

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER
ITA No.4513/M/2024
Assessment Year: 2020-21**

The Saraswat Co-operative Bank Limited Eknath Thakur Bhavan, 953 Apasaheb Marathe Marg, Prabhadevi S. O., Mumbai- 400025. PAN: AABAT4497Q	Vs.	DCIT- 1(3)(1) Aayakar Bhavan, M. K. Road, Mumbai- 400020.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anish Thacker & Pranay Gandhi

Revenue by : Dr. Kishore Dhule- CIT DR

Date of Hearing : 28.10.2024

Date of Pronouncement : 29.11.2024

ORDER

Per Beena Pillai, JM:

Present appeal is filed by the assessee arises out of order dated 08/07/2024 passed by ADDL-JCIT(A)1- Coimbatore for Assessment Year 2020-21 on following grounds of appeal:

"Based on the facts and circumstances of the case, The Saraswat Co-operative Bank Limited (hereinafter referred to as "Saraswat Bank or the



"the Appellant') craves leave to prefer an appeal against the order passed by the Additional/Joint Commissioner of Income-tax (Appeal) -1 Coimbatore [learned CIT(A)] under section 250 of the Income-tax Act, 1961 (Act), on the following grounds, each of which are without prejudice to and independent of the others:

1. Ground 1

On the facts and circumstances of the case in law, the learned CIT(A) has erred in deleting the addition only to the extent of Rs.2,23,69,94,165 (as against Rs 2,36,60,18,905 made by the Centralized Processing Centre) under section 37 of the Act on account of disallowance of provision for bad and doubtful debts disregarding that disallowance was already made by the Appellant in the computation of AY 2020-2021.

2. Ground 2

On the facts and circumstances of the case and in law, the learned CIT(A) has erred in not granting credit of advance tax paid amounting to Rs 45,00,00,000.

The above grounds of appeal are all independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law."

Brief facts of the case are as under:

2. Saraswat Co-operative Bank Limited [hereinafter referred to as to 'Appellant'] is a multi-state co-operative bank established in the year 1918 and is engaged in providing a range of banking products and services including deposits, extending loans, guarantee services, bill discounting services, forex services, trade finance, etc. The assessee filed its return of income (ROI) for Assessment Year ('AY') 2020-2021 on 12/02/2021 declaring total income of Rs.3,78,72,22,820 and claiming refund of Rs.5,20,95,310. Subsequently, the ROI filed by the assessee was processed and intimation under section 143(1) of the income-tax Act, 1961 (Act)



dated 24/12/2021 was issued assessing total income at Rs.6,24,03,59,550/- and raising a demand of Rs.1,64,38.68,950/-.

2.1. The assessee noted certain mistakes apparent from record in the intimation as under:

“1. Additional disallowance of Rs 2,36,60,18,905 under section 37 of the Act.

1.1 During the financial year ended 31 March 2020, the Appellant created a provision for bad and doubtful debts amounting to Rs.2,36,60,18,905. The said provision had been disallowed by the Appellant in the computation of income for AY 2020-2021 and a deduction was claimed in accordance with the provisions of section 36(1) (viii) of the Act. The disallowance forms a part of Sr. No. 14 of Schedule BP of the Return of Income

1.2 However, in the Intimation, the said provision has been again disallowed under section 37 of the Act and added to the returned income, which has resulted in double disallowance of the same amount.

1.3 Accordingly, the Appellant prays that the additional disallowance of Rs.2,36,60,18,905 under section 37 of the Act should be deleted.

2. Interest on Income tax refund taxed twice

2.1 During the financial year ended 31 March 2020, the Appellant has received interest on income-tax refund of Rs.86,31,300 and the same has been offered to tax under the head Income from Other Sources.

2.2 However, in the Intimation, the aforesaid amount of Rs.86,31,300, being interest on income-tax refund received and offered to tax during the year under consideration, is again added to the total income by the CPC which has led to double taxation of the same income.

2.3 In light of the above, the Appellant prays that double taxation of Rs. 86,31,300 should be deleted.

3. Deemed income under section 41 of the Act amounting to Rs.7,84,86,529

3.1. The Appellant has credited the following to the profit and loss account for the year ended 31 March 2020 (and accordingly forming part of the net profit offered to tax in the tax computation):



- a) *Excess provision of earlier years written back amounting to Rs 58,16,355; and*
- b) *Bad debts earlier written off, now recovered amounting to Rs7,26,70,174.*

3.2. *However, in the Intimation, the aforesaid amounts have been added to the net profit before tax by treating the same as deemed income under section 41 of the Act, and thus resulting in double taxation of the same amount.*

3.3. *In light of the above, the Appellant prays that the aforesaid excess provision of earlier year written back amounting to Rs..58,16,355 and bad debts written off now recovered amounting to Rs7,26,70,174 should not be added to the total income for A.Y.2020-2021 since the same is already credited to the profit and loss account for the year ended 31 March 2020.*

4. *Non-grant of credit for advance tax*

4.1 *The Appellant has discharged as advance tax installment, an amount of Rs45,00,00,000 on 12th December 2019.*

4.2 *However, at the time of filing the Return of income, the date of the said payment was inadvertently mentioned as 12October 2019 and as a result, the aforesaid credit of the advance tax has not been granted to the Appellant.*

4.3 *In light of the above, the Appellant prays that the credit of advance tax installment of Rs.45,00,00,000 ought to be granted. It may be noted that while the notes to the Intimation indicates that the error pertaining to tax payments could be rectified by filing an online rectification request, correcting the details of tax payments, no such facility is currently available on the web portal of income-tax department.”*

2.2. The CPC did not take cognizance of the above submissions of the assessee and also erred in granting credit of advanced taxes paid.

Aggrieved by the order of the CPC under, the assessee preferred appeal before the Ld. CIT(A).

3. The Ld. CIT(A) after considering the submissions of the assessee observed and held as under:-

The appellant has claimed that NFAC passed Assessment Order under section 143(3) dated 23 September 2022 after making inter-alia the following adjustments:

- *addition of Rs 4,06,100 in respect of deduction claimed under section 80G of the Act (on the basis that documentary evidence has not been provided).*
- *considering income as per the Rectification Order instead of returned income as per ROI filed for AY 2020-2021 while computing assessed income, and*
- *not considering the additional claims filed by the Appellant.*

The 143(1) order dated 24-Dec-2021 is further rectified u/s 154 on 22/03/2022 and Assessment Order under section 143(3) is passed on 23 September 2022. The 143(1) order dated 24-Dec-2021 is infructuous after the passing of Order under section 143(3). In the 143(3) order the AO has started from the returned income and the screenshot is as under Returned income

<i>Returned income</i>	<i>Rs. 3,78,72,22,820/-</i>
<i>Adjusted total income under MAT</i>	<i>Rs. 3,79,86,11,730/-</i>
<i>Add addition as per para 3.1</i>	<i>Rs. 5,07,84,135/-</i>
<i>Add addition as per para 3.2</i>	<i>Rs. 4,06,100/-</i>
<i>Total Income</i>	<i>Rs 3,83,84,13,055/-</i>
<i>R/o</i>	<i>Rs. 3,83,84,13,060/-</i>

5.2 The AO in the computation of income has started from the income as per the Rectification Order Rs 6,24,03,59,550 and the demand raised u/s 143(1) on the income of Rs 6,26,27,82,012 is reduced a little in the 154 order. The appellant is on appeal against the 143(1) order stating that the AO has retained the demand u/s 143(3). This is correct and the AO has not made any mention about the additions made in the 143(1) order in the 143(3) order but in the computation has retained the additions u/s 143(1). Hence it is assumed that the AO has retained the additions made u/s 143(1) order in the 143(3) order and the appeal is decided on merits.

5.3. Ground 1 is against the CPC again disallowing the provision for bad and doubtful debts amounting to Rs 2,36,60, 18,905 under section 37 of the Act,



disregarding that the disallowance was already made by the Appellant in the computation of income for AY 2020-2021. In form 3CD the auditors has qualified that

(1) Any sum paid by the assessee as an employer not allowable under section 40A(9)		
(g) Particulars of any liability of a contingent nature		
S.No.	Nature Of Liability	Amount in Rs.
1	Provision towards COVID-19	15544642
2	Provision towards Bad & doubtful debts	2419018049
3	Provision towards interest as per Court order in respect of recovery amount under legal dispute	5582920

In the ITR Part A: Ol Other Information (Mandatory if liable for audit under section 44AB) the appellant has disallowed contingent liability of Rs 7,71,26,706 only as under:

law			
h	Amount of any liability of a contingent nature	7h	74126706
i	Any other amount not allowable under section 37	7i	0
j	Total amount disallowable under section 37 (total of 7a to 7i)	7j	77126706

The difference of Rs 2,36,30,18,905/- between the total liability reported in form 3CD Rs 2,44,01,45.611/- (15544642+2419018049+5585920) and disallowed in ITRRS 7,71,26,706/- is disallowed by CPC.

5.4 The Instructions for filling out FORM ITR-6 correctly states that the Following fields of ITR should be tallied with corresponding amount mentioned in Tax Audit report i.e Form 3CA-3CD/3CB-3CD

Schedule Name in ITR- Schedule Ol Section 37 Amount of any liability of a contingent nature Sr. No. 7(i) From Form 3CD, Clause 21 (g) "Particulars of any liability contingent in nature" column "Amount"

Schedule Name in ITR- Schedule Ol Section 37 Expenditure of personal nature: [37(1)] Sr. No. 7(b) Form 3CD, Clause 21 (a) "field Personal Expenditure" Column "Amount"

5.5 The appellant has not done this and the adjustment/addition made by the CPC in correcting the arithmetical mistake that the disallowance reported in Form 3CD, Clause 21 is not offered as income in - Schedule Ol is correct. The auditors have qualified that Rs 2,44,01,45,611 debited into the Profit and loss account is contingent in nature and is to be disallowed while the amount disallowed is Rs 7,41,26,706/- and the difference of Rs 2,36,30,18,905/- debited into the Profit and loss account is contingent in nature and is to be



disallowed. The CPC has corrected this mistake only and is correct as per facts and law.

5.6. The Income Tax (Eighth Amendment) Rules, 2021 has inserted sub-rule (3) in rule 6G vide towards the issues faced by assesses because of the provisions of section 40 and section 43B of the Act through Notification No. 28/2021 dated 1.4.2021, w.e.f. 1.4.2021

Report of audit of accounts to be furnished under section 44AB.

6G. (1) The report of audit of the accounts of a person required to be furnished under section 44AB shall,-

(a) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA; (a)

(b) in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.

(2) The particulars which are required to be furnished under section 44AB shall be in Form No. 3CD.]

(3) The report of audit furnished under this rule may be revised by the person by getting revised report of audit from an accountant, duly signed and verified by such accountant, and furnish it before the end of the relevant assessment year for which the report pertains, if there is payment by such person after furnishing of report under sub-rule (1) and (2) which necessitates recalculation of disallowance under section 40 or section 43B

5.7 The appellant has now filed the details the audited accounts, and ITR. The appellant has clarified as under

During the financial year ended 31 March 2020, the Appellant created a provision for bad and doubtful debts amounting to Rs 2,36,60,18,905. The said provision had been disallowed by the Appellant in the computation of income for AY 2020-2021 and a deduction was claimed in accordance with the provisions of section 36(1) (viiia) of the Act. The disallowance forms a part of Sr. No. 14 of Schedule BP on page no 24 of the ROI filed for AY 2020-2021.

5.8 It is correct that the appellant has made disallowance of Rs 223,99,94,165/- in the ITR as under



before the due date [36(1)(va)]			
l	Amount of bad and doubtful debts [36(1)(vii)]	6l	345453368
m	Provision for bad and doubtful debts [36(1)(viii)]	6m	1894540797
n	Amount transferred to any special reserve [36(1)(viii)]	6n	0

	iii	(viii) (ix) + (x)	14iii	2001 2020/
13.	Profit or loss after adjustment for depreciation (10 +11 - 12iii)		13	3802117575
14.	Amounts debited to the profit and loss account, to the extent disallowable under section 36 (6t of PartA-OI)		14	2239994165
15.	Amounts debited to the profit and loss account, to the extent disallowable under section 37 (7j of PartA-OI)		15	77126706

5.9 From AY 2021-22 onwards the appellant is provided with an opportunity to correct the mistake in audit report after it receives intimation from CPC regarding the mistake committed. The appellant had opportunity to filed correction return also. The appellant has not done this. The software driven CPC has gone by the entries and has not gone to the facts/evidence. Now the appellant has an opportunity to present the facts/evidence before the appellate authority. On verification it is clear that the Rs.223,99,94,165/- + Rs 7,41,26,706/- Rs 2,31,41,20,871/- out of the total contingent expenses disallowable as reported in Form 3CD of Rs 2,44,01,45,611/- is disallowed in the ITR under two heads. As this is already offered as income further adjustment u/s section 143(1) of Rs 2,31,41,20,871/- was not required. Assessing a disallowance already disallowed is actually double taxing the same income. Hon'ble Supreme Court in the case of Laxmipat Singhania vs. CIT reported in (1969) 72 ITR 291 (SC) wherein at page 294 Hon'ble Apex Court has observed that "it is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice". Taxing the same income twice is not according to the statute and against natural justice. The expenditure not claimed by the appellant as business expense of Rs 2,31,41,20,871/- which is taxed twice must be excluded from income assessed u/s 143(1). The additions/disallowance made by the CPC under section 143(1) is hereby limited to Rs 12,60,24,740/- (Rs 2,44,01,45,611 -Rs 2,31,41,20,871/-) and the appellant gets a relief of Rs 2,23,69,94,165/- (addition made by CPC 2,36,30,18,905-12,60,24,740)."

Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before this Tribunal.

4. In respect of the **Ground No. 1**, the Ld.AR filed in the paper book at page 10 the computation in respect of the *suo-moto* disallowance made u/s. 36 of the Act by the assessee. It is submitted that, as per directions of the Ld. CIT(A), the double disallowance to the extent of Rs.2,23,69,94,165/- has been provided as observed in para 5.9 of the impugned order. He thus submitted that Rs.2,36,60,18,904/- was already disallowed by the assessee which is clear from the table reproduced in the impugned order hereinabove. The Ld.AR contended that the CPC once cannot make the disallowance of the even amount. He submitted that the Ld. CIT(A) though considered the issue partly in favour of assessee, however figures adopted therein have been not correctly looked into.

4.1. Considering the above submissions of the assessee, we are of the opinion that this issue observes to be remanded to the Ld.AO for necessary verifications. Assessee is directed to provide the computation of disallowance made by the assessee vis-à-vis the disallowance made by the CPC u/s. 143(1)(a) of the Act. The Ld.AO shall make necessary enquiries and consider the claim in accordance with law.

Accordingly the Ground No.1 raised by the assessee stands partly allowed for statistical purpose.

5. Ground No.2 is in receipt of non granting of credit to advanced tax paid by the assessee.



The Ld.AO directed to give necessary credits to the advanced tax paid upon furnishing all details by the assessee in respect of the same.

Accordingly, ground no. 2 raised by the assessee stands partly allowed for statistical purpose.

In the result the appeal filed by the assessee stands partly allowed for statistical purpose.

Order pronounced in the open court on 29.11.2024.

**Sd/-
PRABHASH SHANKAR
ACCOUNTANT MEMBER**

**Sd/-
BEENA PILLAI
JUDICIAL MEMBER**

Mumbai, Dated: 29.11.2024.
Snehal C. Ayare, Stenographer/Dragon

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai