The appellant is a co-operative society, engaged in the business of banking activities as it was established under Regional Rural Bank Act, 1976. In exercise of powers conferred u/s 23A of the RRB Act, 1976, the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) issued Notification F.No. 1/4/2006—RRB (i) dated 12—06—2006 and further issued corrigendum dated 14—07—2006 amalgamating the erstwhile three co—operative Banks namely (1) Marwar Gramin Bank (2) Sriganganagar Kshetriya Gramin Bank and (3) Bikanere Kshetriya Gramin Bank into a single bank known as MGB Bank with effect

from 12—06—2006. Further, with amalgamation it was named as Rajasthan Marudhara Gramin Bank (earlier MGB Gramin Bank). In this case assessment order u/s 143(3) was passed on 15—12—2009 computing income at Rs. 10,05,32,760/—.

Another assessment order u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 was passed on dated 22-11-2011 determining total income Rs. 10,47,31,010/— . Then Assistant Commissioner of Income Tax (Circle) Pali submitted proposal for initiating proceeding u/s 147 of the I.T. Act, 1961 in the case MGB Gramin Bank for the A.Y. 2007—08 after recording reasons of reopening on 13—03— 2014 vide office letter No. 513. Where the Reasons were recorded as below:—

1. *'On examination of assessment record, it is found that assessee have debited Rs. 38.01,442/— on account of provisions toward standard assets and Rs. 43,98,484/— on account of provisions for depreciation on NSLR investment in the profit and loss account. As per section 36(1)(vii) the amount of bad debt or part thereof which is written off as irrecoverable in the account of the assessee for the previous year subject to the provisions of sub—section 2 of section 36 is allowable. The provision for standard assets is not bad debts. Similarly, the provision for depreciation on NSLR investment is also not allowable. The omission has resulted in incorrect computation of business income by Rs. 81,99,926/— .*

2. *On perusal of assessment records it is also noticed that the assessee has earned income of Rs. 16,57,517/— which is claimed as exempted income. However no disallowance of expenses has been made by the AO u/s 14 A read with Rule 8 D.*

3. *The above income has not been dealt in assessment order u/s 143(3) dated 15.12.2009 as well as u/s 143(3) read with under section 147 dated 22.11.2011 also. The assessee has not furnished any details of working of claim of Rs. 81,99,928/— as well as working of Rs. 16,57,517/— Hence to this extent there is a failure on the part of the assessee to disclose fully and truly material facts. In view of above, I have reasons to believe that Rs. 98,57,443/— is his escaped income for A.Y 2007—08. Accordingly proceeding u/s 147/148 recommended in this case.'*

Case was reopened after taking approval from The Commissioner of income Tax—1, Jodhpur. Notice u/s 148 dated 26—03—2014 which got served upon assessee on dated 28—03—2014. Assessment was completed and the AO made disallowance of Rs.78,61,442/- against standard assets (inclusive of sub-standard assets) and; Rs. 12,30,236/- u/s 14A of the Act.

3.1 At the time of hearing, the Id. counsel for the assessee has contended that the Id. CIT(A)-1, Jodhpur erred in sustaining the assessment order framed by invoking the provisions of section 147/148 by

way of reassessment proceedings without any reason to belief of escapement of income based on surmises, therefore, the assessee so framed deserves to be quashed.

3.2 In the present case, the Assessing Officer (AO) has supplied the copy of the reasons recorded to the appellant assessee vide its letter dated 22.05.2014 and thereafter the appellant has participated in the assessment proceedings, and hence raising objection to the validity of issuing of notice u/s 148 at the subsequent appellate stages is not appropriate on the part of the appellant. It is provided u/s 147 of the Income Tax Act that 'if the Assessing Officer has reason to believe that an income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of sections 148 to 153, assessee or reassess such income and also any other income chargeable to tax which is escaped the assessment and which comes to notice, subsequently, in the course of assessment proceedings under this section or re-compute loss or the depreciation or any of allowances as the case may be, for the year concerned.' The Id. CIT(A) has observed that the AO had reason to believe that income chargeable to tax has escaped assessment, and the reasons so recorded were duly communicated to the appellant. In our view, the Id. CIT(A) was

justified in affirming the validity of the reasons that the AO has appropriate “reason to believe” that income chargeable to tax has escaped assessment in the present case. The Id. CIT(A) has placed reliance on the judgment of the Higher Judicial Forums in the case of Phool Chand Bajrang Lal v. ITO , reported in 203 ITR 456 and Raymond Woolen Mills Ltd. v. ITO, reported in 236 ITR 34 (SC) wherein it has been held that to determine whether the commencement of reassessment proceeding was valid, it has only to be seen by the AO, whether there is prima facie some material on the basis of which the AO could re-open the case. Thus, the sufficiency of the correctness of the material is nothing to be considered as to this stage of the recording reasons for the reopening of the assessment proceedings in the case of the appellant assessee. The Id. CIT(A) has also referred to the judgment in the case of ACIT v. Rajesh Jhaveri Stock Broker Pvt. Ltd. [2007] 291 ITR 500 (SC). The Id. counsel for the assessee failed to rebut the finding of the Id. CIT(A) or furnish a case in rebuttal. In view of that matter, we are of the considered view that the AO has valid reasons to form belief under section 147 of the Act to complete assessment order u/s 147 r.w.s. 143(3) of the Act following the due procedure.

3.3 Accordingly, we find no infirmity or perversity in the finding of the CIT(A) to the facts on record in upholding the validity of reopening of assessment and thus the ground no. 1 is dismissed.

4. In the 2<sup>nd</sup> grounds of appeal, the appellant has challenged the order of the Id. CIT(A) that he was not justified in sustaining the assessment order framed in the name of MGB Gramin Bank without bringing the successor on record. The assessment order framed u/s 143(3) in the name of MGB Gramin Bank is void ab initio as MGB Gramin Bank ceased to exist at the time framing the assessment and as such assessment was framed on non existing person and assessment so framed kindly be declared void ab-initio.

5. The issue is squarely covered by the co-ordinate bench decision in ITA No. 143/Jodh/2015 dated 19.05.2017 wherein on identical facts, in appellant's own case, the appeal of the assessee was dismissed by the Hon'ble ITAT. The Id. CIT(A) following the co-ordinate bench decision in assessee's own case has rejected the issue of validity of assessment alleged to be framed on a non existing person on account of merger of Bank. In our view, the Id. CIT(A) has rightly rejected the grounds of

assessee pertaining to the issuance of notice u/s 148 of the Act and framing assessment in the name of MGB Gramin Bank.

6. Following co-ordinate bench decision in the assessee's case on identical facts, no interference is called for in the decision of the Id. CIT(A) on the issue of validity of the assessment framed by the AO. Accordingly, this ground of appeal is dismissed.

7. In ground no. 3, the assessee has objected to the decision of the Id. CIT(A) in sustaining the disallowance of Rs.38,01,442/- being provision for Standard Assets being claimed allowable on provision basis as per the provisions of section 36(1)(viiia) on the finding that Hon'ble ITAT in the assessee's own case in appeal against the order u/s 263 for AY 2010-11 in ITA No. 143/Jodh/2015 dated 19.05.2017 held that same is not allowable. In ITA No. 143/Jodh/2015 dated 19.05.2017 ground about allowability of provision for Standard Assets has not been decided by the Hon'ble ITAT.

8. The Id. CIT(A) while sustaining the disallowance of Rs. 38,01,442/- being provision for Standard Assets under section 36(1)(viiia) following the Hon'ble ITAT in the assessee's own case in appeal against the order u/s

263 for AY 2010-11 in ITA No. 143/Jodh/2015 dated 19.05.2017 has observed as under:

“5.2 I have considered the assessment order, submissions of the appellant and the facts of the case. There are 2 issues involved here, (i) issue of Standard Assets and provisions made thereto and; (ii) issue of sub-Standard Assets and provisions made thereto.

5.2.1 I deal with the 1<sup>st</sup> issue first i.e. issue of Standard Assets and provisions made thereto. In the case of appellant himself, while disposing off the appeal against an order of CIT-1, Jodhpur u/s S.263; Hon'ble ITAT vide its order in ITA No.143/Jodh/2015 dt. 19.5.2017 has observed as under:

8. The Id. A.R. reiterated the submissions as made by him before the lower authorities by placing reliance on various decisions including that of the Jodhpur bench of ITAT in the case of M/s Nagaur Urban Co-operative bank Ltd Vs. ACIT ITA No. 240/JU/2013 vide order dated 29.11.2013 and the decision of the Chennai Bench of ITAT in the case of Vellore Dist. Central Cooperative Bank Ltd Vs. CIT ITA No. 914/Mds/2013 order dated 17.7.2013 and harping on the additional ground raised.
9. Per contra, the Id. D.R. relied on the orders of the authorities below.
10. We have heard the rival submissions and have perused the relevant material on record. We have also gone through the elaborate paper book filed by the Id. A.R. of the assessee as well as the catena of decisions cited in support of his submissions. We find that during the year under consideration, the assessee had made provision of Rs.56.70 lakhs for standard assets. It has been noticed that as per guidelines dated 01.07.2009 issued by the Reserve Bank of India through Master circular for prudential norms on income recognition, Asset classification and provisioning pertaining to Advance, the provision under the nomenclature 'Non Performing Assets' (NPA) which covers (1) sub standard, (i) doubtful category je. D-1, D-2 and D-3 and (iii) loss Assets. The Non-Performing Assets (NPA) is defined as a classification used by financial institutions that refers to loans that are in jeopardy of default. Once the borrower has

failed to make interest or principal payments for 90 days, the loan is considered to be a Non—Performing Assets. It has been further noticed that the provision for 'Standard Assets' does not fall in the category of non-performing assets. It is further noticed that as per the provision of section 36(1)(viiia), the deduction is allowable in respect of any provision for bad and doubtful debts made by a scheduled bank not being a bank incorporated by or under the laws of country outside India or a non scheduled bank or a Cooperative Bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank, not exceeding seven and one-half percent of the total income computed before making any deduction under this chapter VIA. From this, it would be clear that deduction u/s 36(1)(viiia) is allowable in respect of provision made for bad and doubtful debts, whereas the assessee itself has not classified under the head nonperforming assets in accordance to the RBI Master circular dated 1.7.2009. Therefore, it cannot be said that provision for 'Standard Assets' falls in category of bad and doubtful debts.

11. It would be relevant to note here that the C.B.D.T. had situated an Instruction No. 17/2008 and 26.11.2008 under the subject 'Assessment of banks — Checklist for deductions' —Regarding for the section 36(l)(vii), 36(l)(viiia) and 37(1) of the Income—Tax Act. The Board at Para No. (xi) has categorically mentioned that 'section 37 of the Income—Tax Act envisages that an amount debited in the profit and loss account in respect of accrued or ascertained liability only is an admissible deduction, while any provision in respect of any un— ascertained liability or a liability which has not accrued, do not qualify for deduction. However, it has been found that banks are claiming provisions on different accounts, probably under the R.B.I. guidelines example; provision for wage arrears for which negotiations are yet to be finalized, provision for 'standard asset etc'. A contingent liability cannot constitute deductible expenditure for the purpose of income tax Act. In view of the above facts, the Id. CIT(A) held that the order of the Assessing Officer in respect of this point is erroneous and prejudicial to the interest of revenue as there is no enquiry on this aspect by the Assessing Officer which was required in accordance to the provisions of section 36(l)(viiia) and 37 of the I.T. Act, 1961. He further that the provision for standard assets amounting to Rs.56.70 lakh is not allowable in accordance to the provisions of section either u/s 36(1)(viiia) or u/s 37(1) of the Act. Accordingly, he directed the Assessing Officer to give effect to this finding.

In view of discussion above, it is clear that the banks are required to make certain provisions under the guidelines of the RBI, but the allowably of such provisions, for tax purpose, is governed by the provisions of Income Tax Act, 1961. It is also noted that the case laws relied upon by the appellant were also placed before the Hon'ble ITAT. And, in this case of appellant itself, Hon'ble ITAT held the action of the CIT-1, Jodhpur, valid as the appellant had claimed the provision on 'Standard Assets' as well, which otherwise are not allowable as deduction because the same cannot be termed as bad & doubtful debts by any stretch of argument, Thus, addition of Rs.3801442/- made by the AO is confirmed, hereby. Appellant fails in this part of ground.

9. It is settled law that the banks are required to make certain provisions under the guidelines of the RBI, but the allowably of such provisions, for tax purpose, is governed by the provisions of Income Tax Act, 1961. It is noted that the case laws relied upon by the appellant were also placed before the Hon'ble ITAT, by the appellant itself, where the Hon'ble ITAT Coordinate – Bench held the action of the CIT-1, Jodhpur, valid as the appellant had claimed the provision on 'Standard Assets' which otherwise are not allowable as deduction because the same cannot be termed as bad & doubtful debts by any stretch of argument, Therefore, we find no infirmity or perversity in the decision of the Ld. CIT(A) to the facts on record in confirming the addition of Rs.3801442/- made by the AO on account of the provision on 'Standard Assets'. Thus, the 3<sup>rd</sup> ground of appeal is rejected.

10. In the next issue the appellant has challenged that the Id. CIT(A) has erred in sustaining disallowance u/s 14A for Rs.12,30,236/-. Disallowance

made invoking provisions of rule 8D may kindly be deleted as Rule 8D is not applicable for AY 2007-08.

11. For the purposes of computing the total income under section 14A of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. The appellant claimed, that no expenditure was incurred for earning exempt income, needs to be examined by the AO in view of the fact that the appellant has been making investments though no separate accounting system have been placed on record by the appellant, so that it could be ascertained as to how much precise expenses could be relatable to a particular investment/income etc. And precisely for taking care of this dilemma, procedure has been laid down which has been followed by the AO, as per Law. In view of that matter, we restore the issue to the file of the AO to adjudicate afresh after granting opportunity of being heard to the appellant.

12. The appellant has also raised an additional ground of appeal is as under:

*“That on the facts and in the circumstances of the case, requisite direction may kindly be issued to allow deduction u/s 80P of the Income Tax Act, 1961 as the assessee is eligible for same in light of judgment of Hon’ble*

*Allahabad High Court in the course of Pr. COT vs. Baroda Uttar Pradesh Gramin Bank [2022] 447 ITR 218 (All.).”*

12.1 The Hon’ble Apex Court in the latest judgment in the case of “Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer”, [2023] 154 taxmann.com 305 (SC) has observed as under:

*“15.13. Further, under the provisions of the State Act, 1984, 'agricultural and rural development bank' means the Kera/a Cooperative Central Land Mortgage Bank Limited, registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951, which shall be known as Kera/a State Co-operative Agricultural and Rural Development Bank Limited i.e. the appellant herein. Thus, from conjoint reading of all the relevant statutory as alluded to hereinabove, it is quite clear that the appellant is not a co-operative bank within the meaning of sub section (4) of Section 80P of the Act. The appellant is a co-operative credit society under Section 80P(2)(a)(i) of the Act whose primary object is to provide financial accommodation to its members who are all other cooperative societies and not member of the public.*

*15.14 Therefore, when the definition of "co-operative bank" in Section 56 of BR Act, 1949 is viewed in terms of Sections 2(u) of the NABARD Act, 1981, it is clear that only a state co-operative bank would be within the scope and meaning of a banking company under Section 2(c) of the BR Act, 1949 on obtaining licence under Section 22 of the said Act.*

*Conclusion: In the instant case, although the appellant society is an apex cooperative society within the meaning of the State Act, 1984, it is not a co-operative bank within the meaning of Section 5 (b) read with Section 56 of*

*the BR Act, 1949. In the result, the appeals filed by the appellant are allowed and the order(s) of the Kera/a High Court and other authorities to the contrary are set aside. Consequently, we hold that the appellant is entitled to the benefit of deduction under Section 80P of the Act. The questions for consideration are answered accordingly.”*

12.2 From conjoint reading of all the relevant statutory provisions, it is quite clear that the appellant is not a co-operative bank within the meaning of sub section (4) of Section 80P of the Act. The appellant is a Gramin Bank Act whose primary object is not to provide financial accommodation to its members who are all other cooperative societies and not member of the public. Thus, Rajasthan Marudhara Gramin Bank Ltd, a Regional Rural Bank and not a co-operative bank would not eligible for deduction u/s 80P(2)(d) of the Act as this entity is not a Cooperative Society or Cooperative Bank as provided u/s 80P(2)(d) of the Act in the light of the latest judgment of the Apex Court (Supra). Thus, the additional ground raised by the appellant has been dismissed as non- maintainable.

13. The facts and issues in ITA No. 518 to 521/Jodh/2018and C.O. No. 13/Jodh/2018of the appellant are identical to the facts and issues involved in I.T.A. No. 517/Jodh/2018 of the appellant and therefore, our observation

and finding given in I.T.A. No. 517/Jodh/2018 shall be applicable to the I.T.A. No. 518 to 521/Jodh/2018, and C.O. No. 13/Jodh/2018, in mutatis mutandis, ordered accordingly.

14. In **ITA No. 504/Jodh/2018** the department challenged the order of the CIT(A) that he has erred in law and in facts in deleting the disallowance of provision for wage revision of workman Rs. 9,10,42,530/- ignoring the fact that payment were made in F.Y. 2010-11 and that neither the quantum for provision of wage revision had been finalized nor any kind of payment was made till the end of the F.Y. 2009-10.

14.1 learned CIT(Appeal), while deleting the addition made by AO, on account of disallowances of provision for wage revision of workman Rs. amounting to rupees 9,10,42,530/-, has observed as under:

6.2 I have considered the facts of the case, assessment order and the submissions by the appellant. From the facts of the case, assessment order and the submissions by the appellant above it is dear that, wage revision negotiations were actively in progress and the liability of the appellant towards payment of wage arrears was round the corner. Appellant has also placed on record the copy of agreement dated 27.11.2009 which stated, apart from other matters, that the wage revision will be effective from 1.11.2007. Thus, it is clear that the effective date of liability of the appellant was ascertained, the only question left was that of the quantum, which was being negotiated upon. It is also noted that amounts of arrear were paid in September, 2010 Rs. 8,85,56,679/-, in February, 2011 Rs. 6,05,795 - the month of March, 2011 Rs. 18,80,056/-. Thus, to deny completely that either the liability was not criticized or that the time-frame of

future payment was not known, shall not be correct. Indeed, the exact quantum of liability and the exact date of payment in future were not known. But the very purpose of the creating a provision and allowing such a provision is for such eventualities only. However, in view of the particular facts of this case, it cannot be denied that the effective date of wage revision resulting into creation of liability to be paid, was well known and; the progress of negotiations between the workmen and the management were well underway, culminating into major payment of arrears in Sept.2010 i.e. in the following year.

In view of discussion above, disallowance of Rs. 09,10,42,580/- on account of provision is deleted. Appellant succeeds on this ground.

14.2 The Ld. DR for the department submitted that the CIT(A) has erred in law and in facts in deleting the disallowance of provision for wage revision of workman Rs. 9,10,42,530/- ignoring the fact that payment were made in F.Y. 2010-11 and that neither the quantum for provision of wage revision had been finalized nor any kind of payment was made till the end of the F.Y. 2009-10. He strongly relies on the assessment order.

14.3 The counsel for the appellant supported the impugned order by reiterating the submission made before the CIT Appeal. The appellant's submission made before the Id. CIT(A) is as under:

*"An obligating event is an event that creates an obligation that results /n an enterprise having no realistic alternative to settling that obligation.*

*A contingent liability is:*

*(a) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or*

*(b) a present obligation that arises from past events but is not recognized because:*

*(i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or*

*(ii) a reliable estimate of the amount of the obligation cannot be made.*

*Present obligation - an obligation is a present obligation if, based on the evidence available, its existence at the balance sheet date is considered probable, i.e., more likely than not.*

*Possible obligation - an obligation is a possible obligation if, based on the evidence available, its existence at the balance sheet date is considered not probable.*

*That the AS 29 issued by the ICAI mandate to recognize a provision in the books of account when:*

*A provision should be recognized when:*

*(a) An enterprise has a present obligation as a result of a past event;*

*(b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and*

*(c) A reliable estimate can be made of the amount of the obligation.*

*If these conditions are not met, no provision should be recognized.*

*That Since all the three conditions laid in the case of assessee bank satisfy the assessee bank recognized a provision amounting to Rs. 5,10,42,530/- for wage revision.*

*That the provisions were recognized where the quantification can be reasonably estimated, though there is certain probability that the ultimate outcome may differ that the amount earlier recognized in the books of account. But merely because the quantification cannot be done with the certainty and was only estimation, provision cannot be disallowed. In the case under consideration the quantification of the amount to be paid is also not uncertain but was duly computed. It may be pertinent to mention that the amount of provision made and the payment made in the subsequent year was exactly same and there was no variation.*

*Appellant also relied upon the ratio of undernoted judgments:*

*Rotork Controls India P. Ltd. v. CIT [2009] 314 ITR 62*

*Metal Box Co. of India Ltd. v. Their Workmen [1969] 73 ITR 53 and Bharat Earth Movers v. CIT [2000] 245 ITR 428.*

*CIT vs Bharat Heavy Electrical Ltd [80 DTR (Dei) 7]*

*The Jalore Central Co Operative Bank Ltd. vs ACIT [ITAT Jodhpur Bench ITA No 39/Jodh/2012 Dated 09/06/2014] [PB Pg 142 to 153, 149, 151-152]*

*Neyveli Lignite Corporation Ltd vs ACIT [93 TTJ 685 (ITAT (Chen))]*

*Tata Communication Ltd. Vs. JCIT [ITAT Mumbai Bench ITA No 3062/Mum/2003 Dated 05/12/2012]”*

14.4 The department grievance was that indeed, the exact quantum of liability and the exact date of payment in future were not known. Considering the peculiar facts of the case, in our view, the very purpose of the creating a provision and allowing such a provision is for such eventualities only. Therefore, in the present case, it cannot be denied that the effective date of wage revision resulting into creation of liability to be paid, was well known and; the progress of negotiations between the workmen and the management were well underway, culminating into major payment of arrears in Sept.2010 i.e. in the following year. In view of that matter, we find no infirmity or perversity in the finding of the Ld. CIT(A) in

deleting the disallowance of provision for wage revision of workman of Rs. 9,10,42,530/-. Thus, the grounds of appeal of the department are rejected.

15. In the backdrop of the aforesaid discussion, the bunches of captioned appeals are disposed off in the terms indicated as above.

*Order pronounced as on 10.11.2023 in terms of rule 34(4) of the  
Income Tax Appellate Tribunal Rules, 1963.*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

**Assistant Registrar  
Jodhpur Bench**