IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

BEFORE SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No.3356/MUM/2023
Assessment Year: 2012-13

Deputy Commissioner of Income Tax – 1(3)(1), Mumbai	Vs.	Mumbai District Central Co-op Bank Ltd., 207, Mumbai Bank Bhavan, Dr. DN Road, Fort, Mumbai – 400 001 (PAN : AAAAM3185D)
(Appellant)		**(Respondent)**

Present for:

Appellant by : Shri Ajay Singh and
Shri Akshay Pawar, Advocates
Respondent by : Smt. Mahita Nair,Sr.DR

Date of Hearing : 06.05.2024
Date of Pronouncement : 10.05.2024

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1054533074/(1), dated 24.07.2023, passed against the assessment order by Deputy Commissioner of Income Tax, 1(3)(1), u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 22.12.2019 for AY 2012-13.

2. Grounds taken by Revenue are reproduced as under:

"1. On the facts and in the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the disallowance of bad and doubtful debt reserves written back amounting to Rs.7,78,76,947/-without appreciating that the assessee has been unable to furnish documentary evidences in respect of the said claim?

2. On the facts and in the circumstances of the case and in law, the Id.CIT(A) erred in allowing the appeal of the assessee merely on the basis of decision of the Id.CIT(A) for A.Y.2011-12 on the same issue in the assessee's own case?

3. The appellant craves that the order of the Ld. CIT(A) on the above ground be set aside and i.e. the order passed by the AO be restored."

3. Brief facts of the case are that assessee is a Co-operative Bank. It filed its return of income reporting total income at Rs.13,13,613/- after claiming set off of brought forward loss of Rs.5,27,41,991/-. Case of the assessee was reopened by issuing notice u/s. 148 of the Act, dated 26.03.2019. In response to the notice, the assessee filed its return of income on 24.09.2019. In the reasons to believe, recorded by the AO, it is noted that on verification of records assessee had claimed deduction for bad and doubtful debts reserve (BDDR) provision written back for Rs.7,78,76,947/- in its computation of income. According to the ld. AO, assessee had not credited any write back of BDDR provision in its profit and loss account for the year under consideration. He further noted that assessee cannot claim any deduction for any provision/written back unless the same is credited to the current year's profit and loss account. Accordingly, this has resulted in under assessment of income to the extent of Rs.7,78,76,947/-.

3.1 A show cause notice was issued on the assessee to explain its case. Assessee had furnished that it had always disallowed/added back the amount of BDDR identified during each of the year. In the year under consideration, assessee was able to recover an amount of Rs.7,78,76,947/- from the previously classified non performing asset (NPA) borrowers. For this recovered amount, assessee had created a provision for BDDR which was not claimed as a deduction. Therefore, the recovery of amount in the year under consideration which has already been disallowed/added back in the preceding years is a tax deductable item in the year under consideration. Assessee also

referred to the decision of Co-ordinate Bench of ITAT, Mumbai in assessee's own case for AY 2011-12 in ITA No.6538/Mum/2016, dated 26.09.2018, whereby it was held that such amount represents sum which has already been subjected to tax by the assessee and therefore should not be taxed again. Ld. AO after considering the submissions made by the assessee and distinguishing the decision of Co-ordinate Bench (supra) observed that assessee had failed to provide satisfactory explanation along with documentary evidences. He thus completed the assessment making an addition of Rs. 7,78,76,947/- towards BDDR provision written back. Aggrieved assessee went in appeal before the CIT(A).

4. Before the ld. CIT(A), assessee submitted that disallowance had been made suo-motto towards BDDR provisioning while computing the total income reported in the returns filed by it for various preceding assessment years. Details of the same are tabulated as under including for the year under consideration:

Sr. No.	AY	Disallowed in Computation	Allowed in computation u/s 36(1)(viia)	Balance unutilized out of disallowance
		(A)	(B)	(C)
1	2002-03	13,00,00,000	0	13,00,00,000
2	2003-04	0	0	0
3	2004-05	21,23,01,000	0	21,23,01,000
4	2005-06	8,53,00,000	0	8,53,00,000
5	2006-07	0	0	0
6	2007-08	0	0	0
7	2008-09	0	0	0
8	2009-10	20,81,99,000	0	20,81,99,000
9	2010-11	29,76,79,000	0	29,76,79,000
10	2011-12	0	0	0
11	2012-13	42,99,453	0	42,99,453
	Total	**93,77,78,453**	**0**	**93,77,78,453**

Note:-	The deduction claimed of Rs. 7,78,76,947/- from the above BDDR provisions which was earlied disallowed.

4.1 It was contended that assessee had already written off the unrecovered amount and corresponding provisions were added back which were offered to tax in the preceding years. Now in the year under consideration, on recovery of certain amounts, these have been claimed as deduction which otherwise would lead to taxing the same amount twice. After considering the submissions of the assessee, ld. CIT(A) deleted the addition for which he placed his reliance on the appellate order for AY 2011-12 passed by ld. CIT(A) in appeal No.CIT(A)-3/IT/459/2013-14, vide order dated 31.08.2016 where in similar issued was dealt with, giving relief to the assessee. Aggrieved, Revenue is in appeal before the Tribunal.

4.2 Before us, ld. Sr.DR referred to the observations made by the ld. AO and submitted that in absence of satisfactory explanation alongwith documentary evidences, the disallowance was made.

5. Per contra, ld. Counsel for the assessee reiterated the submissions made before the authorities below. The same are not repeated here since already narrated in detail in the above paragraphs. He referred to the table extracted above to demonstrate disallowance made by the assessee in computing its total income in several preceding years including the year under consideration. He also referred to page 46 in the paper book giving details of recovery made by the assessee from various sugar factories during the year under consideration. From the said statement, there are recoveries of Rs.7,78,76,947/- towards principal from three parties namely:

I. Kedareshwar SSK Ltd. – Rs.74,24,647/-

II. Pushdanteshwar SSK Ltd. – Rs.4,10,70,000/-

III. Balaghat SSK Ltd. – Rs.2,93,82,300/-

5.1 Ld. Counsel also referred to page 52 which is a statement showing cash credit/pledge/overdraft and other advances for the year

which was placed before the ld. CIT(A). In this statement, in column no.21 recovery of last year NPA from the three aforesaid parties has been included.

5.2 With reference to the reliance placed by ld. CIT(A) on the first appellate order for AY 2011-12, ld. Counsel submitted that both, assessee and Revenue were in appeal before the co-ordinate bench in ITA No. 6538 and 6350/Mum/2016. In this appeal by the Revenue, there was no ground raised for the relief granted by the ld. CIT(A) in respect of identical issue being adjudicated upon in the present appeal. According to him, Revenue by not contesting the issue decided by ld. CIT(A) in favour of the assessee for AY 2011-12, it goes in favour of the assessee and therefore no disallowance can be made in the present year also. To corroborate this, ld. Counsel referred to para 3 of the order of the Co-ordinate bench of AY 20011-12 placed at page 88 – 97 of the paper book wherein grounds taken by the Revenue are stated and does not have any ground in respect of the issue being dealt in the present case.

5.3 Ld counsel also submitted that original assessment was completed u/s. 143(3), wherein assessee had furnished auditor's certificate for bad debts. In this respect, he referred to the classification of assets and provisioning made against NPA as on 31.03.2012 which is mentioned at Rs.174,18,14,000/-. In this respect, it was also submitted that assessee had always disallowed/added back the BDDR provisions in its tax computation and therefore any recovery / write back of the same during the year cannot be considered as taxable income. The original assessment was completed without any disallowance or addition in respect of the aforesaid submission and explanation given by the assessee.

5.4 On a specific query by the Bench to demonstrate how the treatment of the current year provision and write back has been made,

ld. Counsel referred to statement of tax computation placed at page 2 and 3 of the paper book. From this he pointed out that BDDR of Rs.42,99,453/- has been added to the profit as per profit and loss account and an amount of Rs.7,78,76,947/- has been reduced towards BDDR provision written back. He thus asserted that relief granted by the ld. CIT(A) be upheld.

6. We have heard the rival contentions and perused the material on record. Admittedly, it is fact on record that assessee has suo-motto added the BDDR provision in its computation of total income and tax for all the preceding years. However, as and when the recoveries are made by it for its bad and doubtful debts, the same have been claimed as a deduction in computing the total income in the year in which the recoveries are made. In the year under consideration, assessee has recovered the amounts from three parties as stated above, against which it has claimed the deduction since provisions made towards these bad and doubtful accounts were added while computing the total income of the respective year.

6.1 Further, in AY 2011-12, similar issue was dealt with by the ld. CIT(A) and relief was granted. On the said relief, we note that Revenue did not contest before the Tribunal and had accepted the view taken by the ld. CIT(A) in that year. The issue in the present year before us is identical except for the change in the quantum.

6.2 We also take note of the fact that assessee had furnished all the relevant details and documents both in the original assessment proceeding u/s.143(3) as well as in the impugned assessment u/s.147 r.w.s. 143(3) which are uncontroverted. The only reason given by the AO for making the disallowance is that assessee failed to give satisfactory explanation along with documentary evidences which according to us has been adequately substantiated by the assessee both, before the ld. CIT(A) as well as before us. Considering the facts

on record, discussion and observations made above, we do not find any reason to interfere with the findings arrived at by the CIT(A). Accordingly, grounds taken by the Revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 10 May, 2024.

Sd/-	Sd/-
(Sunil Kumar Singh)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 10 May, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai