

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "जी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्रीमती रेणु जौहरी, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

आअसं.1820 to 1822/दिल्ली/2023 (नि.व. 2016-17 to 2018-19)  
ITA Nos.1820 to 1822/DEL/2023 (A.Ys.2016-17 to 2018-19)

Deputy Commissioner of Income Tax,  
Circle Rohtak, Aayakar Bhawan, Delhi Road,  
Opp. Mansarover Park, Rohtak, Haryana 124001

..... अपीलार्थी/Appellant

बनाम Vs.

Sarva Haryana Gramin Bank,  
Delhi Road, Rohtak, Haryana 124001  
PAN: AAKAS-1464-M

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Jaya Chaudhary, CIT-DR  
प्रतिवादीद्वारा/ Respondent by : Shri Vivek Gupta, Advocate  
सुनवाई की तिथि/ Date of hearing : 03/12/2024  
घोषणा की तिथि/ Date of pronouncement: : 27/12/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

These three appeals by the Revenue for assessment years 2016-17, 2017-18 & 2018-19, respectively are against the orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)'). The impugned orders by the CIT(A) for the respective assessment years are of even date i.e. 30.03.2023. These appeals are taken up together for adjudication as they emanate from identical set of facts and are decided by this common order.

2. For the sake of convenience the appeals are decided in seriatim of assessment year. Appeal for assessment year 2016-17 is taken up as a lead case, hence, the facts are narrated from said appeal.

**ITA No. 1820/Del/2023 for AY 2016-17**

3. The Revenue in appeal has raised as many as 16 grounds. The grounds of appeal are summed up as under:

Ground no. 1 to 3: Against deleting of disallowance u/s. 14 r.w.r 8D.

Ground no. 4 to 6: Against deleting of addition on account of amortization of premium.

Ground no. 7 to 9: Against deleting of provisions for Standard Assets u/s. 36(1)(viiia) of the Income Tax Act, 1961(hereinafter referred to as 'the Act').

Ground no. 10: Against deleting of addition on account of fraud/dacoity.

Ground no. 11 to 13: Against deleting of addition on account of disallowance of claim of deduction u/s. 80P of the Act.

Ground no. 14: Against deleting of expenditure claimed under the head 'Estab-PNB'.

Ground no. 15 & 16: Against deleting the addition on account of disallowance of establishment expenses.

4. Facts of the case in brief as emanating from records are Sarva Haryana Gramin Bank is a Regional Rural Bank and is treated as cooperative Society as per section 22 of RRB Act. The assessee filed return of income declaring income of Rs. 150,00,63,447/- on 28/11/2016. On 31/03/2018, the assessee revised its return of income declaring income at Nil after claiming deduction under section 80P. The case was selected for scrutiny under CASS. Notice under Section 143(2) of the Income Tax Act, 1961 dated 27th July, 2017 was issued to the assessee. The assessment was completed at total income of Rs. 175,25,80, 155/- vide order u/s 143(3) of the Act dated 27/12/2019 making certain additions/ disallowances and also denying the claim of deduction u/s 80P. Aggrieved the assessee filed appeal

before the CIT(A). The First Appellate Authority granted substantial relief to the assessee. Hence, the present appeal by the Department.

**Disallowance u/s. 14A:**

5. During the period relevant to assessment year under appeal, the assessee earned tax free dividend income of Rs.1,08,88,335/-. The assessee made *suo moto* disallowance of Rs.10,41,406/- u/s. 14A of the Act. The Assessing Officer (AO) rejected assessee's computation of disallowance and recomputed disallowance u/s. 14A r.w.r 8D at Rs.1,05,71,214/-. The assessee carried the issue in appeal before the CIT(A). The contention of the assessee is that as against average investment of Rs.20,79,46,799/-, the assessee was having interest free own funds in the form of share capital and reserves aggregating Rs.1484,16,26,571/- thus own funds of the assessee were much more than the investments made. Where interest free funds are in excess of investments, no disallowance u/s. 14A of the Act could be made. The CIT(A) placing reliance on various decisions including the decision in the case of *CIT vs. Hero Cycle Ltd. 189 Taxman 50 (P&H)* deleted the addition. It is no more *res integra* that where the assessee is having mixed bag of own interest free funds and interest bearing funds and own funds of the assessee are much more than the investments made, it shall be presumed that the investments are made from assessee's own interest free funds. Thus, in light of settled legal position, we find no infirmity in findings of the CIT(A) on this issue, hence, ground no. 1 to 3 of appeal are dismissed.

**Amortization of Premium Paid on Securities:**

6. The assessee has amortized the premium paid on purchase of securities over remaining period of securities. The assessee has claimed amount paid on amortization in the P&L account. The AO disallowed assessee's claim of

amortization on securities 'held to maturity' and made addition of Rs.2,35,11,091-/. In first appeal, the CIT(A) deleting the addition following decisions rendered in the case of *CIT(A) vs. HDFC Bank Ltd. 366 ITR 105 (Bom)* and in the case of *ACIT vs. The Bank of Rajasthan Ltd. (2011) TIOL 35 (ITAT Mumbai)*. The issue is now well settled that amount paid towards amortization of premium on securities 'held to maturity' is an allowable deduction. We see no infirmity in the findings of the CIT(A) on this issue, hence, the same are upheld and ground no. 4 to 6 are dismissed.

### **Revision for Standard Assets:**

7. The assessee has claimed provision for Standard Assets amounting to Rs.1,76,56,000/-. The AO placing reliance on the decision of Hon'ble Apex Court in the case of *Southern Technology Ltd. vs JCTT, in Civil Appeal No. 1337/2003* disallowed the assessee's claim. The CIT(A) place reliance on the decision of Tribunal in assessee's own case in AY 2010-11, 2011-12 & 2012-13 deleted the addition.

7.1. The CIT(DR) to reinforce view of the AO has further placed reliance on the following decisions:

*"1, Rajasthan Marudhara Gramin Bank (earlier MGB Gramin Bank) ITA No. 504/Jodh/2018, A. Y 2010-11/ ITA No. 517 to 521/ Jodh/2018, A.Y 2007-08, 2010-11, 2011-12, 2013-14, & 2012-13/ CO No. 13/Jodh/2018, A. Y 2009-10, Dated 10-11-2023.*

*2. Chaitanya Godavari Grameena Bank [2018] 93 taxmann.com 400 (Visakhapatnam-Trib.), Dated 04-05-2018.*

*3. Bharat Overseas Bank Ltd. [2012] 26 taxmann.com 330 (Chennai), Dated 28-08-2012."*

7.2. Per contra, the Id. Counsel for the assessee submitted that in preceding assessment years and succeeding assessment years i.e. AY 2017-18 & 2018-19 the

assessments were made u/s. 143(3) of the Act by the AO and no disallowance was made on this account. The consistency demands that no disallowance should be made in the hands of the assessee on an issue which has been accepted by the Revenue in preceding and succeeding assessment years. There has been no change in the accounting policies and methodology adopted by the assessee in the impugned assessment year.

7.3. We find that the Coordinate Bench in ITA No. 1561/Del/2015 for AY 2011-12 vide order dated 20.12.2017 has considered this issue and has decided the same in favour of the assessee by deleting addition made u/s. 36(1)(viiia) of the Act. The Revenue has not been able to controvert the statement of Id. Counsel for the assessee that in preceding and succeeding assessment years where assessments were completed u/s.143(3) of the Act, the claim of the assessee has been accepted by the AO. The rule of consistency demands that where the assessee has claimed an expenditure following the same accounting policy in preceding and succeeding assessment years and the same has been accepted, no disallowance should be made in one of intervening assessment years. We find no error in the order of CIT(A) in deleting addition u/s. 36(1)(viiia) of the Act. Ergo, ground no. 7 to 9 of appeal are dismissed.

**Provision for Fraud:**

8. During the period relevant to assessment year under appeal, the assessee had claimed expenses to the tune of Rs.47,32,872/- on account of provision for fraud. The assessee has furnished a copy of FIR lodged to substantiate loss caused due to fraud during the year. The AO rejected assessee's claim merely on the ground that assessee did not submit any calculation in support. In First Appellate proceedings, the CIT(A) deleted the addition following the order of CIT(A) in

assessee's own case in AY 2014-15. The Id. DR supporting findings of the AO submitted that no reasons for fraud were explained by the assessee nor any details of recovery of amount involved in fraud in subsequent assessment year is furnished by the assessee.

8.1. The Id.AR vehemently supporting the order of CIT(A) submitted that reasons for fraud are given in FIR, copy of which was provided to the AO. He further made statement at Bar that as and when the amount lost in fraud is recovered, the same is offered to tax in the year of recovery.

8.2. Both sides heard, it is an undisputed fact that in support of the claim towards provision for fraud, the assessee had furnished a copy of the FIR. The AO rejected assessee's claim merely for the reason that assessee has not submitted any calculation in support of the claim. The CIT(A) while deleting the addition has referred to the decision of the CIT(A) in assessee's own case for AY 2014-15. In preceding assessment year, the CIT(A) decided this issue in favour of the assessee by placing reliance on various case laws and CBDT Circular no. 35DXLVII-20 dated 24.04.1965. We find no infirmity in the order of CIT(A) on this issue, hence, we see no reasons to interfere with the same. The Id. DR has anxiously raised a concern that the assessee has not explained the treatment given on subsequent recovery of the amount involved in fraud. Though, no such objection was raised by the AO during assessment proceedings, the Id. Counsel for the assessee made a statement at Bar that as and when any amount is recovered, the same is offered to tax in the year of recovery. In view of above, we find no reason to give any further direction on this issue. The ground no. 10 of appeal is dismissed for the reasons stated above.

**Deduction u/s. 80P(2)(a)(i) of the Act:**

9. The assessee has claimed a deduction amounting to Rs.150,00,63,447/- u/s. 80P(2)(a)(i) of the Act. The AO disallowed assessee's claim of deduction, citing the provisions to section 80P(4) of the Act. In first appeal, the CIT(A) placing reliance on various decisions including the decisions rendered in the case of Vidisha Bhopal Kshetriya Gramin Bank in ITA No. 2015 & 2016 for AY 2007-08 & 2008-09 decided on 16.08.2012, decision in ITA No. 173 & 174 of 2000 for AY 2006-07 & 2007-08 dated 17.02.2013 by Kolkata Bench of Tribunal, the decision of Hon'ble Bombay High Court in the case of *CIT vs. Goa Urban Co-operative Bank Ltd., in Tax Appeal No. 6 & 8 of 2005 decided on 15.07.2009*, *Karnataka Vikas Grameena Bank in ITA No. 611 of 2020 for AY 2016-17 decided on 15.12.2022* by Bangalore Bench and the decision of Hon'ble Allahabad High Court in the case of *Baroda Uttar Pradesh Gramin Bank in ITA no. 16 to 24 of 2022 decided on 15.03.2022* partly allowed assessee's claim of deduction u/s. 80P of the Act. The Id. Counsel for the assessee referred to the provisions of section 22 of the Regional Rural Bank Act, 1976 (RRB Act), to state that a Regional Rural Bank shall be deemed to be a Cooperative Society. He further referred to the provisions of section 32 of RRB Act to contend that the provisions of RRB Act would override the provisions of other Acts. To further buttress his argument, the Id. Counsel placed on record CBDT Circular No. 319 dated 11.01.1982, which specifically stated that the provision of section 80P of the Act will also be applicable to Regional Rural Banks. Hence, deduction u/s. 80P(2)(a)(i) of the Act is allowable in respect of the RRB's. Taking into consideration entire facts and decision on which the CIT(A) has placed reliance, we see no reason to interfere with the findings of the CIT(A). Hence, ground no. 11 to 13 are dismissed.

**Disallowance of expenses claimed under 'Estab-PNB':**

10. The assessee has claimed establishment expenses to the tune Rs.1,69,97,505/- towards staff deputed from sponsor bank i.e. PNB. The Id. Counsel submitted that the said establishment expenditure was incurred during the course of business of the assessee. The books of the assessee are subject to audit and the Auditors have not raised any objection in respect of the said expenditure claimed. The AO has not rejected assessee's books of account but has merely disallowed the expenditure on surmises and conjectures. After examination of assessment order, we find that the expenditure is claimed under the sub-heads like EPF, Medical Aid, LFC, Gratuity, etc. The AO has disallowed the claim as the assessee has failed to submit any clarification or nature of payment under the aforesaid sub-heads and no bills or vouchers were submitted before the AO to prove nature of expenditure and the genuineness of the expenditure claimed. In first appeal, the CIT(A) has allowed assessee's claim in a cryptic manner. In our considered view neither the nature of expenditure has not been properly explained by the assessee nor it is substantiated with documentary evidence, we deem it appropriate to restore this issue to the jurisdictional AO for verification. The AO, after considering the submissions of the assessee and supporting documents shall, decide the issue in accordance with law. Ground no. 14 of appeal is allowed for statistical purpose.

**Establishment expenses:**

11. The assessee has claimed establishment expenses to the tune of Rs.141,58,21,905/-. The AO has disallowed assessee's claim to the extent of Rs.14,07,52,523/-. for the reason that the increase in establishment expenses is not commensurate to other expenses claimed by the assessee on account of setting up of new branches. The AR of the assessee submits that the AO made disallowance

merely on estimations without actually examining documents furnished before the AO. He further contended that the AO has estimated increase in expenditure at the rate of 5% as compared to earlier years, and ignored actual expenditure incurred which includes increase in wages due to revisions and opening of new branches. The Id. AR pointed that the assessee has opened 13 new branches from Financial Year 2014-15 to 2015-16 and 55 branches were opened from Financial Year 2013-14 to 2014-15. The establishment expenses have increased at the rate of 16.59% from Financial Year 2014-15 to 2015-16 and there was marginal increase in other expenses from Financial Year 2013-14 to 2014-15 at the rate of 12.42%. The Id. Counsel further stated that the issue is squarely covered by the decision of the Tribunal in assessee's own case in favour of the assessee. He further pointed that in subsequent assessment years i.e. AY 2017-18 and 2018-19 no such disallowance has been made by the AO. We find that the AO has made addition merely based on surmises and conjectures, without examining material available on record. The addition cannot be made merely on assumptions and suspicion. We are in agreement with the reasons given by the CIT(A) to delete the addition. Hence, ground no. 15 & 16 of appeal are dismissed being without any merit.

12. In the result, appeal of Revenue is partly allowed for statistical purpose.

**ITA No. 1821/Del/2023 for AY 2017-18**

13. The gist of issues raised in grounds of appeal by the Revenue in the impugned assessment year is as under:

Ground no. 1 to 3: Against disallowance u/s. 14A r.w.r 8D

Ground no. 4 to 6: Against amortization of premium.

Ground no. 7: Against provisions for fraud/dacoity.

Ground no. 8 to 10: Against deduction u/s. 80P of the Act.

14. During the period relevant to assessment year under appeal, the assessee had made investment in tax free securities/mutual fund amounting to Rs.107,15,568/-. The assessee made *suo moto* disallowance of Rs.5,85,676/- u/s. 14A of the Act. The AO not being satisfied with the *suo moto* disallowance made by the assessee recomputed disallowance u/s.14A r.w.r. 8D at Rs.63,06,563/-. In first appeal, the CIT(A) following the order of Tribunal in assessee's own case for AY 2014-15 in ITA No. 1984/Del/2019 decided on 19.10.2022 deleted the addition. We have already dealt with this issue while adjudicating appeal of the assessee for AY 2016-17. Both sides are unanimous in stating that the facts in the impugned assessment year are identical. In light of parity of facts, the findings given by us while adjudicating the issue in AY 2016-17 would *mutatis mutandis* apply to the assessment year under appeal.

15. In so far as the issues raised in grounds of appeal no. 4 to 10, relating to amortization of premium, provision for fraud/dacoity, and the assessee's eligibility to claim deduction u/s. 80P of the Act, both sides admitted that facts in the impugned assessment year are identical to the facts in AY 2016-17 and the submissions made in AY 2016-17 would hold good for the impugned assessment year as well. Thus, in light of the statement made by both sides, we see no reason to take a different view on the above said issues. The findings given by us on the aforesaid issues in AY 2016-17 would *mutatis mutandis* apply to the impugned assessment year. Ergo, grounds of appeal no. 4 to 10 are dismissed.

16. In the result, appeal of Revenue is dismissed.

**ITA No. 1822/Del/2023 for AY 2018-19**

17. The solitary issue raised by the Revenue in its appeal in ground no. 1 to 3 of appeal relates to assessee's claim of deduction u/s. 80P of the Act. Both sides unanimously stated that the issue in appeal is identical to the one raised by the Revenue in AY 2016-17. In AY 2016-17, we have dismissed this ground by passing a detailed order. Since, facts in the impugned assessment year are identical, the findings given while adjudicating this issue in appeal of the Revenue for AY 2016-17 would mutatis mutandis apply to the impugned assessment year.

18. In the result, grounds no. 1 to 3 of appeal are dismissed. Consequently, appeal of the Revenue is dismissed.

**19. To sum up, ITA No. 1820/Del/2023 for AY 2016-17 partly allowed for statistical purpose, ITA No. 1821/Del/2023 & ITA No. 1822/Del/2023 for AY 2017-18 & 2018-19 are dismissed.**

Order pronounced in the open court on Friday the 27<sup>th</sup> day of December, 2024.

Sd/-

(RENU JAUHRI)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated /12/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**NV/-**

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
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BY ORDER,

(Dy./Asstt. Registrar) ITAT, DELHI