

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "G" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA.No.2475/Mum./2024
Assessment Year 2021-2022

SVC Cooperative Bank Ltd., SVC Tower, Nehru Road, Santacruz (East), Mumbai – 400 055 Maharashtra. PAN AAAAT0177C (Appellant)	vs.	The ACIT, Circle-1(3)-1, Room No.535, 5 th Floor, Aaykaar Bhavan, M.K. Road, Mumbai-400020 Maharashtra. (Respondent)
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For Assessee :	Shri Rajiv Waglay, Advocate
For Revenue :	Shri Dr. Kishor Dhule, CIT-DR

Date of Hearing :	25.07.2024
Date of Pronouncement :	26.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's appeal for assessment year 2021-2022 arises against the order of the CIT(A)-National Faceless Appeal Centre, Delhi's DIN & order no.ITBA/ NFAC/S/250/2023-24/1062394280(1), dated 11.03.2024, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

“On the facts and the circumstances of the case, the Ld. CIT (A), NFAC, Delhi erred in-

- 1. confirming the disallowance of depreciation to the tune of Rs.24,37,070 on the ground that invoices of the assets purchased amounting to Rs.1,23,41,442 pertaining to the depreciation for A. Y. 2020-21 were not tendered by the Appellant during the appellate proceedings for the A.Y. 2020-21 and hence, the consequential effect of the same for the A.Y. 2021-22 was to the tune of Rs.24,37,070 based on the reduced wdv as on 1.4.2020.*
- 2. confirming the above disallowance without appreciating the fact that all the invoices were duly uploaded on the income tax portal of DCIT/CIT(A) during e-proceedings for the A.Y. 2020-21.*

3. *confirming the disallowance of staff gratuity payable of Rs.5,90,78,895.*
4. *confirming the above disallowance of staff gratuity on the ground that the said payment was not made to any approved gratuity fund as contemplated u/s.36(1)(v) of Income Tax Act, 1961.*
5. *confirming the above disallowance of staff gratuity on the ground that payment made to LIC was not a contribution to any gratuity fund approved u/s.36(1)(v) of Income Tax Act, 1961.*
6. *And hence, the disallowance of depreciation of Rs.24,37,070 and disallowance of gratuity payment of Rs.5,90,78,895 deserves to be deleted in toto.”*
7. *Your Appellant craves leave to add, alter, modify or delete all or any of the grounds of appeal.*

3. We note in this factual backdrop that the assessee's first and foremost substantive grievance canvassed herein challenges depreciation disallowance of Rs.24,37,070/- made by both the learned lower authorities on the ground that it could not prove to have purchased the

corresponding fixed assets in the preceding assessment year(s) and more particularly, in assessment year 2020-2021. Learned counsel has filed this tribunal's order dated 18.06.2024 in assessee's case itself ITA.No.1072/MUM./2024 for A.Y. 2020-21 wherein the learned coordinate bench has restored the very issue back to CIT(A)-NFAC as under :

“7. We have heard the parties and perused the material available on record. During the course of assessment, the AO disallowed the depreciation on intangible asset for the reason that the assessee did not produce any evidence to support the purchase of software. The CIT(A) based on additional evidences submitted by the assessee gave partial relief to the assessee and upheld the disallowance of depreciation on intangible asset which according to the CIT(A) were not supported by the documentary evidence. From the perusal of the table containing details of invoices submitted before the CIT(A)/AO as extracted above we notice that the assessee has submitted the supporting documents for the list of additions which the CIT(A) held

as not furnished (refer table from CIT(A)'s order). Therefore, we see merit in the submission of the assessee that the evidences for entire additions to software purchase were submitted by the assessee and that the CIT(A) has omitted to consider a part of the invoices submitted. However, in our view the bills which have been omitted to be verified by the CIT(A) needs to be examined for determining the allowability of the depreciation on the same. Therefore, we remit the issue of verification of the balance list of invoices, as tabulated in the paper book supporting the purchase of software, back to the CIT(A) with a direction to examine the same and allow the depreciation in accordance with law. Needless to say that the assessee be given an opportunity of being heard. It is ordered accordingly.”

4. The Revenue could hardly rebut the clinching fact that the relevant fixed assets are common in both these assessment years as it is claimed at the assessee's behest. We thus adopt judicial consistency and restore the

assessee's instant former substantive ground back to the CIT(A)-NFAC for its afresh appropriate adjudication in very terms.

5. Next comes assessee's latter substantive ground of staff gratuity disallowance of Rs.5,90,78,895/- made in both the learned lower authorities respective findings for the sole reason that the same could not be substantiated by filing the relevant supportive evidence(s) indicating contribution to an approved fund. Faced with this situation, learned counsel takes us to page-11 of the assessee's paper book that the assessee had indeed contributed to an approved fund namely "*Trustees of The Shamrao Vithal Co-operative Bank Employees Gratuity Fund*" followed by the necessary details in pages 12 to 19 of the paper book; as the case may be.

6. Learned counsel next submitted very fairly that it was assessee only who claims responsibility for creating the entire confusion in both the lower proceedings since it failed to file the relevant details thereof. Be that as it may, the

Revenue is fair enough in submitting that all these relevant facts require afresh factual verification. We thus deem it appropriate to restore the assessee's instant latter substantive ground as well back to CIT(A)-NFAC for it's afresh appropriate adjudication. Ordered accordingly.

7. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 26.07.2024

Sd/-
[OMKARESHWAR CHIDARA]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Mumbai, Dated 26th July, 2024

VBP/-

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1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "G" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,
Mumbai.