

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA Nos. 21 to 24/Ahd/2023

निर्धारणवर्ष/Assessment Year: 2008-09, 2009-10, 2011-12 & 2013-14

The Dabhoi Nagrik Sahakari Bank Limited, Sahakar Bhawan, Kansara Bazar, Dabhoi, Dist: Baroda Gujarat-391110 PAN : AAAAT 1314 K	Vs.	ACIT, Circle 1(1)(1), Vadodara
---	-----	--------------------------------------

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
-------------------------------	--	---------------------------------

Assessee by :	Shri SN Soparkar, Sr Advocate & Shri Parin Shah, AR
Revenue by :	Shri Nitin Vishnu Kulkarni, Sr DR

सुनवाई की तारीख/Date of Hearing : 06.02.2024
घोषणा की तारीख /Date of Pronouncement: 03.05.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

This bunch of four appeals has been filed by the assessee against separate orders of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short], all of even dated 28.12.2022, passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Years (AYs) 2008-09, 2009-10, 2011-12 & 2013-14.

2. It was common ground that the issue arising in all the appeals was identical; therefore, all the appeals were taken up together for adjudication and are being disposed of by way of this common consolidated order. For the sake of convenience, the appeal of the assessee in AY 2008-09 in ITA No. 21/Ahd/2023 is being taken as lead case and the issue being adjudicated

based on the facts for the said year. Our decision rendered therein will apply *mutatis mutandis* to the rest of the appeals also.

ITA No. 21/Ahd/2023 : AY 2008-09

3. Grounds of appeal raised by the assessee are as under:-

“(i) The Learned CIT (Appeal) is not correct in disallowing set off of brought forward losses against income earned during the year under consideration.

(ii) The Learned CIT (Appeal) is not correct in stating that the assessee ceased to be competent to carry on Banking Business.

(iii) The Learned CIT (Appeal) is not correct in stating that the liability which has not been determined and not accounted for cannot be given to assessee.

(iv) In view of deposit credit Guarantee Corporation of India Act, 1961 (DICGCI Act, 1961) read with DICGCI regulation 1961; any bank under liquidation availed insurance claim for payment of outstanding deposit liability from DICGCI (subsidiary of RBI) statutorily required to set a part funds realized from advances for payment of liability of DICGCI hence bank is statutorily obliged to divert by overriding title for payment of liabilities of DICGCI and not otherwise as held by Supreme Court in case of DICGCI vs. Raghupathi Raghavan Civil appeal no. 1035/2008 dated 01/07/2015 and by Gujarat High Court in case of assessee in LPA No. 2456/2009 in SCA No.7617/2009 dated 06.07.2015 hence any income of the assessee bank under liquidation ought to have been diverted at source by overriding title for payment of liabilities of DICGCI and therefore all proceeds of advances realized and entire income of assessee bank under liquidation is diverted at source and hence taxable income is Nil.

(v) Assessee has realized interest on Deposits and Advances of Rs.20 ,81,688/-. In the course of realizing advances do not cease to be stock in trade nor such interest cease to have characterization of business income hence Ld. AO ought to have held that interest on Deposits and Advances of Rs.20,81,688/- is business income.

(vi) Assessee has realized advances and has kept surplus funds as fixed deposits and as regards bank is concerned; liquid funds including stock in trade converted as liquid money and kept as fixed deposits are stock in trade however interest thereon has its characterization as income from other sources due to liquidation process but in view judgment of Supreme Court in case of Western States Trading Co(P.). Ltd. v/s C.I.T. 80 ITR 21 (SC) such interest income of

fixed deposits being stock in trade and assessed under head income from other sources ought to have been set- off against brought forward losses.

(vii) The Learned CIT (Appeal) failed to consider properly the directions given by Hon. ITAT without understanding properly the explanations and submissions made by the assessee which ought to be considered while passing high pitched assessment order.

(viii) There being no inaccurate particulars or concealment of particulars, the proceedings initiated is unjustified.

(ix) We relied on the decision of Hon. ITAT, Ahmedabad in the case of The Visnagar Nagrik Sahakari Bank Ltd. V / s DCIT, Patan. ITA NO. 2251/Ahd. 2015, A.Y. 2011-12."

4. We have heard both the parties. This is the second round of litigation before us. In the first round, ITAT had restored the appeal back to the Assessing Officer, giving certain directions. In the second round, the Assessing Officer called for necessary details from the assessee for complying with the directions of the ITAT; after considering which, he passed an order on the issues before him making certain additions to the income of the assessee. The assessee carried the matter in appeal before the Id. CIT(A), where he made arguments and raised grounds which were held by the Id. CIT(A) to be non-maintainable, being beyond the purview of the directions given by the ITAT. It is against this order of the Id. CIT(A) that the assessee has come up in appeal before us and his arguments before us were twofold:-

- (i) that the Id. CIT(A) has erred in holding that the contentions raised by the assessee in the second round before him were beyond the purview of the directions of the ITAT to the Assessing Officer in the second round, and therefore not maintainable;
- (ii) that on considering the arguments made by the assessee on merits, the assessee's appeal needed to be allowed.

5. It is in this broad backdrop that we now proceed to point out the specifics of the case and adjudicate the issue before us.

6. The first question to be answered or the issue to be adjudicated by us is with regard to the Id. CIT(A)'s finding that the contentions raised by the assessee before it were non-maintainable in view of the same exceeding the directions of the ITAT in the first round. For the said purpose, it is pertinent to note,

- what exactly is the case at hand,
- what was the direction of the ITAT in the first round, and
- what pleadings were/are being made by the assessee now which are not being entertained by the Id. CIT(A).

The copy of the order of the ITAT, passed in the first round, was placed before us, from where we have extracted the facts of the case and also the directions of the ITAT in the first round. As emanates from the same, the assessee is a co-operative society established in the year 1934 and was granted banking license by the Reserve Bank of India in 1986. In June, 2004, the Reserve Bank of India, vide its letter, precluded the assessee from incurring any liability or sanctioning/reviewing or making payment or discharging any liability or obligation except in accordance with directions contained in the said directive. Subsequently, the Reserve Bank of India, vide its order dated 01.03.2006, cancelled the license of the assessee bank with effect from 01.04.2006, debarring the assessee-bank from carrying on any banking business in India under Section 22 of the Banking Regulation Act, 1949. Thereafter, after cancellation of banking license, Registrar of Co-operative Societies, Gujarat, vide his order dated 08.03.2006, appointed liquidator for liquidation of the assessee-society.

7. For the impugned year, i.e. AY 2008-09, the Assessing Officer held that since the assessee was not entitled to carry out any banking business, being debarred w.e.f 01.04.2006 when its banking license was cancelled by the RBI, its income earned by way of interest was to be treated as income earned from other sources. The assessee, on the other hand, had returned the said income under the head "income from business & profession" and claimed set off of brought forward losses against the same. The Assessing Officer denied this claim of the assessee of its income being assessable under the head "business income", and held the same assessable under the head "income from other sources", and accordingly denied claim of set off of brought forward losses.

8. The matter was carried in appeal before the Id. CIT(A), who upheld the order of the Assessing Officer, dismissing the assessee's appeal.

9. When the matter came up before the ITAT, the ITAT followed the decision of the Co-ordinate Bench of the ITAT in the case of Anand Peoples Co-operative Bank Ltd. Vs. ITO in ITA No. 3199 to 3202/Ahd/2015 dated 23.01.2018 and the decision of the ITAT in M/s. Charotar Nagarik Sahakari Bank Ltd. Vs. ITO in ITA No.2678/Ahd/2015 dated 28.11.2017, and held that the true character of the interest earned by the assessee needed to be determined and that interest earned from the assessee's customers needed to be treated as its business income while the rest of the income earned, after depositing in bank account, was to be treated as income from other sources. The ITAT held that accordingly the net income earned from both the sources, after setting off of corresponding expenditure, needed to be determined and directed the Assessing Officer to do so after obtaining necessary details with regard to its income earned from customers and others. The directions of the ITAT are contained at paragraph No. 7 of its order, which are also reproduced in the order of the Id. CIT(A), as under :-

7. We have heard both the sides and perused the material on record. The assessee is a co-operative bank and vide directive dated 8th June, 2014 issued vide letter dated 9th June, 2014, the assessee bank was precluded from incurring any liability i.e. resorting to borrowing accepting deposit etc. or sanctioning/reviewing loan/advances or making payment or discharging any liabilities or obligations except in accordance with the directions contained in the said directive. During the course of appellate proceedings before us, the ld. counsel has also referred directions of Reserve Bank of India given to the assessee bank u/s. 35A of the Banking Regulation Act, 1949 vide letter dated 8th June, 2004 stating that serial no. 3 of the direction state that renewal of the exiting term deposits may be allowed on maturity in the same name and same capacity. Therefore, the ld. counsel has submitted that section 35 never restricts the bank to recover outstanding dues as on the day of invoking section 35 of the Banking Regulation Act, 1949. It is further submitted that bank has recovered its outstanding advances with interest and has paid interest to depositors and to pay for necessary establishment incurring expenses or carrying out business activities. After cancellation of banking license, Registrar of Co-operative, Gujarat State vide his letter dated 8th March, 2006 passed order for liquidation of the bank and appointed liquidator for liquidation process. **In the light of the above facts and circumstances, we have gone through the decision of Co-ordinate Bench of the ITAT in the case of Anand Peoples Co-operative Bank vs. ITO vide ITA No. 3199 to 3202/Ahd/2015 dated 23-01-2018 vide which after referring the decision of Co-ordinate Bench of the ITAT vide ITA No. 2678/Ahd/2015 M/s. Charotar Nagarik Sahakari Bank Ltd. vs. ITO dated 28-11-2017 wherein after considering that the assessee has received back its business advances from its customers with interest which in turn stood deposited in bank fetching the interest income, therefore, it was held that interest received from customer as well as the interest income paid by bank on the same being deposited in its banking account is to be taken as business income and the rest of the income would be taken as income from other sources. The relevant part of the decision of the Co-ordinate Bench of the ITAT is reproduced as under:-**

"5. We have heard rival contentions. Case file perused qua the instant issue on merits. Learned Departmental Representative vehemently contends that the Assessing Officer as well as the CIT(A) have rightly assessed assessee's interest income in question under the head "income from other sources" as assessee's banking license stands cancelled. He also quotes above judicial precedent in support of the said action for urging us to follow judicial consistency. We however find that hon'ble jurisdictional high court's judgment hereinabove did not deal with the case wherein the income in question had been realized from the relevant business customers. It rather transpires that the said cooperative bank liquidator had realized its assets and consequential income therefrom had been claimed as "income from business". In view of these facts that their lordships settled the issue to uphold Revenue's action treating income from said realization as under the head "income from other sources". We find that the same is not the case here. The assessee's plea throughout is that it has received back its business advances from its customers with interest which in turn stood deposited in bank(s)

fetching the interest income in question. We find in the very backdrop that a co-ordinate bench in ITA No.2678/Ahd/2015 M/s. Charotar Nagrik Sahakari Bank Ltd. vs. ITO decided on 28.11.2017 has remitted an identical issue back to the Assessing Officer with necessary directions to the assessee as well to submit necessary bifurcation of the original interest received from customers as well as the interest income paid by the bank on the same being deposited in its bank account. We follow the very course of action herein as well to leave it open for the Assessing Officer to finalize consequential computation in view of the relevant bifurcation details submitted by the assessee in consequential proceedings. We make it clear that the relevant interest income paid by assessee's customers would be taken as business income. The rest of the income after the same being deposited in bank accounts would be taken as "income from other sources". Needless to say corresponding expenditure both under business head as well as the one u/s.57 of the Act would also be computed and allowed as per law. This latter issue is accepted in assessee's favor but for statistical purposes."

It is observed that the case of the assessee is also comprised of identical issue on similar facts as involved in the case of Anand People Co- operative Bank referred above. Therefore, respectfully following the decision of the Co-ordinate Bench, we restore the issues in appeals to the file of assessing officer for adjudicating afresh after affording necessary opportunity to the assessee as per the directions laid by the Co-ordinate Bench of the ITAT in the aforesaid cited decision. Accordingly, the appeal of the assessee is allowed for statistical purposes.

10. In the second round before the AO, on the basis of certain details filed by the assessee giving bifurcation of its interest income the AO noted interest earned from other sources to be Rs.17,23,194/- and assessed the same under the head "income from other sources".

11. Having so pointed out the facts of the case and the directions of the ITAT in the first round, we shall now take note of the contentions raised by the assessee before the Id. CIT(A), and also before us, which were dismissed by the Id. CIT(A) as non-maintainable, being beyond the scope of the ITAT in the first round. A bare perusal of the grounds of appeal give a pointer of the arguments made by the Id. Counsel for the assessee at Ground No.4, which was reiterated before us also. The argument was to the effect that the interest income earned by the assessee was not taxable in its hands at all since the first

charge over that income lay with the Deposit Insurance Credit Guarantee Corporation (DICGC); that the interest income was diverted at source by overriding title for payment of liability of DICGC and, therefore, no income at all was taxable in the hands of the assessee. Ground No.4 raised by the assessee explaining the argument of the assessee in this regard is reproduced herein again for clarity.

“(iv) In view of deposit credit Guarantee Corporation of India Act, 1961 (DICGCI Act, 1961) read with DICGCI regulation 1961; any bank under liquidation availed insurance claim for payment of outstanding deposit liability from DICGCI (subsidiary of RBI) statutorily required to set a part funds realized from advances for payment of liability of IDCGCI hence bank is statutorily obliged to divert by overriding title for payment of liabilities of DICGCI and not otherwise as held by Supreme Court in case of DICGCI vs. Raghupathi Raghavan Civil appeal no. 1035/2008 dated 01/07/2015 and by Gujarat High Court in case of assessee in LPA No. 2456/2009 in SCA No.7617/2009 dated 06.07.2015 hence any income of the assessee bank under liquidation ought to have been diverted at source by overriding title for payment of liabilities of DICGCI and therefore all proceeds of advances realized and entire income of assessee bank under liquidation is diverted at source and hence taxable income is Nil.”

12. As is evident from the above, the contention of the assessee is that the assessee had gone into liquidation; all deposits made by customers with it were guaranteed by the DICGCI, for which the DICGCI had given funds to the assessee in accordance with law; and, any amount, therefore, recovered subsequently from advances made by the assessee was needed to be set aside statutorily for payment of liability of DICGCI; that therefore the interest earned by the assessee-bank was diverted by overriding title for payment of liabilities of DICGCI, and therefore not taxable as income of the assessee. The Id. Counsel for the assessee, during the course of hearing before us, referred to the decision of the Hon'ble Delhi High Court in the case of Curewel (India) Ltd. Vs. ITO, [2020] 113 taxmann.com 583 (Delhi), for contending that this contention of the assessee needed to be entertained by the Ld. CIT(A). His

plea was that the Revenue Authorities being seized with the issue of taxability of interest income earned by the assessee, the direction of the ITAT could not be read in a limited manner so as to determine only the nature of the income, as to what component comprised as business income and what component comprised as income earned from other sources, but the Revenue Authorities needed to take a broader view on the issue and also, therefore, ought to have considered the contention of the assessee that the income was not taxable at all in the hands of the assessee.

13. Having noted both the directions of the ITAT and the pleadings of the assessee as above, as also the decision of the Hon'ble Delhi High Court referred to by the Id. Counsel for the assessee before us, we have no hesitation in holding that the Id. CIT(A) has rightly held the contention now raised by the assessee as non-maintainable. The direction of the ITAT to the Assessing Officer is very clear - to determine only the "nature" of the interest income earned by the assessee, whether from customers or others, and accordingly categorize it as "income from business" and "income from other sources" respectively. The scope of determination before the Assessing Officer was limited vis-à-vis determining only the nature of its income whether by way of business or income from other sources. There is no doubt about it as is evident from the portion of the order of the ITAT in bold above.

14. What the Ld. Counsel for the assessee is now pleading is that this income was not taxable in its hands at all.

The scope of determination by the Assessing Officer surely did not extend to this limit of determining whether the income was taxable in the hands of the assessee or not. From the order of the ITAT, it is derived that the income for all purposes was taxable and there was no dispute vis-à-vis for the

same in the first round at all. The dispute was only vis-à-vis the nature of the income, for which purpose it was restored to the Assessing Officer for determination. The issue, therefore, now raised by the assessee was beyond the directions of the ITAT and, therefore, have been rightly dismissed by the Id. CIT(A) as non-maintainable.

15. The decision of the Hon'ble Delhi High Court relied upon by the Id. Counsel for the assessee, we find, is of no assistance to the assessee. In the said case, the Hon'ble High Court had noted that the remand made by the Tribunal to the Assessing Officer was a complete and wholesale remand for framing a fresh assessment and the remand was not limited in its scope. In the light of these facts, therefore, the Hon'ble High Court held that the Assessing Officer ought to have evaluated the assessee's claim made in the second round before it. These findings find mention at paragraph Nos. 10-12 of the order of the Hon'ble High Court as under:-

"10. Having heard learned counsels and perused the impugned order as well as the order dated 10.03.2011 passed by the ITAT in ITA No. 04/Del/2011 preferred by the assessee, it is clear to us that the remand made by the Tribunal to the Assessing Officer vide order dated 10.03.2011 was a complete and wholesale remand for framing a fresh assessment. The remand was not limited in its scope and was occasioned upon the Tribunal finding the approach of the Assessing Officer and the CIT (A) to be excessive, harsh and arbitrary. The earlier assessment had been framed on the basis of Best Judgment without examining the books of accounts of the assessee, which the assessee has claimed were available.

11. That being the position, the Assessing Officer ought to have evaluated the claim made by the assessee for write-off of liability by Canara Bank in its favour amounting to Rs. 1,36,45,525/-, and should not have rejected the same merely on the ground of it being raised for the first time. The reliance placed by the Tribunal on Sehet Synthetics P. Ltd. (supra) is misplaced in the light of the scope and nature of remand in the present case. The finding returned by the Tribunal in paragraphs 8, 9 and 12 of the impugned order are erroneous since the Tribunal has not appreciated the scope and nature of the remand ordered by it by its earlier order dated 10.03.2011.

12. We, therefore, answer the questions framed aforesaid in favour of the assessee and set aside the impugned order. Since the Assessing Officer has not

evaluated the appellant's claim regarding non-taxability of income arising from write-off of liability by Canara Bank in its favour amounting to Rs. 1,36,45,525/- on merits, we remand the matter back to the Assessing Officer for evaluation of the said claim on its own merits."

16. In the present case, the remand by the ITAT is limited in its scope, as noted above, and surely note a complete or wholesale remand. Therefore, this decision of the Hon'ble Delhi High Court is of no assistance to the assessee.

In view of the above, we dismiss the contention of the Id. Counsel for the assessee that the plea raised by the assessee before the Id. CIT(A) of the income earned by the assessee being not taxable in its hands ought to have been entertained by the Id. CIT(A). All grounds raised by the assessee in this regard are, therefore, dismissed and the order of the Ld. CIT(A) is upheld.

17. Having confirmed the order of the Id. CIT(A), in not entertaining the fresh contention raised by the assessee, there is no occasion to deal with the merits of the arguments of the assessee in this regard since it would only be an academic exercise. Therefore, the arguments made by the Id. Counsel for the assessee on the merits of the contention raised are not being dealt with by us.

18. The order of the Id. CIT(A) is accordingly confirmed and the appeal of the assessee is thus dismissed in above terms.

19. In effect, all the appeals filed by the assessee are dismissed.

Order pronounced in the open Court on 03/05/2024 at Ahmedabad.

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 03/05/2024

**%

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad