

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'H': NEW DELHI)
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER
ITA No:- 3/Del/2021
(Assessment Year: 2007-08)**

ACIT, Circle-2(1), Ghaziabad.	Vs.	Zila Sahkari Bank Limited, Ghaziabad.
PAN No: AAATG0597N		
APPELLANT		RESPONDENT

**C.O.:- 35/Del/2021
Arising from ITA No:- 3/Del/2021
(Assessment Year: 2007-08)**

Zila Sahkari Bank Limited, Ghaziabad.	Vs.	ACIT, Circle-2(1), Ghaziabad.
PAN No: AAATG0597N		
APPELLANT		RESPONDENT

Revenue by : Ms. Meenakshi Dohre, Sr. DR
Assessee by : Shri Akhilesh Kumar, Adv.
Date of Hearing : 27.02.2024
Date of Pronouncement : 29.02.2024

ORDER

PER N.K. BILLAIYA, AM

ITA No. 03/Del/2021 by the Revenue and Cross Objection No. 35/Del/2021 of the Assessee preferred against the order of the Ld. CIT(A)-

1, Noida, dated 24.08.2020 pertaining to A.Y. 2007-08.

1.1 The appeal and the cross objection were heard together and are being disposed of by this common order for the sake of convenience and brevity.

1.2 The grievance of the Revenue reads as under:

"1. The CIT(A)-1, Noida has erred in law and on facts in deciding the issue of To disallowance of Rs. 27,16,514/- for not qualifying u/s 36(1)(vii)(a) by quashing the order on the grounds that the reason where factually incorrect and was found 1. unsustainable. In the reason recorded, the AO by foresight had recorded a different sub clause for disallowance of deduction which was only available till A.Y. 2005- 06. As per the provision of section 36(1)(vii), the said deduction claimed by the assessee was available only when the assessee had made provisions for bad and doubtful debts and not if it is claimed directly in the computation in the income The assessee had done the same which the Ld. CIT(A) has also acknowledged in his order and has advised as per Para 6.1.6 to take remedial action on the issue which was a prima facie mistake apparent from record.

2. The CIT(A)-1, Noida has erred in law and on facts in quashing the assessment order passed u/s 143(3)/147 when it was established that the claim of the assessed was not justified within section 36(1)(vii)(a).

3. The Learned CIT(A) has erred in law in quashing the assessment order, while he has confirmed the addition of Rs. 8,74,358/- on account of disallowance of overdue interest etc.

4. Therefore, the learned CIT(A)'s impugned order being erroneous on facts and on law may be set aside and that of assessment order of the AO may be restored.

5. The CIT(A)-1, Noida has erred in law and on facts in deleting the addition of Rs 4,40,69,824/- made on account of interest expenses for non deduction of TDS after admitting Form 15G/15H as additional evidence during appeal proceedings. The Ld. CIT (A) had called for Remand Report on the submission of additional evidence of Form 15G/15H by the assessee. The AO had specifically stated in its Remand report that the additional evidence filed by the assessee should not be accepted as the same could have been provided by the assessee during assessment proceeding.

6. Appellant craves leave to modify/amend or add any one or more grounds of appeal."

2. Briefly stated the facts of the case are that the assessee electronically filed its return of income on 31.10.2007 declaring income of Rs. 3,35,03,670/-. The return was selected for scrutiny assessment through CASS and thereafter assessment was framed u/s 143(3) of the Act on 10.12.2009 accepting the return income of Rs. 3,35,03,670/-.

3. The completed assessment was reopened by the issue of Notice dated 31.03.2014 and the reasons for issue of Notice u/s 148 of the Act read as under:

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Reasons for issue Notice u/s 148 of the I.T.Act, 1961 for A.Y. 2007-08

Name & Address of the assessee : M/s Zila Sahakari Bank Ltd.,
RDC-20, Raj Nagar, Ghaziabad.

PAN : AAATG0597N

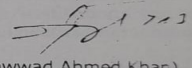
A.Y. : 2007-08

Reasons:

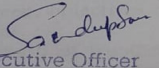
In this case return of income was e-filed on 31.10.2007 declaring income of Rs.3,35,03,670/-. The case was processed u/s 143(1) at returned income. The case was selected in scrutiny through CASS. The case is completed u/s 143(3) of I. T.Act., 1961 on 10.12.2009 at income of Rs.3,35,03,670/-.

During the course of assessment proceedings u/s 143(3) for A.Y. 2011-12 it is noted that the assessee has claimed 5% additional amount u/s 36(1)(viiia) against doubt full assets and losses. The additional claim of 5% against doubt full assets and losses u/s 36(1)(viiia) is available only upto assessment year 2005-06 as per I.T.Act., 1961 and assessee bank has claimed this deduction for A.Y. 2007-08 which is not allowable as per law.

Therefore it is fit case for section u/s 147 (c)(1) of the I.T.Act, 1961. Therefore, I have reason to believe that an income has been escaped assessment within the meaning of explanation (C) (1) of section 147 of the I.T.Act, 1961. Issue notice u/s 148.


(Jawwad Ahmed Khan)
Addl. Commissioner of Income Tax
Range-2, Ghaziabad

Certified True Copy


Chief Executive Officer
Zila Sahkari Bank Ltd.,
Ghaziabad

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4. Thereafter, the assessment order was framed on 27.02.2015 by making additions of Rs. 27,16,514/- and Rs. 8,74,258. The assessed total income was at Rs. 8,11,64,266/-.

5. The assessment was challenged before the Ld. CIT(A) and it was vehemently contended that the reopening itself is bad in law as the same has been done on wrong facts.

6. After considering the facts and submissions and after appreciating the facts persuading the AO to reopen the completed assessment, the Ld. CIT(A) held as under:

"5.4 Perusal of AO's assessment record shows that the AO had reopened the case for reassessment u/s 147 of the Act after recording reasons on the ground that appellant has made additional claim of 5% against doubtful debt asset u/s 36 (viiia) which was available only upto AY 2005-06. But the appellant has argued that the appellant had not claimed any additional deduction of 5% allowable in IInd proviso upto 2005-06, during the year under consideration. As per main Section 36(1) (viiia) (a) the appellant was eligible for deduction at the rate of 7.5% which has been duly claimed by him, hence deduction claimed by the appellant is as per law.

5.5. To clarify the aforesaid issue the provisions of Section 36(1)(viiia)(a) for FY 2006-07 relevant to AY 2007-08 are as under;

36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

.....

(viiia) 30 [31 in respect of any provision for bad and doubtful debts made by-

*(a) **a scheduled bank** (not being (***) a bank incorporated by or under the laws of a country outside India) or a non-scheduled bank, an amount not exceeding seven and one-half per cent of the total Income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding as(ten) per cent of the aggregate average advances*

made by the rural branches of such bank computed in the prescribed manner:

35 [Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:]

36 [Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent had been substituted:"]

5.6. Keeping in view of above section and provisions, it is found that while opening the reassessment proceedings u/s 147 of the Act the AO had recorded wrong reasons as the appellant had not claimed additional deduction of 5% as stated in the reasons recorded by the AO. Instead the appellant had claimed deduction at the rate of 7.5% as per Section 36(1)(vii) (a) of the Act. The aforesaid section was never abolished. Hence, basis on which the AO was reopened the case for reassessment u/s 147 of the Act is found incorrect. Therefore, the reason becomes non-existent even after validly assuming jurisdiction, the AO loses right to continue with the proceedings in absence of correct information. The ground of the appeal of the appellant is allowed."

7. Before us, the Ld. DR strongly supported the findings of the AO.
8. It is the say of the Ld. DR that though the AO has wrongly mentioned different sub-clause but the fact of the matter is that the reasons given by the AO are correct and the reopening should have been upheld. The Counsel for the assessee reiterated what has been stated before the Ld. CIT(A).
9. We have given a thoughtful consideration to the orders of the authorities below. The impugned assessment year is 2007-08 and the

notice u/s 148 of the Act, dated 31.03.2014 which means that the notice has been issued after four years.

10. The first proviso to Section 147 of the Act apply on the facts of the case wherein it has been provided that there should be a failure on the part of the assessee to disclose fully and truly all the material facts related to the assessment.

11. A perusal of the notice exhibited elsewhere show that nowhere the AO has mentioned that there is a failure on the part of the assessee to disclose truly and fully materials facts. On the contrary, the AO has proceeded on wrong facts and reopened the assessment.

12. Considering the totality of the facts, in the light of the relevant provisions, we do not find any reason to uphold the reopening of the assessment and therefore the findings of the CIT(A) cannot be faulted with.

13. Since the assessment order was quashed, we do not find it necessary to dwell in the merits of the case. The appeal of the Revenue is dismissed, and the Cross Objection becomes infructuous and is accordingly dismissed.

14. In the result, appeal and cross objection both are dismissed.

Order pronounced in the Open Court on 29.02.2024

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 29/02/2024.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27.02.2024
Date on which the typed draft is placed before the dictating Member	27.02.24
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	