

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Waseem Ahmed, Accountant Member**

**ITA Nos. 1030 & 1031/Ahd/2023
Assessment Year 2017-18**

The Vejalpur Nagrik Sahakari Bank Ltd., Vejalpur Bank Road, Vejalpur, Panchmahals-389340 Gujarat, India PAN: AAAAT1290J (Appellant)	Vs	The ACIT, Anand Circle, Anand (Respondent)
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**Assessee by: Shri Sakar Sharma, A.R.
Revenue by: Shri H. Phani Raju, CIT-D.R.**

Date of hearing : 02-04-2024
Date of pronouncement : 15-05-2024

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

These two appeals filed are against the order dated 26-10-2023 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2017-18.

2. The grounds of appeals are as under:-

ITA No. 1030/Ahd/2023

“1. The Ld. CIT (A)-NFAC erred on facts and in law in confirming action of Assessing Officer invoking provisions of section 154 to make addition without any notice to the appellant.

2. The Ld. CIT(A)-NFAC erred on facts and in law in Rs. 3,20,02,883/- confirming action of Assessing Officer in substituting addition of Rs. 10,35,69,201/- made u/s 26955 in order passed u/s 143(3) dtd 29-12-2019 with section 69A without appreciating that neither such substitution an mistake apparent on record not is permissible within the meaning of section 292B of the Act in as much as conditions specified in section 69A are also not getting satisfied in the case of appellant.

Total

Rs. 3,20,02,883/-”

ITA No. 1031/Ahd/2023

“1. The Ld. CIT (A) NFAC erred on facts and in law in confirming action of Assessing Officer invoking provisions of section 154 of the Act without appreciating that the actions of the Assessing Officer are not permissible for rectification u/s 154 of the Act.

2. The Ld. CIT(A)-NFAC erred on facts and in law in confirming action of Assessing Officer in enhancing tax liability of appellant through rectification order passed u/s 154 by applying provisions of section 115BBE, as amended by Taxation Laws (Second Amendment) Act, 2016 assented by the Hon'ble President on 15-12-2016 without appreciating that neither the income of Rs. 10,35,69,201/- to which provisions of section 115BBE have been invoked itself is maintainable nor enhanced rate of taxation @ 60% Act has any application in the year under consideration.

Total

Rs. 5,87,60,478/-”

3. The assessee is a co-operative bank duly registered with the registration of co-operative societies in the State Bank of Gujarat and is engaged in banking operations under license from Reserve Bank of India. The assessee furnished return of income for the year under consideration declaring total income of Rs. 10,30,750/- on 21-08-2017. The Assessing

Officer issued notice u/s. 143(2) on 09-08-2018 and the case of the assessee was selected for scrutiny on account of abnormal increase in cash depositization during demonetization period. Notices u/s. 142(1) were issued on 10-11-2019 and on 26-11-2019, the assessee furnished details/documents before the Assessing Officer. No further notices were issued till completion of the assessment proceedings on 29-12-2019. After examining the explanations and submissions of the assessee, the Assessing Officer made addition of Rs. 1,012,5000/- for the reason that the assessee deposited cash in State Bank of India amounting to Rs. 2,50,000/- and in the Panchmahal District Co-operative Bank Ltd. amounting to Rs. 1,10,00,000/- during demonetization period but failed to furnish details of the same. Thus, the Assessing Officer made addition u/s. 69A amounting to Rs. 10,03,69,201/- in which section 269SS of the Income Tax Act, 1961 was also written with the assessment order passed. The assessee filed rectification application dated 04-10-2020 which was received by the Assessing Officer on 06-01-2020, thereby stating that the assessee is co-operative bank as per provisions of section 269SS explanation (i) which read banking company means a company to which the provisions of Banking Regulation Act 1949 applies and including any bank or banking institution referred to in section 51 of the Act. The said provision of this section shall not apply. After verification of section 269SS and explanation (i) of the Income Tax Act, the said section was rectified by the Assessing Officer and corrected the same thereby observing that the word used on account of 269SS, the Income Tax Act, 1961 is withdrawn and in its place read as per the provisions of section 69A of the Income Tax Act and no penalty u/s. 269SS attract.

4. Being aggrieved by the rectification order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Id. Authorized Representative submitted that the assessee filed rectification application on 04-01-2020 thereby stating that the provisions of section 269SS of the Income Tax Act, 1961 are not applicable to the Co-operative Bank. The Id. Authorized Representative further submitted that the said application in para 2 categorically mentions that during the course of assessment proceedings, the assessee e-filed details of total deposit of SBN to Rs. 3,06,05,000/- between 09-11-2016 to 31-12-2016 vide annexure 7 attached thereby the submissions of the assessee dated 26-11-2018. The Id. Authorized Representative further pointed out that the assessee submitted that the same was considered as Rs. 2,48,00,000/- and difference of Rs. 1,01,25,000/- was made as addition u/s. 69A of the Income Tax Act. The Id. A.R. submitted that the addition made by the Assessing Officer has clearly set out that the Assessing Officer accepted the activities of the assessee which is monitored by the Reserve Bank of India as well as by the registrar of co-operative societies. While doing so, the Assessing Officer opted not to issue any show cause to the assessee before making such addition, otherwise the assessee should have rectified the inadvertent error crept in while making submissions if any. The Id. A.R. submitted that the Assessing Officer has not given the proper hearing for demonstrating the assessee co-operative bank related to how section 69A addition will not be applicable in assessee's case. In fact, the annexure 7 mentioned by the Assessing Officer was not uploaded in the submissions of the assessee and therefore the Assessing Officer should have show cause the assessee to seek clarification in the

matter before making any addition without giving any opportunity of hearing. The Id. A.R. submitted that the action of the Assessing Officer in case that the assessment has been made in pre-determined manner which is further evident from the fact that the Assessing Officer made further addition for alleged violation of section 269SS of the Income Tax Act, 1961 amounting to Rs. 10,35,69,201/- which such provisions firstly have no application to an assessee engaged in banking business and secondly no addition to total income is permissible u/s. 269SS of the Income Tax Act, 1961. The Assessing Officer invoked provisions of section 115BBE of the Act in respect of additions made u/s. 69A. The Assessing Officer also initiated penalty proceedings u/s. 270A of the Act in respect of the addition made u/s. 69A. the Assessing Officer has charged interest u/s. 234B of Rs. 1,46,79,225/- and u/s. 234D of Rs. 6,788/- due to which tax liability and interest together has been contributed at Rs. 5,92,25,399/-. The Id. Authorized Representative relied upon the following decisions:-

<i>D N Singh vs CIT 454 ITR 594 (SC)</i>
<i>TCA Menon vs ITO 96 ITR 148 (Ker)</i>
<i>ACIT vs Sudesh Kumar Gupta 184 ITD 651 (Jaipur)</i>
<i>Hari Narain Gattani vs DGIT 186 ITD 434 (Jaipur)</i>
<i>ACIT vs Sandesh Kumar Jain in ITA No. 41/Jab/2020 (Jabalpur) dtd 31-10-2022</i>
<i>DCIT vs Punjab Retail P Ltd in ITA No. 677/Ind/2019 dated 08-10-2021</i>

6. The Id. Departmental Representative submitted that the Assessing Officer while passing the original assessment order has in fact made addition u/s. 69A which was also set out in para 2 of the application filed by the

assessee u/s. 154 for rectification of the assessment order. The Id. Departmental Representative further submitted that 60% of tax rate u/s. 115BBE is applicable to assessment year 2017-18 in view of the decisions of ITAT Indore Bench in case of Chandan Garments Pvt. Ltd. vs. PCIT being ITA 125/Ind/2022 assessment year 2017-18 order dated 02-12-2022. The Id. Departmental Representative further submitted that mentioning of the wrong section is not fatal to making assessment under any other section and reliance is placed on the the following decisions:-

- i. PV Ajay Narayanan v ITO 57 TTJ 159 (Bangalore)
- ii D.M. Neterwalla v. Commissioner 122 ITR (Bom)

The Id. Departmental Representative further submitted that the CIT(A) has categorically given a finding that the assessee has specifically stated that the Assessing Officer cannot charge section by invoking section 154 of the Act but the Assessing Officer has in fact set out the assessment order in consonance with section 69A but inadvertently wrote 269SS while passing the order on 29-12-2019. Thus, it is a typographical mistake which was rightly rectified u/s. 154 of the Act.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the assessee while filing the rectification application u/s. 154 of the Act mentioned in the rectification application that the addition difference of Rs. 1,01,25,000/- u/s. 69A was already made by the Assessing Officer and therefore while coming to the unsecured loans and the addition thereafter the Assessing Officer has categorically taken into account section 269SS which can clearly be seen in

para 9 of the original assessment order by changing the same nomenclature as well as the content in consonance with section 69A, the observation in the original assessment order for the addition of section 69A does not fall as per the provisions of section 69A of the Act. While rectifying the order, the Assessing Officer should have confronted the assessee in consonance with the application of 69A in respect of unsecured loans which the Assessing Officer has failed to do so. The rectification order is simply making it a typographical mistake but the assessee has made clear in application u/s. 154 of the Act that it is a typographical mistake but the very applicability of section 269SS in assessee's case will not/should not have been applied. Thus, the rectification while giving the scope of 69A has not taken into any evidences as regards credibility of the loan, the source of the fund of the loan, identity of the parties for which the details are required and merely on the basis of PAN, voter card, form no. 16 and Aaddhar card of the details of depositors will not suffice the said addition. These inquiries and verifications have not been done by the Assessing Officer while making the said single line observation in the rectification order. These aspects were totally ignored by the CIT(A). Thus, it will be appropriate that whether the applicability of section 69A is justifiable or not in assessee's case and whether the assessee proves the nomenclature of unsecured loan and its proper demarcation in his profit and loss account, we are directing the Assessing Officer to verify the same after calling upon the evidences to that effect. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. Thus, ITA No. 1030/Ahd/2023 is partly allowed for statistical purposes.

8. As regards ITA No. 1031/Ahd/2023, the same is identical to that of ITA 1030/Ahd/2023 and the same is also remanded back to the file of the Assessing Officer.

9. In the result, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 15-05-2024

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 15/05/2024

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद