

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2478/MUM/2021
(Assessment Year: 2014-2015)**

**Deputy Commissioner of Income Tax,
CC-7(2), Mumbai,**
Room No. 655, Aaykar Bhavan, M.K. Road,
Mumbai - 400020

.....

Appellant

**M/s Sahebrao Deshmukh Co-op
Bank Ltd.,**
103, Trade Corner Society,
Sakinaka Junction,
Andheri (East), Mumbai - 400072
[PAN: AABAT4669A]

Vs

.....

Respondent

Appearance

For the Appellant/Department : Ms. Shreekala Pardeshi
For the Respondent/Assessee : Shri Satish Modi

Date

Conclusion of hearing : 27.12.2023
Pronouncement of order : 29.12.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 26/10/2021, passed by the Ld. Commissioner of Income Tax (Appeals)-49, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) allowed the appeal of the Assessee against the Assessment, dated 28/12/2019, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
 - 1.1. The present appeal was disposed off vide order dated 27/02/2022 on

account of low tax effect. However, subsequently, vide order dated 10/11/2023, passed in Miscellaneous Application preferred by the Revenue [MA No. 174/Mum/2023] the aforesaid order, dated 27/02/2022, was recalled in view of the fact that the reassessment proceedings in the present case were initiated on account of a revenue audit objection accepted by the Assessing Officer and therefore, the case fell under the exceptions specified in paragraph 10(c) of the Circular No. 3 of 2018, dated 11/07/2018. In the aforesaid facts and circumstances, the present appeal came up for hearing before the Tribunal.

2. The Revenue has raised following grounds of appeal:

- "1. Whether on the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in deciding the reopening was initiated by Assessing Officer on change of opinion ignoring the fact that reopening can be done on the reasons relevant to subjective opinion and not conclusive findings.*
- 2. Whether on the facts and the circumstances of the case and in law, the Ld CIT(A) has erred in deciding that the notice under section 148 of the Act is void ab initio and hence passed is null and void.*
- 3. Whether on the facts and the circumstances of the case and in law, the Ld CIT(A) has failed to discuss the merits of the case wherein the assessee had claimed Rs. 90,72,553 in the Profit and Loss Account which is not allowable as business expense.*
- 4. On the facts and circumstances of the case and in law, the appeal is being filed in this case, even though the tax effect involved in this case is below monetary limit (Tax effect. 88,149) considering that issue involved is covered by exceptions as listed in para 10(e) of Boars's Circular no. 3 of 2018 as amended by Board's letter F.NO.279/Misc. 142/2007-ITJ dated 20.08.2018."*

3. The relevant facts in brief are that the Assessee is a Co-operative Bank. Assessment under Section 143(3) of the Act was framed on

the Assessee vide order, dated 23/12/2016. Subsequently, the case of the Assessee was reopened under Section 147 of the Act and vide re-assessment order dated 28/12/2019, passed under Section 143(3) read with Section 147 of the Act taxable income of the Assessee was assessed at INR 7,93,28,470/- after making disallowance of INR 90,72,553/- (1/5th of INR 4,53,62,781/-) claimed by the Assessee as amortized goodwill/excess loss taken over on merger of Shahpuri Nagari Sahari Bank Ltd. with the Assessee-Bank during the Financial Year relevant to Assessment Year 2010-11.

4. The Assessee preferred appeal before CIT(A) against the above assessment order, dated 28/12/2019, passed under Section 143(3) read with Section 147 of the Act challenging the validity of re-assessment proceedings as well as the disallowance made on merits. The CIT(A), vide order dated 26/10/2021, deleted the disallowance of INR 90,72,553/- holding that the reassessment proceedings were void-ab-initio and therefore, the order dated 28/12/2019, passed by the Assessing Officer under Section 143(3) read with Section 147 of the Act was null and void.
5. Being aggrieved by the above order passed by the CIT(A), the Revenue is now in appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
6. The Ld. Departmental Representative appearing before us submitted that the reassessment proceedings were initiated on the basis of revenue audit objection which constituted sufficient tangible material for initiating reassessment proceedings. Further, during the assessment proceedings, for the Assessment Year 2014-15 the Assessing Officer had not examined/verified the claim of deduction

for INR 90,72,553/- claimed by the Assessee, and therefore, it cannot be said that the reassessment proceedings have been initiated on account of change of opinion.

7. Per contra, the Ld. Authorised Representative for the Assessee giving a factual background to the deduction of INR 90,72,553/- claimed by the Assessee submitted that the aforesaid amount represented amortized amount of goodwill arising on account of merger of Shahupuri Nagari Sahakari Bank Ltd. with the Assessee during the financial year relevant to Assessment Year 2010-11 claimed as deduction by the Assessee in terms of the letter, dated 26/02/2009, issued by Reserve Bank of India. The Assessee had amortized payment of INR 4,53,62,781/- (representing excess liability over assets taken over on account of merger) as goodwill equally over a period of 5 years and claimed amortized amount as deduction in 5 assessment years (i.e. Assessment Years 2010-2011 to 2014-2015). No such disallowance was made in the immediately preceding four assessment years in which identical deduction has been claimed by the Assessee. Assessment Year 2014-2015 was the 5th and final year in which deduction of INR 90,72,553/- has been claimed by the Assessee. The Ld. Authorised Representative for the Assessee submitted that the Assessing Officer did not have any fresh tangible material to initiate reassessment proceedings. The revenue audit objection did not point out any new fact and therefore, could not form the basis of initiating reassessment proceedings. In the preceding assessment years, the claim of deduction had been examined during scrutiny assessment proceedings and was allowed. The Ld. Authorised Representative for the Assessee also placed reliance upon paragraph 6 of the order passed by the CIT(A) and reiterated the submissions made before the CIT(A).

8. We have heard the rival contention, perused the material on record and examined the position in law.
9. On perusal of record it emerges that during the previous year relevant to Assessment Year 2010-2011 Shahupuri Nagari Co-operative Bank was merged with the Assessee with effect from 25/04/2009. The total liability of the said bank exceeded the total assets by INR 4,53,62,781/-. The aforesaid amount was claimed by the Assessee as goodwill/excess loss taken over which was amortized equally over the period of 5 assessment years starting from Assessment Year 2010-2011 and ending with Assessment Year 2014-2015. For Assessment Year 2010-2011 assessment was completed under Section 143(3) of the Act and identical deduction claimed by the Assessee was allowed. During the course of the aforesaid assessment proceedings, the Assessing Officer allowed deduction for INR 90,72,577/- (being 1/5th of INR 4,53,62,781/-) after requisite inquiry/verification. However, while computing the income the Assessing Officer failed to allow deduction for the same and therefore, the Assessee moved rectification application under Section 154 of the Act which was allowed vide rectification order dated 07/05/2015. On perusal of the assessment order for the Assessment Year 2011-2012, 2012-2013, and 2013-2014, we find that no disallowance was made in respect of identical deduction claimed by the Assessee. For the Assessment Year 2014-2015 also during regular scrutiny assessment no disallowance was made in this regard. Subsequently, the Assessing Officer initiated reassessment proceedings under Section 147 of the Act recording the following reasons:

"The assessee has e-filed its return of income on 24.11.2014 declaring income at Rs 7,02,55,918/--The case was selected for scrutiny under CASS and accordingly notice u/s 143(2) of the Act issued and served

on the assessee. Subsequently, the case was assessed u/s 143(3) of the I.T. Act determining the total income at Rs.7,02,55,918/-.

On perusal the material on record, it is found as under;

"The assessment of the above assessee was done under scrutiny manner after assessing taxable income at Rs.7,02,55,918/-. It is observed from the Profit and loss account assessee bank has claimed 1/5th cost differed merged of Shahupuri Bank of Rs. 90,72,553/- and the same was allowed by department. In submission, it was stated that the assessee has acquired the Shahupuri Nagari Co-op Bank with effect from 25.04.2009. While taken over the assessee incurred more liability than assets of Shahpri Co-op Bank

Total liability as per audited balance sheet Rs. 13,86,52,068/- as on 25.04.2009

Total asset as per audited balance sheet Rs. 9,32,89,286/-

Excess of liability over asset Rs.4,53,62,781/-

This excess liability of Rs. 4,53,62,781/- is claimed as goodwill paid by the Bank and claimed 1/5th every year. As assessee bank has acquired the Shahupuri bank therefore all the assets and liabilities of the amalgamating co-op bank immediately before the merger become the assets and liabilities of the amalgamated co-op bank and the successor co-op bank can set off and carry forward business loss and depreciation allowances of the predecessor co-op bank. Here in this case of claim of 1/5th cost differed on a/c of merger of Shahupuri Bank amounting to Rs. 90,72,553/- was not in order the same should have been disallowed. However this was not done.

Omission to do so has resulted in under assessment of income of Rs. 9,72,553/-with consequent to short levy of tax of Rs 41,01,401/- including interest under section 234B.

In view of the above, I am satisfied that this is a fit case for reopening the assessment u/s 147 r. w. explanation 2(c) of the I.T. Act. Since, there is a failure on the part of the assessee to disclose fully and truly material facts necessary for its assessment, the assessment for A.Y. 2014-15 is proposed to be reopened u/s 147 of the I.T. Act." (Emphasis Supplied)

10. On perusal of the above reasons recorded for reopening of the assessment, it is clear that the Assessing Officer was not in possession of any new tangible material and the reassessment proceedings were initiated merely on the basis of revenue audit objection. The revenue audit objection did not point out any new fact which was not already on record. We note that both, the revenue audit objection and the reasons recorded made reference to the Profit & Loss Account of the Assessee for the relevant previous year. It is admitted position that Shahupuri Nagari Co-operative Bank merger with the Assessee during the financial year relevant to the Assessment Year 2010-11. Identical deductions were claimed by the Assessee during the Assessment Year 2010-11, 2011-12, 2012-13 and 2013-14 have been allowed by the Revenue. Despite this, the revenue audit objection merely stated that deduction claimed by the Assessee should have been disallowed. The Assessing Officer also issued notice under Section 148 of the Act without application of mind and without providing any basis or reasoning by merely placing reliance on the audit objection. In the case of CIT Vs. P.S.V. Beedies Pvt. Ltd.: 237 ITR 13 (SC)], the Hon'ble Supreme Court has held that reopening of the case on the basis of factual error pointed out by the audit party is permissible under law. However, on perusal of audit objection [placed at page 6 to 8 of the paper-book] we find that no such factual error has been pointed out by the Assessing Officer. In the facts and circumstances of the present case, we are of the view that the reassessment proceedings were initiated under Section 147 of the Act without any tangible material to form the basis of belief that income had escaped assessment. We concur with the CIT(A) that notice issued under Section 148 of the Act was void-ab-initio and therefore, the order dated 28/12/2019, passed under Section 143(3) read with Section 147 of the Act is null and void. In view of

the aforesaid, we do not find any infirmity in the order passed by the CIT(A). Accordingly, Ground No. 1 and 2 raised by the Revenue are dismissed, while Ground No. 3 and 4 are dismissed as being infructuous.

11. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 29.12.2023.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.12.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai