

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.445/Coch/2023 : Asst.Year 2015-2016

Neyyattinkara Co-operative Urban Bank Limited, Hospital Junction Neyyattinkara Trivandrum - 695 121. PAN : AABAT7474R.	v.	The Assistant Commissioner of Income-tax, Circle 2(1) Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri.Arun Raj S, Advocate
Respondent by : Smt.V.Swarnalatha, Sr.DR

Date of Hearing : 13.08.2024	Date of Pronouncement : 05.11. 2024
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ORDER

Per Bench :

This assessee's appeal ITA No.445/Coch/2023 for assessment year 2015-2016 arises against the Commissioner of Income-tax (Appeals) / NFAC's DIN & Order No.ITBA/NFAC /S/250/2021-22/1041222039(1) dated 22.03.2022, in proceedings u/s.154 r.w.s. 143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter.

Heard both the parties. Case file perused.

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

"1. The order dated 22-3-2022 passed by the CIT(Appeals), National Faceless Appeal Centre, Delhi to the extent challenged in this appeal for the AY 2015-16 is illegal, arbitrary and unjustified.

2. The CIT(Appeals) failed to appreciate, in the right perspective, the fact that the assessing officer has not allowed the deduction of an amount of Rs 19,18,448/- credited to the Profit & Loss account under the Head Investment Depreciation reserve removed from the total income.

3. During the preceding years, the assessing officer had added back the aforesaid amount to the total income and reworked the total income and computed the tax liability and therefore the appellant is eligible to claim the said amount as deduction from the total income, for which the evidence was available in the assessment records. The CIT (Appeals) failed to appreciate the issue in the right perspective and ought to have noted that the assessing officer failed to consider or address this aspect. The CIT (Appeals) failed to take note of the fact that the assessing officer without considering the issue raised by the assessee and the documents made available to him vide 8-1-2018, rejected the rectification application.”

3. Learned Counsel next takes us to the assessee's sec.154 rectification application, reading as under:-

“We have received your assessment order cited above reference proposing an addition of Rs. 6607030/- under the head provision for Non performing assets and provision for standard assets and by increased our tax liability by Rs. 3162510/- In this connection we reiterated our earlier letter dated 22-12-2017 and the above said letter we are stated that along with any proposed addition consider an amount of Rs. 1948443/-, which was credited under the head "Investment depreciation reserve removed" in the Profit and Loss Account, which was already added by the assessing officer during the assessment year 2013-14 and 2014-15 and tax was also paid. The copy of above order is also attached. Similarly, while disallowing the Provision for NA your good office not considered the 7.5% of allowable provision computed from the current year profit before deduction under Chapter VIA (The assessment order passed by the assessing authority for the previous period is also enclosed).

In view of above facts, we request the assessing authority to kindly consider the above two points, which is also eligible for us and pass the rectification order accordingly. Thanking you.”

4. The assessee's case accordingly is that the limited relief which is claimed in its instant rectification is that to prevent double addition of the very amount under the head "Investment depreciation reserve removed" which already stood added / assessed in the preceding assessment years. Learned DR draw strong support from both the lower authorities findings that such an issue could hardly been held as rectifiable mistake in the light of T.S.Balaram, ITO vs. Volkar Bros. [1971] 82 ITR 50 (SC). She further elaborates the point that the Assessing Officer has already held the assessee not to have filed all the relevant details. She however fails to dispute that the assessee's averments in its rectification application had duly claimed to have attached all the corresponding assessment orders pertaining to the preceding assessment years which have neither been considered nor rejected.

5. Face with this situation, we deem it appropriate to restore the issue to the Assessing Officer for fresh appropriate adjudication as per law. We further make it clear that it shall be the tax payers risk and responsibility to plead and prove all the relevant facts before the Assessing Officer within three effective opportunity in consequential proceedings. Ordered accordingly.

6. This assessee's appeal ITA No.445/Coch/2023 is allowed for statistical purposes in above terms.

Order pronounced in the open court on this 5th Day of
November, 2024.

**Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER**

**Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER**

Cochin ; Dated : 05th November, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin