

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA NOS. 1461 & 1462/Del/2024		
A.YRS. : 2017-18 & 2018-19		
SARVA HARYANA GRAMIN BANK, PLOT NO. 1, SHGB HOUSE, SECTOR-3, HUDA ROHTAK, HARYANA - 124001 (PAN: AAKAS1464M)	VS.	DCIT, CIRCLE ROHTAK HARYANA- 124001
(APPELLANT)		(RESPONDENT)

Assessee by : Shri Vivek Gupta, CA
Department by : Ms. Shashi Kajle, Sr. DR.

Date of hearing : 30.10.2024
Date of pronouncement : 05.11.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the aforesaid 02 Appeals against the respective impugned orders passed by the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi relating to assessment years 2017-18 & 2018-19. Since common issues are involved in both the appeals, hence, these appeals were heard together and are being disposed of by this common order for the sake of convenience, by only dealing with the facts of the Appeal No. 1462/Del/2024 (AY 2018-19) and the decision thereof will apply *mutatis mutandis* to other Assessee's ITA No. 1461/Del/2024 (AY 2017-18).

2. The grounds raised in Assessee's Appeal No. 1462/Del/2024 (AY 2018-19) are reproduced as under:-

- i) That on the facts and circumstances of the case and provisions of the law, the order u/s. 250 dated

05.02.2024 passed by the Ld. CIT(A) is against the facts of the case and provisions of the law.

- ii) That on the facts and circumstances of the case and provisions of the law, the AO as well CIT(A) erred in levying / confirming the surcharge @15% as against 12% and also erred in making the consequential increase in cess, ignoring the vital fact that as per section 22 of the RRB Act, the appellant shall be deemed to be a cooperative society for the purpose of Income Tax Act.
- iii) That consequent to ground no. 2 above, the AO as well as CIT(A) erred in charging the interest u/s. 234B of Rs. 60,36,746/-.

3. Brief facts of the case are that the AO has passed the assessment order u/s. 143(3) of the Act for Assessment Year 2018-19 and completed the same at Rs. 180,89,34,865/-. However, later on, he invoked the provisions of section 154 of the Act and issued the notice by noting as under:-

*“It is noticed that the assessment for the AY 2018-19 was completed under section 143(3) on 24.12.2019 at assessed income of Rs. 180,89,34,865/-. However, while finalizing the assessment, surcharge had been levied by the system @12% amounting to Rs. 6,51,21,295 instead of the correct rate of surcharge @15% amounting to Rs. 8,14,01,619 on income tax of Rs. 54,26,77,461/-. *The omission had resulted in short levy of tax of Rs. 2,28,05,480/- including education cess and interest u/s. 234B (36 months). Thus, an amount of Rs. 2,28,05,480/- (including interest) is required to be increased in overall tax effect.*

Since the aforementioned mistakes are apparent from records, hence, the same are proposed to be rectified u/s. 154 of the Act. You are, therefore, requested to please explain and show cause

why necessary rectification for AY 2018-19 should not be made u/s. 154 of the Income Tax Act, 1961."

3.1 In response to the aforesaid, assessee responded as under:-

"I. It is an admitted fact that assessee is a Regional Rural Bank (RRB) under Regional Rural Banks Act, 1976.

II. As per section 22 of Regional Rural Bank Act, 1976, a Regional Rural Bank shall be deemed to be a cooperative society for the purpose of the Income Tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax or income, profits or gains of RRB. The said provisions of RRB Act have got overriding effect as per section 32 of RRB Act

Extract from section 22 and 32 of RRB Act, is reproduced below:

"22. For the purpose of the Income-tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on Income, profits or gains, a Regional Rural Bank shall be deemed to be a Cooperative Society."

III. In your aforesaid notice u/s 154 dated 12.02,2023, your good-self has proposed to levy surcharge 15% instead 12% resulting into proposed demand of Rs. 2,23,05,480/-. Please note that rate of surcharge for cooperative society was 12% for AY 2018-19. Bank has also filed its return of Income for AY 2018-19 with its status as AOP/BOI with sub status as "other Cooperative Society" as required in terms of ITR Form-5 for AY 2018-19. Copy of relevant extract from ITR Form-5 filed by bank for AY 2018-19 is enclosed for your ready reference.

In view of the above, the surcharge @ 12% and education cess thereon was correctly levied while passing the order u/s 143(3) dated 05.04.2021 by the Ld. AO/system. Consequently, there has been no apparent mistake in the said order dated 05.04.2021 w.r.t levy of surcharge and education cess thereon.

It is therefore, requested to your goodself to kindly withdraw the aforesaid notice u/s 154 dated 03.02.2023 proposing the demand of Rs. 2,28,05,430/- under Intimation to us."

3.2 However, AO rejected the aforesaid reply of the assessee by observing that the reply of the assessee is not satisfactory as Surcharge Rate being prevailed during the period under consideration for the AOP/BOI was 15%, hence, he applied the same.

4. Upon assessee's appeal, Ld. CIT(A) by referring the earlier CBDT Circular No. 319 dated 11.1.1982, observed that the deeming status of RRB was subsequently reviewed by CBDT vide its Circular No. 6/2010 dated 20.9.2010 wherein, it has been specifically mentioned that the Circular No. 319 dated 11.1.1982 deeming any Regional Rural Bank to be cooperative society stands withdrawn with effect from assessment year 2007-08. Hence, he upheld the action of the AO.

5. Against the above action of the Ld. CIT(A) assessee is in appeal before us.

6. We have heard both the parties and perused the records.

7. At the time of hearing, Ld. counsel for the assessee made the following submissions:-

".. The appellant is a Regional Rural Bank (RRB) under Regional Rural Banks Act, 1976.

2 As per section 22 of Regional Rural Bank Act, 1976, a Regional Rural Bank shall be deemed to be a co-operative society for the purpose of the Income Tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits or gains of RRB. The said provisions of RRB Act have got overriding effect as per section 32 of RRB Act.

Extract from section 22 and 32 of RRB Act, is reproduced below:

"22. For the purpose of the Income-tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits or gains, a Regional Rural Bank shall be deemed to be a Cooperative Society."

"32. Act to override the provisions of other laws. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, express or implied, or in any instrument having effect by virtue of any law other than this Act, and notwithstanding any custom or usage to the contrary.

Copy of Extract from section 22 and section 32 is enclosed as per page no 1-2 of paper book.

3. Bank has also filed its return of Income for AY 2017-18 & AY 2018-19 with its status as X AOP/BOI with sub status as "Cooperative Society" as required in terms of ITR Form-5 for AY 2017-18 & AY 2018-19. Copy of relevant extract from ITR Form-5 filed by bank for AY 2017-18 & AY 2018-19 is enclosed as per page no 3-4 of Paper book.

The rate of surcharge for AY 2017-18 & AY 2018-19 for cooperative society has been 12% as per relevant Finance Act. Copy of extract of FY 2017 read with section 2 of FA Act 2017, as applicable for surcharge for AY 2017-18 is enclosed as an instance as paper book page no 5-7.

Further in later years, the revenue even after the scrutiny assessments itself levied the surcharge @ 12%. Copy of computation made by revenue consequent to scrutiny assessment for AY 2022-23 is enclosed an instance as per page no 8-11 of paper book

Even Ld CIT (A) also allowed the deduction under section 80P to the appellant treating the appellant as "deemed Cooperative Society" after having the detailed analysis and following the decisions on this issue of two benches of Hon'ble Tribunal and Hon'ble High Court of Allahabad in the case of Baroda UP Gramin Bank in ITA nos 16 to 24 and 28 of 2022 and others dated 15.03.2022 (refer para 10.5 of the order of Ld CIT(A) for AY 2016-17 enclosed as an instance as per page no 12-63 of Paper book.

In view of the above, the aforesaid demand raised due to incorrect levy of surcharge d 15% as against 12% and consequential incorrect levy of cess thereon by the revenue, is liable to be fully deleted. It is prayed according."

Ground No: 3 Charging of Interest u/s 234B

Consequent to our submissions to ground no. 2 above, Interest u/s 234 of IT Act, is also liable to be fully deleted. It is prayed accordingly."

8. At the time of hearing, Ld. DR relied upon orders passed by the lower authorities.

9. Upon careful consideration, we note that as per section 22 of Regional Rural Bank Act, 1976, a Regional Rural Bank shall be deemed to be a co-operative society for the purpose of the Income Tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits or gains of RRB. Furthermore, the provisions of RRB Act have got overriding effect as per section 32 of RRB Act. Moreover, Bank has also filed its

return of Income for AY 2017-18 & AY 2018-19 with its status as AOP/BOI with sub status as “Cooperative Society” as required in terms of ITR Form-5 for AY 2017-18 & AY 2018-19, a copy thereof has been filed by the Assessee at page 3-4 of the APB. Moreover, the rate of surcharge for AY 2017-18 & AY 2018-19 for cooperative society has been 12% as per relevant Finance Act, a copy of relevant extract of Finance Act, 2017 read with section 2 , as applicable to surcharge for AY 2017-18 has been placed at page no. 5-7 of the APB. It is further noted that in later years, the revenue even after the scrutiny assessments itself levied the surcharge @ 12%, a copy of computation made by the revenue consequent to scrutiny assessment for AY 2022-23, has been placed at page no. 8-11 of APB and even CIT (A) also allowed the deduction under section 80P to the assessee treating the assessee as “deemed Cooperative Society” after having the detailed analysis and following the precedents as cited by the Ld. AR in his Written Submissions, a copy thereof has been placed at page no. 12-63 of the APB.

10. In the background of the aforesaid discussions, in our considered view, the demand raised by the revenue authorities due to incorrect levy of surcharge @15% instead of @12%, and consequential incorrect levy of cess deserve to be deleted and orders of the lower authorities on this issue needs to be set aside. We hold and direct accordingly.

11. In view of our aforesaid findings, the issue for charging of interest u/s. 234B has become academic, hence, the same need not be adjudicated.

12. In the result, the Assessee’s appeal No. 1462/Del/2024 (AY 2018-19) stand allowed in the aforesaid manner.

13. Following the consistent view as taken in AY 2018-19, as aforesaid, the issues raised in Assessee’s other ITA No. 1461/Del/2024

(AY 2017-18) is also decided in favour of the assessee by setting aside the orders of the authorities below and accordingly allowed the appeals of the assessee.

14. In the result, both the Assessee Appeals are allowed in the aforesaid manner.

Order pronounced on 05/11/2024.

SD/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

SD/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar