IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. No.224/Pat/2019
Assessment Year: 2009-10

The Muzaffarpur Central Co-operative Bank Ltd....…...……....Appellant
Sadar Hospital Road,
Muzaffarpur,
Bihar – 842001.
[PAN: AABAT7831Q]

vs.

ACIT, Circle-2, Muzaffarpur…..…..…..... Respondent

Appearances by:
Shri Sanjeev Kr. Anwar, Advocate, appeared on behalf of the appellant.
Shri Sushil Kr. Mishra, JCIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 28, 2024
Date of pronouncing the order : July 11, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 30.07.2019 of the Commissioner of Income (Appeal), Muzzafarpur [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. Though the assessee in this appeal has taken as many as six grounds of appeal, however, the sole issue raised by the assessee in this appeal is relating to the validity of the reopening of the assessment.

3. The brief facts of the case are that the assessee is a cooperative bank and derives income from banking business. The Assessing Officer noted that the assessee had not filed its return of income for the assessment year 2009-10 despite having taxable income. He, therefore

issued a notice u/s 142(1) of the Act on 21.07.2010. In compliance of the said notice, the assessee filed its return on 09.08.2010 showing a loss of Rs.1,79,29,709/-. Thereafter, Assistant Commissioner of Income Tax, Circle-2, Muzaffarpur (hereinafter referred to as the 'ACIT') noted that the assessee despite having taxable income had not filed return of income. He accordingly initiated reassessment proceedings u/s 147 of the Act for assessment years 2009-10 and 2010-11. However, the assessee informed vide letter dated 11.10.2011 that it has already filed return of income for the year under consideration on 09.08.2010. The ACIT noted that the assessee was supposed to file the return of income with his circle, however, he had filed the return of income for the year under consideration with ITO, Ward-1, Muzaffarpur (hereinafter referred to as the 'ITO'). He obtained return from ITO and noted that the assessee had debited Rs.1,48,86,823/- on account of provision for bad and doubtful debts, which, prima facie, was not allowable. He, therefore, reopened the assessment in the case of the assessee by way of issuing notice u/s 148 of the Act. During the assessment proceedings, the Assessing Officer noted that as per the provisions of section 36(1)(viia) of the Act, the amount of deduction in respect of provision for bad and doubtful debts is restricted to 7.5% of the total income. A further deduction of 10% of the aggregate average advance made by the rural branches of the bank was also deductible under this head. He noted that the assessee had debited Rs.1,83,22,123/-, which was excess claim on account of provision for bad and doubtful debts. On being asked in this respect, the assessee explained that out of the provisions made for NPA, a substantial amount was written back and credited to profit & loss account in subsequent years. In support of this, the assessee referred to the audit report for assessment year 2010-11. The Assessing Officer, however, noted that the said explanation of

the assessee was not satisfactory because of provision for bad and doubtful debts of Rs.1,83,22,123/- had been debited in the profit & loss account during the year under consideration i.e. A.Y 2009-10 and due to that reason only, the income of the assessee had converted into loss. The Assessing Officer further observed that 10% of the aggregate average advances made by rural branches of the bank was allowable, however, the assessee had not furnished the addresses of the branches, which were situated in rural areas. Further, there was no proof submitted that the said branches were situated in rural areas where the population of the village as a unit was less than ten thousand. He in this respect relied upon the decision of the Hon'ble Kerala High Court in the case of 'CIT vs. The Lord Krishna Bank Ltd' (195 taxman 57) as well as Explanation (ia) to section 36(1)(viia) of the Act. The Assessing Officer accordingly restricted the deduction on account of provision for bad and doubtful debts @7.5% of the total income in accordance with the provisions of section 36(1)(viia) of the Act, and computed the income of the assessee accordingly making the impugned additions.

4. The ld. CIT(A) confirmed the additions so made by the Assessing Officer.

5. Before us, the ld. Counsel for the assessee has not advanced any argument on the merits of the case. The sole contention of the ld. Counsel for the assessee has been that the reopening of the assessment was bad in law. He in this respect has submitted that firstly the Assessing Officer has not recorded satisfaction regarding escapement of income. Further, in respect of the show-cause notice issued by the Assessing Officer, the assessee had filed objections against the same, however, the Assessing Officer did not dispose of the said objections. He has further contended that this was a case change of opinion as the

earlier return of the assessee was processed u/s 143(1) of the Act and that the reopening of the assessment was done on the basis of change of opinion. He in this respect has relied upon the decision of Hon'ble Supreme Court in the case of 'CIT vs. Kelvinator India Ltd.' reported in (2010) 320 ITR 561 (SC) and further of the Third Member decision of the Mumbai Bench of the Tribunal in the case of 'Telco Dadajee Dhackjee Ltd. vs. DCIT' in ITA No.4613/Mum/2005 order dated 29.06.2012 and further of the Coordinate Mumbai Bench of the Tribunal in the case of 'Delta Airlines, INC vs. ITO' in ITA No.3476/Mum/2008 order dated 30.11.2012.

6. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

7. We have considered the rival submissions and gone through the record. In the case in hand, the original return was filed by the assessee with ITO, Ward-1, Muzaffarpur, whereas, the jurisdictional Assessing Officer of the assessee was ACIT, Circle-2, Muzaffarpur. When the ACIT called for/obtained assessment records from ITO, he noted that the assessee has claimed excess deduction on account of provision for bad and doubtful debts u/s 36(1)(viia) of the Act. The said excess claim of deduction was apparent from the record. It is not the case of the assessee that the assessee was entitled to claim the said deduction as per law. It is a clear-cut case of escapement of income of the assessee on account of excess claim of deduction as per the provisions of section 36(1)(viia) of the Act. Therefore, in our view, it is not a case of change of opinion at all. It is an apparent case of escapement of income, which was noted by the jurisdictional ACIT when the assessment record was called upon from the ITO.

7.1 So far as the objections of the assessee are concerned, we have gone through the same. A one line reply given by the assessee to the show-cause notice is that 'the provision for bad and doubtful debts was allowable as per section 36(1)(viia) of the Act'. This, in our view, would not fall in the definition of any objection as alleged by the ld. AR. This reply of the assessee was vague. Even the ld. AR has not demonstrated or argued at any point of time as to what was the objection of the assessee, which has not been adjudicated by the Assessing Officer. Merely, a reply for the sake of reply only, there being not raised any point which requires adjudication or any contention which the Assessing Officer was supposed to look into, in our view, does not fall in the definition and scope of objection. The second contention raised by the ld. Counsel is that the amount of deduction claimed of, mentioned by the Assessing Officer in the reasons recorded was Rs.1,48,86,823/-, whereas, the amount debited during the year was Rs.1,83,22,123/-. He in this respect has submitted that there is no application of mind by the Assessing Officer as the figure of the amount was taken of another year. This contention of the ld. AR, in our view, is also not tenable. It is to be mentioned here that earlier the reopening of the assessment u/s 147 of the Act was initiated for two assessment years i.e. A.Y 2009-10 and A.Y 2010-11. The Assessing Officer at the time of perusal of records has inadvertently taken the figure of the other year which is nothing but a clerical mistake. We note that even the same mistake has been committed by the assessee also as in reply to the show-cause notice vide letter dated 07.12.2016, which has been strongly relied by the ld. AR, the assessee has not objected to the figure of the amount, rather, the assessee has also repeated the same figure in the reply. Therefore, it cannot be said that the Assessing Officer has not applied his mind before reopening of the assessment, rather, it is a case where the

Assessing Officer came into the knowledge of excess claim of deduction on account of provision for bad and doubtful debts after going through the record and after application of mind. So far as the reliance of the ld. Counsel for the assessee on the decision of the Hon'ble Supreme Court in the case of 'CIT vs. Kelvinator India Ltd.' (supra) is concerned, the same, in our view, is not applicable in the facts and circumstances of the case because in the said case, the Hon'ble Supreme Court held that reopening of the assessment cannot be done for the sake of mere change of opinion of the Assessing Officer. However, in the case in hand, in our view, is not a case of change of opinion. The concerned jurisdictional ACIT got the knowledge of escapement of income only when he obtained assessment records from ITO. The return for the year under consideration was not ever scrutinized u/s 143(3) of the Act, therefore, there wasn't any earlier opinion formed by the Assessing Officer, which could be said to have been changed. So far as the reliance of the ld. Counsel on the Coordinate Mumbai Bench of the Tribunal in the Third Member decision in the case of 'Telco Dadajee Dhackjee Ltd. vs. DCIT' (supra) is concerned, in the said case, reopening of assessment was done after four years. The Third Member in the said case has observed that where the return of income has been processed u/s 143(1) of the Act, there is no question of change of opinion. Therefore, the contention of the ld. Counsel that it is a case of change of opinion, is not tenable even in view of the Third Member decision. However, in the said Third Member decision of the Tribunal, it has been observed that the reasons to believe must have a live link with the formation of belief that income chargeable to tax has escaped assessment. That to hold that in every case where a return was processed and accepted u/s 143(1), the Assessing Officer will be free to reopen the same u/s 148 even in the absence of a live link between the

reasons recorded and the formation of the belief, would be to make the conditions of section 147 and section 148 otiose as regards notices of reopening issued in cases where the return was originally processed under section 143(1). What has been held in the Third Member decision was that there must be tangible material before the Assessing Officer to form belief that the income of the assessee has escaped assessment. In the case in hand, in our view, there was tangible material before the Assessing Officer in the shape of assessment records, which were obtained by him from the ITO and on perusal of which, it was apparent on record that the assessee has claimed excess deduction u/s 36(1)(viia) of the Act and it was a clear-cut case of escapement of income. Therefore, the Assessing Officer has rightly formed the belief of escapement of income in the present case. Even the ld. AR could not point out as to why the said observation of the Assessing Officer was not correct. So far as the reliance of the ld. AR on the decision of Coordinate Mumbai Bench of the Tribunal in the case of 'Delta Airlines, INC vs. ITO' (supra) is concerned, we find that in the said case, the decision has been given only on the basis of the Third Member decision as discussed above, that there will be a tangible material to form the belief of escapement of income, which condition is duly fulfilled in the case in hand. Moreover, from the facts of the case, we find that it is not a case of change of opinion at all as no second opinion could have been formed by any of the authority in view of the express statutory provisions of section 36(1)(viia) of the Act that deduction on account of provision for bad and doubtful debts cannot exceed more than 7.5% of the total income. Neither any second opinion nor two views were possible in this case, only one opinion/one view was possible in this case in view of the statutory provisions. There is no merit in the present appeal of the assessee and the same is accordingly dismissed.

8. In the result, the appeal of the assessee stands dismissed.

Kolkata, the 11th July, 2024.

Sd/-	Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]	**[संजय गर्ग /Sanjay Garg]**
लेखा सदस्य /Accountant Member	**न्यायिक सदस्य /Judicial Member**

Dated: 11.07.2024.
RS

Copy of the order forwarded to:
1. The Muzaffarpur Central Co-operative Bank Ltd
2. ACIT, Circle-2, Muzaffarpur
3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches