

□□□□ □□□□□□ □□□□□□, □□□□□□□□ □□□

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.101/Hyd/2018**
(निर्धारण वर्ष / Assessment Year: 2005-06)

The Prudential Co-operative Urban Bank Limited, Secunderabad. PAN: AABCT7077J	Vs.	Deputy Commissioner of Income Tax, Circle-2(3), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A.V. Raghuram, Advocate	
राजस्व द्वारा / Revenue by:	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख / Date of hearing:	13/08/2024	
घोषणा की तारीख / Pronouncement:	28/08/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by The Prudential Co-operative Urban Bank Limited (“the assessee”), feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals)-III, Hyderabad (“Ld. CIT(A)”), dated 14.08.2013 for the A.Y. 2005-06.

2. In the present appeal, the assessee has raised the following grounds of appeal:

- “1. The order of the learned CIT(A) erroneous both on facts and in law.
2. The learned CIT(A) erred in remanding the matter back to the AO to verify as to whether any interest is provided after cancellation of banking licence, in spite

of the submissions that not just cancellation of the banking licence but the Society came under liquidation by that date and no interest is provided after the date of liquidation in accordance with the provisions of law.

3. Any order ground that may be urged at the time of hearing.”

3. The assessee also raised the following additional ground before us:

“ 1. The Assessing Officer erred in initiating proceedings u/s. 147 when the earlier order was passed entire material was before him and there is no fresh material before him.”

4. Learned AR submitted that additional ground so filed are admissible in view of judgment rendered by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC). The prayer for admission of additional ground noted above which are not in memorandum of appeal are being admitted for adjudication in terms of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 owing to the fact that objections raised in additional ground are legal in nature for which relevant facts are stated to be emanating from the existing records.

5. The facts of the case in brief are that, the assessee was engaged in banking business, filed its return of income for the A.Y. 2005-06 on 28.10.2005 declaring loss of Rs.9,06,34,836/-. The return of income was processed u/s. 143(1) of the Income Tax Act, 1961 (“the Act”). Subsequently, the case of the assessee was reopened by issuing notice u/s. 148 of the Act to the Official Liquidator as the assessee was in

liquidation. The assessment was completed by the Learned Assessing Officer ("Ld. AO") u/s. 143(3) r.w.s. 147 of the Act by order dt.29.12.2008 determining the income of the assessee at Rs.10,48,16,318/-. Aggrieved by the order of Ld. AO the assessee filed appeal before the Ld.CIT(A), who dismissed the appeal of the assessee. Consequently, the assessee filed appeal before the ITAT and ITAT allowed the appeal of the assessee by quashing the re-assessment proceedings. At present, the revenue is in appeal before the Hon'ble High Court against the said order of ITAT.

4.1 Subsequently, again a notice u/s. 148 of the Act was issued on 27.03.2012 on the official liquidator proposing to disallow interest on deposits u/s. 40(a)(ia) of the Act. Accordingly, order u/s. 143(3) r.w.s. 147 of the Act was passed by the Ld. AO on 08.03.2013 disallowing a sum of Rs.22,18,70,175/- u/s. 40(a)(ia) of the Act. Aggrieved by the order of Ld. AO the assessee filed appeal before the Ld.CIT(A), who partly allowed the appeal of the assessee by his order dated 14.08.2013. The observation of the Ld.CIT(A) in this regard are contained under para no.6 of his order, which is reproduced as under :

"6. I have seen carefully the facts and evidence. It appears that the assessing officer has disallowed the entire interest paid for the entire year. It is very clear and it has also been stated by the assessing officer that until 3/12/2001 there was nothing wrong with the license of the bank. It was only on this date that the RBI cancelled license. Therefore, it is incorrect to disallow

the interest paid for the entire year. The assessing officer is directed to calculate the interest paid until 3/12/2001 and allow the same because until this date the appellant had a valid banking license. Any interest element after that is to be disallowed u/s 40(a)(ia). I also hold that after the state the assessing officer is correct in holding that the status of the appellant is to be taken as AOP.”

4.2 Aggrieved by the order of Ld.CIT(A), the assessee filed appeal before the ITAT with delay of 1529 days. The ITAT without condoning the delay of 1529 days dismissed the appeal of the assessee by order dated 17/08/2022. Aggrieved by the order of ITAT, the assessee went to Hon'ble High Court and Hon'ble High Court by its order dated 31.08.2013 condoned the delay of the assessee and remand the matter to ITAT to heard the appeal on merits. Now the appeal is before us to be heard on merits.

5. First coming to the additional ground raised by the assessee, the Ld. AR submitted that in the first round of appeal the case of the assessee was reopened on the ground that the license of the assessee was cancelled by RBI on 04.12.2004 and due to cancellation of the license there was escapement of income in the hands of the assessee on account of NPA provisions, which was to be disallowed due to such cancellation. Now in the second round on the basis of same reason of cancellation of license, which was already in the knowledge of the Ld. AO, the Ld. AO again issued notice u/s. 148 of the Act proposing to disallow interest on deposits u/s. 40(a)(ia) of the Act. The Ld. AR further submitted that the issue of notice on the basis of old reason

without any tangible material, is not permissible under law. For this he placed reliance on the order of ITAT in the case of DCIT Vs. NSL Properties Pvt. Ltd. (ITA No.22/Hyd/2020 & C.O. No.14/Hyd/2020 dated 20.12.2022) in which ITAT after considering the judgment of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Limited (2010) 320 ITR 561 at para no.15 of the order held as under :

“ 15. There is no dispute in this case that all the material papers which the learned Assessing Officer made a basis to reopen the concluded assessment were available with the learned Assessing Officer at the time of original assessment itself. From the record is also evident that the learned Assessing Officer noticed from the P&L Account and Balance Sheet that during the year the assessee incurred interest expenditure on long- term borrowings and the amount of interest free advances to related parties, by specifically asking the assessee to furnish the information relating to the loans and advances where no interest was charged/chargeable. It is only after the assessee furnished the information, the assessment was complete after scrutiny considering the income only under "house property" and "other sources", and loss from business was not allowed observing that as there remains no business income/activity, the expenditure is not allowed to be set of against income computed under other heads.”

5.1 The Ld. AR further submitted that the case of the assessee had already been subject to assessment u/s. 147 of the Act and the assessment order for the same was passed u/s. 143(3) r.w.s. 147 of the Act on 29.12.2008. Now again notice u/s. 148 has been issued on 27.03.2012 for the same assessment year after a lapse of more than four years from the end of the relevant assessment year. Therefore, as per first proviso to section 147 of the Act, no action can be taken u/s. 147 after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has

escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for that assessment year. However, no such failure on the part of the assessee has been noticed by the Ld. AO. Therefore, the notice issued by the Ld. AO after expiry of four years from the end of the relevant assessment year is bad in law and required to be quashed. For this the Ld. AR relied on the decision of Hon'ble Supreme Court in the case of ITO Vs. Kayathwal Estates Pvt. Ltd. 442 ITR 507 (SC) in which the Hon'ble Court held as under :

“ Having heard Shri Balbir Singh, learned Associates Solicitor General and in the facts and circumstances of the case more particularly at the time of scrutiny assessment under s. 143(3), the AO had asked for the details regarding the unsecured loan taken by the assessee during the year under consideration and the assessee furnished the details as asked for and thereafter, after perusing the details so furnished by the assessee, the AO passed an order under s. 143(3) of the Act. Therefore, it cannot be said that there was any suppression on the part of the assessee in not disclosing true and correct facts. It is required to be noted that even the reassessment proceeding were initiated beyond the period of four years. Under the circumstances, the High Court is absolutely justified in quashing the reassessment proceedings and the notice under s. 148 of the IT Act. No interference of this Court is called for in exercise of powers under Art. 136 of the Constitution of India.

2. With this, the special leave petition stands dismissed.”

6. Per contra, the Ld. DR opposed to the submission of the Ld. AR and relying on the decision of Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Javeri Stock Broker Pvt Ltd. (2007) 161 taxmann 316

submitted that there is no requirement of any tangible material as per the Act. Therefore the contention of the Ld. AR is not tenable and liable to be rejected.

7. We have heard the rival contention and also gone through the record in the light of the submissions made on either side. The Ld. AR submitted that, the case of the assessee had already been assessed u/s 147 on the previous occasion and now again the reassessment proceeding has been initiated u/s 147 after lapse of four years from the end of relevant assessment year. Therefore, as per the first Proviso to section 147 of the Act, if any assessment had already been done in the previous occasion u/s 143(3) or u/s 147 of the Act, after that, for selecting any case for reassessment u/s 147, there must be some failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment already had been done. However no such failure on the part of the assessee has been pointed out by the Ld. AO. Therefore, under this situation the issue of notice u/s 148 of the Act for the purpose of reassessment u/s 147 is not valid and is liable to be quashed.

7.1 To have a clear understanding of the facts, it is relevant to go through section 147 of the Act , which is reproduced as under :

"Income escaping assessment.

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been under-assessed ; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed. “

From the perusal of above, it is abundantly clear that, the first Proviso to section 147 of the Act, put a restriction for reopening of any case u/s 147, where any assessment had already been done u/s 143(3) or u/s 147 of the Act

in the previous occasion, for selecting any case for reassessment u/s 147, there must be some failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment already had been done in previous occasion. However explanation-I to section 147 of the Act states that the production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso. Therefore, from the conjoint reading of first proviso & explanation-I to section 147 of the Act, it can be concluded that only putting before the assessing officer any books or other documents from which material evidence could with due diligence had been discovered by the Assessing Officer, is not sufficient to covered under the first proviso to section 147 of the Act. The specific issue must had been came before the assessing officer and the assessing officer must had applied his mind on that issue and had came to some conclusion. In the case of the assessee, in previous occasion the reason for reopening was to disallow the NPA provision. However the present reopening has been done to disallow interest on deposits u/s. 40(a)(ia) of the Act. Therefore the present reopening has been done with different reason. However in the case before us, the Ld. AR did not produce any evidence before us to demonstrate that the issue for which the

present reopening has been done, was came before the assessing officer during the previous assessment proceedings and the assessing officer had dealt with that issue in the earlier assessment proceeding.

The decision of Hon'ble Suprmee Court in the case of ITO Vs. Kayathwal Estates Pvt. Ltd.(Supra) and ITAT in the case of DCIT Vs. NSL Properties Pvt. Ltd. (Supra) relied by the Ld. AR are not applicable to the case of the assessee, because the reason for which the present reopening has been done was never came before the Ld. AO during the previous assessment proceedings and the Ld. AO never dealt with that issue in the earlier assessment proceeding. Therefore in our considered opinion the present reassessment proceedings are valid, as the issue for which the reassessment has been opened were not dealt in the previous occasion. Therefore we do not find any merits in the argument of the Ld. AR. Accordingly, we dismiss the appeal of the assessee on this ground.

8. Now coming to the other grounds of the assessee with regard to the action of the Ld. CIT(A) in remanding the matter back to the file of the Ld. AO. The Ld. AR submitted that as per the provisions of section 251 of the Act, the Ld. CIT(A) had no power to set aside the assessment and remand the matter to the Ld. AO to cause fresh enquiry.

9. Per contra, the Ld. DR relied on the orders of the Ld. CIT(A) and requested the bench to uphold the findings of Ld. CIT(A).

10. We have heard the rival submissions and also gone through the record in the light of the submissions made on either side. We are in agreement with the submission of the Ld. AR that, as per the provisions of section 251 of the Act, the Ld. CIT(A) had no power to set aside the assessment and remand the matter to the Ld. AO to cause fresh enquiry. Therefore, we set aside the order of the Ld. CIT(A) and remand back the matter to Ld. AO by issuing the similar directions as issued by the Ld. CIT (A) vide para no.6 of his order dated 14/08/2013. Accordingly, we allow this ground of appeal of the assessee for statistical purposes.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 28th Aug., 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 28.08.2024.

* Reddy gp

Copy of the Order forwarded to :

1. The Prudential Co-operative Urban Bank Limited,
C/o K. Vasantkumar, A.V. Raghuram & P. Vinod,
Advocates, 610, Babukhan Estate, Basheerbagh,
Hyderabad-500 001
2. DCIT, Circle-2(3), Hyderabad.
3. Pr. CIT-2, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,