IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "C", KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

ITA No.2967/Kol/2003
Assessment Year : **2000-01**

Allahabad Bank Kolkata (PAN:AACCA 8464 F) (APPELLANT)	.	-versus-	A.C.I.T., Circle-6, Kolkata (RESPONDENT)

For the Appellant : Shri B.K.Ghosh, FCA & Sjhri Piyush Dey, FCA
For the Respondent : Shri G.Mallikarjuna, CIT(DR)

Date of Hearing : 01.12.2015.
Date of Pronouncement : 09.12.2015.

ORDER

Per Shri N.V.Vasudevan, JM

This is an appeal by the assessee directed against the order dated 24.10.2013 of CIT(A)-VI, Kolkata relating to A.Y.2000-01.

2. Ground Nos. 1 to 1.3 raised by the assessee read as follows :-

"1.0 That the Ld. CIT(A) was wrong in disallowing the appellant's claim for deduction ofRs.l,39,39,304/- being excess receipt of interest shown by the appellant and assessed in earlier years.

1.1. That the Ld. CIT(A) failed to appreciate that excess interest of Rs. 1,39,39,304/- assessed to tax in earlier years was on account of Non- performing assets (NP As) and according to RBI guidelines no interest on such NP As can be charged and if already charged, such interest is to be reversed in the account. and it was this excess interest charged in earlier years which was claimed as deduction.

1.2. That the Ld. CIT(A) was wrong in confirming the disallowance of Rs. 1,39,39,304/- on the ground that such deduction can not be allowed uls 29, 37,30 to 42D of Income Tax Act, 1961.

1.3. The Ld. CIT(A) should have treated the above amount of Rs.l,39,39,304/-as bad debts written off and should have allowed deduction uls 36(1)(vii) of the Income Tax Act, 1961. "

3. The assessee is a public sector bank and is governed by the Banking Companies (A&T) Act 1970, Banking Regulation Act, 1949 and various rules and regulations made by RBI from time to time. In the course of assessment proceedings, the AO noticed that the assesee had claimed deduction of a sum of Rs.1,39,39,304/-. The assessee explained that the aforesaid sum represents interest due on non performing assets. The assessee also pointed out that the aforesaid interest relates to the previous year relevant to A.Y.1999-2000. The assessee explained though the aforesaid interest ought not to have been treated as income of the A.Y.1999-2000 was offered to tax in that year. In the present A.Y. the aforesaid interest income which cannot be realized by the assessee as the debt in question has become non performing asset is being claimed as deduction. AO did not allow the claim of the assessee. No reasons have been assigned by the AO in this regard.

4. On appeal by the Assessee, the CIT(A), confirmed the order of AO by following the decision rendered by the CIT(A) on identical issue in assessee's own case for A.Y.1998-99. In the aforesaid order the CIT(A) has given the following reasons for not allowing the claim of the assessee.

> "I have carefully considered the above submission of the Ld.AR. and have perused the various supporting papers and the records of the appellant, I find that the appellant's claim is not justified. The appellant has shown excess interest income in earlier years on certain accounts, which have actualy been converted into NPAS ,according to RBI guidelines and that according to the RBI Guidelines, no interest on NPAS becomes due to a banking company. As such the excess interest income shown .by the. Appellant in earlier years has been reversed in the year under appeal on the basis of Audit Report, by passing an accounting entry. The reversal of such interest by an accounting entry cannot be said to be an expenditure incurred by the appellant laid out, or .expanded wholly and exclusively for the purpose of business .or profession, as such no deduction of the impugned amount can be allowed under section 37. Further, since, the above amount does not fall within the provisions of section 30 to 43D as such, the same cannot allowed as per section 29 of' the Income Tax Act., Therefore, a wrong accounting entry in respect of the. income in earlier years cannot be claimed as deduction as .expenditure in the later years when such entry is reversed in the Accounts. Accordingly this ground of appeal is dismissed."

5. Aggrieved by the order of CIT(A) the assessee has raised the aforesaid grounds before the Tribunal.

6. The ld. Counsel for the assessee drew our attention to the Prudential norms of the Reserve bank of India applicable and also placed reliance on certain judicial pronouncements rendered on identical facts. The first decision was that the decision of the Hon'ble Delhi High Court in the case of CIT vs Industrial Finance Corporation of India Ltd. In IT A No.1444 of 2010 dated 11.07.2011. In the aforesaid decision the Hon'ble Delhi High Court held on similar claim observing as follows :-

> *"It may not be necessary to go into the validity of the reasons given by the Tribunal as in any case, the assessee was entitled to this deduction. If the income which is earlier recognized is not to be allowed to be reversed in the subsequent assessment years, in any case it is permissible for the assessee to write off such an income in the concerned assessment years when it was found that the amount was not recoverable. Reference in this connection can be made to the judgments of the Supreme Court in the case of Vijaya Bank vs CIT & Anr. (2010) 231 CTR (SC) 209 : (2010) 37 DTR (SC)401 (2010) 323 ITR 166 (SC) and T.R.F.Ltd vs CIT (2010) 230 CTR (SC) 14 : (2010) 35 DTR (SC) 156 : (2010) 323 ITR 397 (SC)."*

7. The next decision is the decision rendered by ITAT, Hyderabad Bench in the case of Andhra bank vs DCIT in ITA No.218/H/10 order dated 04.04.2013. In the aforesaid decision ITAT took the following view :-

> *"59. The next is regarding deduction of Rs.23600000 being unrealized interest on NPA which is reduced from the interest income. The assessee had recognized interest of Rs.23600000/- on certain accounts during the assessment year 2005-06 the same was offered to tax also. These accounts became NPA during the assessment year 2006-07 the assessee therefore reversed interest of Rs.2.36 crores and reduced the same from the interest income for the assessment year 2006-07. The same was disallowed by the AO and confirmed by the CIT(A).*
> *60. The assessee submits that these issue is covered by the decision of the Delhi High Court in the case of CIT vs. Industrial Finance Corporation reported in 201 Taxmann 75. In that case also the assessee reversed the income offered to it for tax in the earlier years on the ground that accounts are become NPAs.*
> *The assessee has also raised additional ground, which is as follows:*
> *"1. Without prejudice to Ground No.7 the learned CIT(A) ought to have allowed the unrealized interest of Rs.236,00,000/- on Non-Performing Assets as deduction u/s 36(1)(vii) of the Act by treating the same as bad debts written off."*
> *6.1. The Delhi High Court held that income which was earlier recognized is not to be allowed in the subsequent year in case it is permissible for the assessee to write off such income in concerned assessment year when it was found that it was not recoverable. In this connection they have also referred to the decision of the Apex Court in the case of Vijaya Bank reported in 323 ITR 166 and TRF Ltd reported in 323 ITR 397. The Delhi High Court upheld the claim of the assessee for deduction of interest reversed.*

6.2. Respectfully following the above we direct the AO to allow deduction of Rs.2.36 crores being unrealized interest offered for tax in the earlier year now reversed by the assessee."

8. The ld. DR, on the other hand, relied on the decision of the Hon'ble Supreme Court rendered min the case of Southern Technical 320 ITR 577 (SC) wherein the Hon'ble Supreme Court took a view that provision of RBI are not pending while computing the income of the assessee.

9. We have considered the rival submissions. The decision referred to by the ld. Counsel for the assessee supports the claim of the assessee for deduction on the ground that the claim for deduction has to be allowed as bad debt or as loss incidental to the business. We are of the view that since the claim is not being allowed on the ground that the debt in question is a non-performing assets, the decision cited by the learned DR is not relevant. Respectfully following the decision referred to above we hold that the claim of the assessee for deduction should be allowed.

10. Ground no.2 raised by the assessee reads as follows :-

"2.0 That the Ld. CIT(A) was wrong in confirming the disallowance of Rs.1 ,88,27 ,903/- out of the contribution to the recognized provident fund."

11. P.F. Contribution made after due date : It appears from Annexure-H of Tax Audit Report that the assessee during the F.Y. 1999-00 relevant to the assessment year 2000-01 made a deposit of Rs.1,88,27,903/- towards contribution of PF by the employer after due date as prescribed in Sec.43B of the I.T.Act. On specific query vide this office letter dated 13.11.2002, the assessee admitted the fact as per submission dated 5.12.2002. Any deposit made after due date is not an admissible deduction and such claim is disallowed.

12. On appeal by the assessee the CIT(A) confirmed the order of the AO. Hence ground No. 2 by the assessee before the Tribunal.

13. The ld. Counsel for the assessee submitted before us that the employers contribution to the Provident Fund has been made on or before the due date of filing the return of income u/s 139(1) of the Act. He drew our attention to the proviso to section 43B of the Act inserted by the Finance Act, 2003. He submitted that the aforesaid amendment has been held retrospective by the Hon'ble Supreme Court in the case of CIT vs Alom Extrusions Ltd 319 ITR 306 (SC). It was submitted by him that since the contribution of Provident Fund have been paid on or before filing of the return of income u/s 139(1) of the Act for A.Y.2000-01 the assessee should be allowed the benefit of deduction.

14. We have considered the rival submissions. We are of the view that addition sustained deserves to be deleted. The Hon'ble Supreme Court in the case of Alom Extrusions Ltd. 319 ITR 306 (SC) held that deletion of the second proviso below Sec.43-B of the Act w.e.f. 0-1-4-2004 was clarificatory in nature and therefore will have to be applied retrospectively. Admittedly the payment of employer's contribution had been made by the Assessee on or before the due date for filing return of income. Therefore the payment made on or before the due date for filing return of income has to be allowed as deduction as per the first proviso to Sec.43B of the Act. In view of the aforesaid decision, we direct that the addition sustained by the CIT(A) should be deleted. According ground No.2 raised by the Assessee is allowed.

12. In the result the appeal of the assessee is allowed.

Order pronounced in the court on 09.12.2015.

Sd/-	Sd/-
[Waseem Ahmed]	[N.V.Vasudevan]
Accountant Member	Judicial Member

Date: 09.12.2015.
R.G.(.P.S.)

ITA No.2967/Kol/2013
Allahabad Bank
A.Yr.2000-01

Copy of the order forwarded to:

1. Allahabad Bank, Shri S.P.Bose, Assistant General Manager, Finance and Accounting, Allahabad Bank, Head Office, 2, Netaji Subhas Road, Kolkata-700001.

2 The A.C.I.T., Circle-6, Kolkata.

3. The CIT-II, Kolkata,

4. The CIT(A)-VI, Kolkata.

5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Deputy /Asst. Registrar**,** ITAT, Kolkata Benches