

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE

SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

आ.अपी.सं / **ITA Nos.417 to 420/Hyd/2023**
(निर्धारण वर्ष / Assessment Years: 2013-14 to 2016-17)

A.P. Grameena Vikas Bank, Warangal, 2-5-8/1, 1 st Floor, Old Bus Depot Road, Ramnagar, Hanamkonda, Warangal – 506001. Telangana. PAN : AAAJA1351N	Vs.	DCIT, Circle 3(1), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारित द्वारा/Assessee by: Shri Darshan Jakaria, CA
राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi,
CIT-DR.

सुनवाई की तारीख/Date of hearing: 29.11.2023
घोषणा की तारीख/Pronouncement on: 29.11.2023

ORDER

PER BENCH :

The captioned appeals are filed by the assessee feeling aggrieved by the separate orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dt.13.06.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, "the Act") for A.Ys. 2013-14 to 2016-17. Facts and the grounds of appeal involved in all

these appeals are identical. We, therefore, deem it just and convenient to dispose of these appeals by way of this common order, taking the appeal in ITA No. 417/Hyd/2023 as a lead case.

2. The grounds raised by the assessee in ITA No.417/Hyd/2023 for A.Y. 2013-14 reads as under :

“1. The Learned Commissioner of Income Tax (Appeals) [“CIT(A)”] erred in misconstruing the contention/submission made by the appellant. The contention raised before the CIT(A) was that the amount being considered represents write-off of provision for bad and doubtful debts and not write back of doubtful debts as presumed by the Assessing Officer whereas the CIT(A) adjudicated the issue in the context of creation of provision and claiming of deduction thereof.

2. The Learned CIT(A) erred in stating that the appellant has contended that it had not claimed any deduction at the time of making the provision towards NPA and accordingly directing the AO to verify whether the appellant had claimed any deduction towards provision for NPA u/s 36(1)(viii) in the years in which provision was made ignoring that the appellant has itself stated in its submission (which are extracted at Page no. 36 of CIT(A) order) that deduction towards provision was claimed in earlier years and in this year no deduction is claimed towards write-off. The appellant only contended that since this is a case of write-off of provision and no benefit is being derived, provisions of section 41 are not applicable.

3. The Learned CIT(A) ought to have directed the Assessing Officer to verify whether the amount under consideration pertains to write-off or write back and once it is found that the amount pertains to write off, no addition to be made in this regard.”

3. As the facts and issues in all the appeals are same, we are reproducing the facts of appeal in ITA No.417/Hyd/2023 for the sake of brevity.

4. The brief facts of the case are that the assessee is a regional rural bank engaged in the activity of banking. The Appellant filed its return of income for AY 2013-14 on 30.03.2016 declaring total income at Rs.199,87,37,320/-. The case of the assessee was selected for scrutiny under CASS and accordingly notices u/s. 143(2) and 142(1) of the Act were issued along with questionnaire and duly served upon the assessee. In response to

the said notices, assessee submitted the information. Thereafter, the Assessing Officer completed the assessment u/s. 143(3) of the Act on 30.03.2016 assessing the total income at Rs. 247,33,34,800/- thereby making additions of Rs. 1,37,84,427/- on account of disallowance of amortization provided on Government Security, Rs.56,80,000/- on account of broken period interest on securities, Rs. 5,93,93,000/- on account of unrealized interest on NPA's, Rs.7,23,80,189/- on account of disallowance u/s. 36(1)(viia) of the Act, Rs.16,43,14,000/- on account of domestic transfer pricing adjustment u/s. 92C of the Act, Rs. 1,84,86,811/- on account of disallowance of excess provisions, Rs.7,14,84,000/- on account of addition u/s. 41(1) & 41(4A) of the Act, Rs.6,56,45,600/- on account of disallowance u/s. 40(a)(ia) of the Act and Rs.34,29,453/- on account of disallowance u/s. 14A r.w.r. 8D of the Act

5. Feeling aggrieved with the orders passed by the assessing officer, assessee filed the captioned appeals before the ld.CIT(A), who partly allowed the appeals of assessee.

6. Aggrieved with the orders of ld.CIT(A), assessee is now in appeal before us.

7. Before us, ld. AR has drawn our attention to para 9 of the order of ld.CIT(A) which is to the following effect :

“In ground no. 3, the appellant has challenged the disallowance of Rs.7,14,84,000/- made by the A.O. towards provisions for NPA assets. In the assessment order, the A.O. has stated that on perusal of the annual accounts, it is noticed that the appellant bank has reversed provision made towards NPA accounts during this year to the extent of Rs.7,14,84,000/-. Vide questionnaire dated 20.11.2015, the A.O. specifically asked the appellant as to why the said provision written back during this year should not be taxed as income u/s 41(1)/ 41(4A) of the Act. However, the appellant has not furnished any reply in response to the said query. Therefore, the A.O. has taxed the said amount of provision written back as income u/s 41(1) and 41(4A) of the Act. Before me,

the appellant has contended that it had not claimed any deduction at the time of making the provision towards NPA and therefore, no income arose u/s 41(1) or 41(4A) when such provision was reversed during the year. The appellant has stated that the provisions of section 41(1) and 41(4A) are attracted only in cases where the assessee has claimed deduction towards certain provision in the earlier years and such provision claimed as a deduction in earlier years was written back/ reversed during the relevant year. On perusal of the provisions of section 41(1)/ 41(4A) of the Act, I am of the considered view that the contention advanced by the appellant is correct in principle and therefore, in the present case, no addition u/s 41(1)/ 41(4A) could have been made unless it is proved that the appellant had claimed deduction in the year in which the impugned provision towards NPA was created in the books of accounts. However, as a measure of abundant precaution and fairness, while passing the Order giving effect to CIT(A) order, the A.O. is directed to factually verify whether the appellant had claimed any deduction towards provision for NPA u/s 36(1)(viii) or under any other section, in the years when such provision was made. The A.O. shall satisfy himself that in the year of creation of such provision, the appellant has not claimed deduction in respect of such provision for NPA which has been reversed in the current year, to the extent of Rs.7,14,84,000/-. If no such deduction is found to be claimed in any earlier years, then the A.O. shall delete the above addition made in the current year. Subject to the above directions, Ground No. 3 raised by the appellant is partly allowed.”

7.1. In support of its case, ld. AR filed the written submissions which are to the following effect :

“A.P. Grameena Vikas Bank (hereinafter referred to as "Assessee"/"Appellant") is a regional rural bank engaged in the business of banking. It filed its return of income u/s 139(1) for the assessment year 2013-14 on 26.09.2013 declaring total income of Rs. 199,87,37,320/-. The case was selected for scrutiny assessment and an assessment order was passed on 30.03.2016 u/s 143(3) by ACIT Circle (1), Warangal ("Assessing Officer"/"AO") assessing total income of Rs. 247,33,34,800/- by making various additions/disallowances to the tune of Rs. 47,45,97,479/.

Facts relating to addition which is subject matter of the present appeal are stated as under.

Assessee being a bank is required to create provision in respect of certain debts where the recovery is doubtful. Subsequent to creation of provision the debt may either turn good i.e. either some recovery might be made or it may turn into a loss i.e. the debt might become irrecoverable. In the first case as the debt has become good, the provision created considering the debt as doubtful would no longer be required and hence will be written back whereas in the second case as the debt has become irrecoverable it will be written off from books of accounts. Consequentially as the debt itself is written off from the books, related provision is also required to be written off from books. In both the cases, the provision decreases.

In the Financial Statements, the assessee bank is required to give details of Movement in Provision for Non-Performing Assets (NPA) in the schedule of "Asset Quality"(Relevant extract from Financial statements is attached herewith, please refer pg no. 5), Details such as opening balance, Provision created, Provision Written back/Written Off and closing balance are given in this schedule. Provision Written back/Written Off is reported in single line item as the effect in NPA is same in both cases i.e. indicates reduction in amount of provision.

In the present case, the amount reported (Rs. 7,14,84,000/-) in this line item pertains to the provision written off as the corresponding debt has become irrecoverable. However, while passing the assessment order, the assessing officer has considered the same as Written back from provisions as not required. Further the AO formed a view that this amount is income within the provisions of section 41(1) and 41(4A).

Aggrieved by the order passed by AO, the assessee preferred an appeal against the assessment order before the first appellate authority. The appeal was partly allowed by Commissioner of Income Tax (Appeals), National Faceless Appeals Centre [referred to as "CIT(A)"] vide order dated 13.06.2023. With regard to the issue which is subject matter of the present appeal, the CIT(A) although decided the issue in appellant's favour but the direction given to the AO is incomplete. This is more elaborately discussed against the respective grounds.

Aggrieved by incomplete direction given by CIT(A), the appellant has preferred the present appeal before your honors and the following submission is being made providing explanation on the grounds of appeal.

Ground 1: The Learned Commissioner of Income Tax (Appeals) ["CIT(A)"] erred in misconstruing the contention/submission made by the appellant. The contention raised before the CIT(A) was that the amount being considered represents write-off of provision for bad and doubtful debts and not write back of doubtful debts as presumed by the AO whereas the CIT(A) adjudicated the issue in the context of creation of provision and claiming of deduction thereof.

Ground 2 : The Learned CIT(A) erred in stating that the appellant has contended that it had not claimed any deduction at the time of making the provision towards NPA and accordingly directing the AO to verify whether the appellant had claimed any deduction towards provision for NPA u/s 36(1)(viii) in the years in which provision was made ignoring that the appellant has itself stated in its submission (which are extracted at Page no. 36 of CIT(A) order) that deduction towards provision was claimed in earlier years and in this year no deduction is claimed towards write-off. The appellant only contended that since this is a case of write-

off of provision and no benefit is being derived, provisions of section 41 are not applicable.

Ground 3 : The Learned CIT(A) ought to have directed the AO to verify whether the amount under consideration pertains to write-off or write back and once it is found that the amount pertains to write off, no addition to be made in this regard.

The summary of contentions raised before CIT(A) and our explanation before your honors is given as under:

It was submitted before CIT(A) that section 41(1) can be invoked only where a deduction is allowed in respect of an expenditure and subsequently the assessee obtains any benefit in respect of such expenditure or liability. Further section 41(4A) can be invoked only in a case of withdrawal of amount from special reserve maintained u/s 36(1) (viii).

In the present case, firstly there is no special reserve and hence section 41(4A) is not applicable. Secondly it is a case where a provision was created in earlier years which now written off as the corresponding loan is written off as irrecoverable. It implies that no benefit is obtained by assessee in respect of provision made earlier. Hence section 41(1) is also not applicable in the facts of present case. Had there been any recovery made or the provision was written back on account of the debt turning from doubtful to good/performing, there could be a case of section 41(1). In fact in such a case even as per accounting principle the amount would have been credited to P&L. (This was done in AY 2009-10 wherein on net basis, provision of Rs. 34.11 crores was written back and the same was credited to P & L). In the year under consideration as it is a case of "Write-Off", same is not required and is not credited to P&L.

The learned CIT(A), although accepted the contention of appellant but while giving direction to AO has emphasized on the first limb of the provision i.e. whether any deduction was allowed in earlier years. Whereas in the present case the emphasis should have also been on the second limb i.e. whether assessee has obtained any benefit. The learned CIT(A) also mistakenly stated that "the appellant has contended that it had not claimed any deduction at the time of making the provision towards NPA". The fact is appellant itself stated that it has claimed deduction u/s 36(1)(viii) at the time of creating provision and hence it is not claiming deduction at the time of write off.

This part of Assessee's submission is reflected on Page no. 36 the order of CIT(A) wherein it is clearly stated that "In this case assessee being a scheduled bank is eligible for deduction in respect of provision for bad and doubtful debts as per section 36(1)(viii) and has claimed the same and therefore the assessee is not entitled to claim this amount (bad debts written off) to extent of provision for bad and doubtful debt allowed u/s 36(1)(viii) and hence the assessee has not claimed any deduction towards this amount written off".

The learned CIT(A) should have given direction that the amount could be brought to tax only in case if it is found that any benefit is obtained i.e. any recovery is made against the provision. However

the CIT(A) has given a direction that "The A.O. shall satisfy himself that in the year of creation of such provision. the appellant has not claimed deduction in respect of such provision for NPA which has been reversed in the current year, to the extent of Rs.7,14,84,000/-. If no such deduction is found to be claimed in any earlier years, then the A.O. shall delete the above addition made in the current year". This direction of CIT(A) would lead to unwarranted addition because as explained in the above part that in the present case although a deduction was claimed in earlier year but it is not a case of obtaining any benefit in the current year.

Hence the only relief sought in this appeal is modification of the direction given. It is respectfully prayed that the direction of the CIT(A) may kindly be modified and the AO may kindly be directed to decide the issue in accordance with the provisions i.e. addition can be made only in case if any benefit is obtained and other-wise no addition to be made."

8. It was submitted by the ld. AR that the ld.CIT(A) had remitted back the matter to the file of Assessing Officer for verification purposes. It was submitted that the said exercise was required to be carried out by the ld.CIT(A). Further, the ld. AR prayed that the matter may kindly be remitted back to the file of ld.CIT(A).

9. Per contra, the ld. DR relied upon the order passed by the lower authorities.

10. We have heard the rival submissions and perused the material on record. Admittedly, the ld.CIT(A) in the order has categorically recorded as under :

"On perusal of the provisions of section 41(1)/ 41(4A) of the Act, I am of the considered view that the contention advanced by the appellant is correct in principle and therefore, in the present case, no addition u/s 41(1)/ 41(4A) could have been made unless it is proved that the appellant had claimed deduction in the year in which the impugned provision towards NPA was created in the books of accounts."

However, after recording the above said, it was mentioned that the matter be remitted back to the file of Assessing Officer by holding as under :

“whether the appellant had claimed any deduction towards provision for NPA u/s 36(1)(viii) or under any other section, in the years when such provision was made.”

10.1. In our view, the above-said direction issued by the Id.CIT(A) to the Assessing Officer is required to be modified and accordingly, we modify the direction issued by the Id.CIT(A) to the Assessing Officer i.e., *“The Assessing Officer is directed to factually verify whether the assessee had claimed any deduction towards provision for NPA u/s 36(1)(viii) or under any other section, in the years in which such provision was made.”*

10.2. Instead of the above direction, we direct the Assessing Officer to decide the issue in accordance with facts and law i.e., whether any benefit was obtained by the assessee in respect of the amount written off by the assessee being irrecoverable under the provisions of section 41(1) of the Act. In the light of the above direction, we deem it appropriate to remand back the matter to the file of Assessing Officer for deciding the issue afresh and in accordance with law after affording due opportunity of hearing to the assessee. The assessee shall be at liberty to file documents, if any, as required for proving its case and the Assessing Officer shall consider such evidences, if any, filed by the assessee. Needless to say, the Assessing Officer shall examine those documents / evidence filed by the assessee and thereafter pass a detailed speaking order. Accordingly, the appeal of assessee is allowed for statistical purposes.

11. In the result, the appeal of assessee in ITA No.417/Hyd/2023 is allowed for statistical purposes.

12. Now coming to the other appeals i.e. ITA Nos.418 to 420/Hyd/2023, which are identical to the facts and issues raised in ITA 417/Hyd/2023, our decision in ITA No.417/Hyd/2023 would apply mutatis mutandis. Accordingly, these appeals of the assessee are also allowed for statistical purposes.

13. To sum up, all the appeals of assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 29th November, 2023.

Sd/-

Sd/-

(R.K. PANDA) VICE PRESIDENT	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 29th November, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	A.P. Grameena Vikas Bank, Warangal, 2-5-8/1, 1 st Floor, Old Bus Depot Road, Ramnagar, Hanamkonda, Warangal – 506001. Telangana.
2	DCIT, Circle 3(1), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order