

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.3747/Mum/2023
(Assessment Year :2018-19)**

Abhyudaya Co-operative Bank Ltd. Ground Floor, K.K. Tower Abhyudaya Bank Lane Off. Dr. Ambedkar Marg Parel Village Mumbai-400 012	Vs.	Commissioner of Income Tax-Appeals NFAC, New Delhi
PAN/GIR No.AAAAA0300L		
(Appellant)	..	(Respondent)

Assessee by	Shri Keshav Bhujle
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	16/04/2024
Date of Pronouncement	18/04/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 15/09/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for A.Y.2018-19.

2. In various grounds of appeal assessee has challenged the disallowance / addition of Rs.2,81,86,524/- made by the ld. AO u/s.14A.

3. The brief facts are that assessee is a co-operative bank and has filed its return of income on 16/08/2011 declaring total loss of Rs. (-) 373,32,38,952/-. The assessee's case was selected for complete scrutiny and during the course of the proceedings ld. AO noted that the assessee company has shown investments, opening balance of Rs.5187,95,92,888/- on 01/04/2017 and closing balance of Rs.4488,54,22,377/- on 31/03/2018 in its accounts. The assessee company has earned Rs.22.97 Crore as exempt Income. The assessee company has suo-moto offered disallowance u/s 14A of Rs.62,590 on basis of certain calculation of man hours put by treasury department for sale of securities during the year and added back the same to the total income.

4. In response to the show-cause notice assessee submitted as under:-

"Our bank had made investment in Tax Free Bonds. As on 31.02.2018 the amount of total investment in tax free bonds was Rs.34.55 crore and tax free interest income earned during the financial year 2017-18 was Rs.22.97 crore."

Total reserves as on 31.03.2017 were Rs. 1259.70 crore and as on 31.03.2018 DER were Rs. 814.63 crore. As and when the opportunity arises our Bank decides to invest in tax free bonds against the reserve funds. Since we have made investments in tax free bonds against reserves, no funding cost is incurred.

As a Co-op Bank, we have to make investments in Govt. securities as per RBI requirements for maintenance of Statutory Liquidity Ratio. Our Treasury Dept. Handles all the investments of our Bank

The approximate operational time required to facilitate investments in Tax free bonds in maximum one working day per investment and two to three staffs Involvements. Further, the time required for maintenance of investment made is half an hour per investment, every month, per staff. Proportionate administrative cost for making and managing such investments is worked out to Rs.0.63 Lakh. The same amount was considered as disallowed. A detailed calculation is appended herewith as- Annexure-A.

We have disallowed the expenses u/s 14A and this has been accepted in the previous year's assessments.

We have enclosed herewith statement for tax free investment as Annexure-B.

5. However, ld. Assessing Officer rejected the assessee's explanation on the following reasons:-

“1. The assessee's suo-moto offering of disallowance u/s 14A itself suggests that the provisions of section 14A are applicable its case

2. The disallowance u/s 14A computed by the assessee is computed without any sound basis and reasoning and is ad-hoc in nature

3. As per, the CBDT circular No. 5/2014 dated 11.02.2014 it has been stated that disallowance of expenditure for earning exempt income u/s 14A read with Rule 8D would be attracted even if the corresponding exempt income has not been earned during the financial year

4. The term expenditure occurring in section 14A would take in its sweep not only direct expenditure but also all forms of expenditure regardless of whether they are fixed, variable, direct, indirect, administrative, managerial or financial. The

Phraseology used in section 14A prohibiting the deduction in respect of expenditure incurred by the assessee in relation to exempt income is thus wide enough to cover all forms of expenses provided they have some connection with the exempt income. This is based on the principle that expenses must be allocated to that income to which they are connected to avoid distortions in the computation of both taxable as well as exempt income.

5. Therefore, ad-hoc disallowance u/s 14A of Rs.62,590/- worked out by the assessee company is not acceptable as meagre expenditure has been considered for earning of Rs 22,97,90,439/- as exempt income, which is not justifiable.

6. The assessee has invested in interest free bonds for earning income of an amount of Rs. 22,97,90,439/- and has disallowed an amount of Rs.62,590/-. The disallowance was made without any logical reasoning for earning such income.

Hence, the disallowed amount by the assessee is rejected as reasons/para.”

6. The ld. AO then proceeded to work out the disallowance under Rule 8D(2) of Rs.2,82,49,114/-. The ld. CIT (A) has also confirmed the addition.

7. Before us ld. Counsel submitted that assessee is a bank and is required to make investment in tax free bonds in Government securities as per RBI requirements for maintenance of statutory liquidity ratio. All these investments are handled by Treasury department of the bank and during the year no fresh investments were made rather some of the investments were sold. He further pointed out in A.Y.2012-13 similar show-cause notice was issued by the AO for disallowance u/s.14A and in response, assessee had given some calculation based on

calculation of man hours involved by the Treasury department and other expenses to work out the disallowance u/s.14A. The same working has been accepted by the Id. AO after examining the expenses and thereafter, this working of disallowance always has accepted by the Assessing Officers not only in the A.Y. 2012-13 and also in subsequent years. Based on past precedents, this year also assessee has given the working which is as under:-

Calculation of disallowance u/s 14A of Income Tax Act, 1961.

Computation of Proportionate Admin Cost
Financial Year - 2017-18

TOTAL MAN HRS USED FOR MAKING INVESTMENT IN TAX FREE BONDS (0 INVESTMENTS * 1 MAN DAY PER INVESTMENTS * 3 STAFF PER INVESTMENT* 8 HRS)	-	
TOTAL MAN HRS USED FOR SALE OF TAX FREE BONDS (8 INVESTMENTS * 1 MAN DAY PER INVESTMENTS * 2 STAFF PER INVESTMENT* 0.5 HRS)	8.00	
TIME SPENT ON MAINTAINANCE OF INVESTMENT (0.5 HRS PER INVESTMENT * 8 INVESTMENTS* 11 TIMES) (0.5 HRS PER INVESTMENT * 4 INVESTMENTS* 12 TIMES)	44.00 24.00	
TOTAL HOURS SPENT	76.00	(a)
TOTAL HOURS (235 WORKING DAYS * 8 HRS PER DAY*20 STAFFS)	37,600.00	(b)
TOTAL EXPENSES	30,965,338.20	(c)
PROPORATINATE EXPENSE	62,589,51	(c/ b*a)

Administrative cost of Treasury Dept.

	Rs.
Particulars	Amount (17-18)
Salary	20,816,654.00
Postage, Telephone & Courier charges	120,514.34
Printing & Stationary	6,128.68
Repairs & Maintenance	980,955.19
Travelling & Conveyance	24,390.00
Misc Expense	8,474,896.17
Audit Fees	135,000.00
Professional fees	7,000.00
DEPRECIATION	399,799.82
Total Administrative Cost	30,965,338.20

8. Thus, he submitted that once such kind of working which has given almost appropriate allocation of expenses towards earning of exempt income and investment activity, then without finding any defect in such working, ld. AO cannot proceed to make the disallowance under Rule 8D. Therefore, the disallowance made by the ld. AO should be deleted.

9. On the other hand ld. DR strongly relied upon the order of the ld. AO and ld. CIT(A) and submitted that once assessee has earned exempt income and if ld. AO has rejected the suomoto

disallowance made by the assessee, then he is required to compute the disallowance under Rule 8D.

10. After hearing both the parties and on perusal of material placed on record and the finding given by the authorities below, we find that, first of all, assessee had duly given its working of disallowance of Rs.62,590/- as per the method given above. Admittedly, such working of the disallowance has been accepted by the department since A.Y.2011-12 to 2017-18. This year also assessee had given its detailed working and pointed out that there were no investments activity in this year and therefore, for selling of the investments in this year, the working given by the assessee which is based on total man hours used by the Treasury department is most reasonable having regard to the accounts maintained by the assessee and looking to the nature of expenditure debited. The ld. AO in his order has nowhere tinkered with such working and has simply rejected that it is an adhoc disallowance and it is a very meager expenditure for earning exempt income of Rs.22.97 Crores. Nowhere, he has pointed out that what is the defect in such working and why it is not accepted having regard to the accounts or the expenses debited and why the proportionate expenses allocated for sale of tax free bonds is not acceptable so as to justify such a huge disallowance. AO has not pointed out as which other expenditure can be said to be attributable for earning of exempt income. Accordingly, application of Rule 8D without recording proper satisfaction by the AO cannot be made. Thus, the disallowance made by the ld.AO and as confirmed by ld. CIT(A) is deleted.

11. In the result, appeal of the assessee is allowed.

Order pronounced on 18th April, 2024.

(RENU JAUHARI)
ACCOUNTANT MEMBER

Mumbai; Dated 18/04/2024
KARUNA, *sr.ps*

(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai