

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

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.424/CTK/2014
Assessment Year : 2011-2012

DCIT, Circle 1(1), Bhubaneswar.	Vs.	The Orissa State Co- operative Agricultural & Rural Development Bank Ltd., A/34, J.N.Marg, Kharvel Nagar, Unit-III, Bhubaneswar.
PAN/GIR No. AABAT 0086 F		
(Appellant)	..	(Respondent)

Assessee by : Shri J.K.Mishra
Revenue by : Shri B.N.Das, DR

Date of Hearing : 30/05/ 2017
Date of Pronouncement : 31 /05/ 2017

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of CIT(A)-1, Bhubaneswar, dated 14.8.2014, for the assessment year 2011-12.

2. At the time of hearing, Id A.R. of the assessee has filed an adjournment petition on the ground that the conducting lawyer Shri A.K.Ray is unable to appear for hearing due to his severe illness. Since the

appeal can be decided, we rejected the adjournment and proceed to decide the appeal on merits.

3. The revenue has raised the following grounds of appeal:

"1. On the facts and circumstances of the case, the CI(A) is not justified in deleting the addition made by the AO to take the income at Nil in place of the income assessed by the AO, when the Id CIT(A) upheld the AO's action in ignoring the audit report based on provisional accounts.

2. On the facts and in the circumstances of the case, the CIT(A) is not justified in not adjudicating on the issue of carry forward and set off of losses claimed by the assessee."

4. Brief facts of the case are that the assessee is a State Co-operative Bank and filed the Return of income on 29.9.2011 declaring total income at Rs. Nil. The Return of income was processed u/s.143(1) of the Act and the case was selected for scrutiny under CASS. Notices u/s.143(2) and 142(1) were issued . In compliance, the Id A.R. of the assessee appeared from time to time and the case was discussed. The Assessing Officer on the basis of financial statements found that the assessee society Books of accounts are Audited u/s.44AB of the Act and filed the Return of income as per the provisional information available with Auditors. The assessee is a co-operative society governed by statutory audit and audit was completed on 19.10.2012 and the Assessing Officer considered the statutory audit report in the assessment proceedings but since the assessee society has not filed the Revised return of income and the statutory audit was not done and whereas tax audit is based on the provisional figures, the Assessing Officer rejected the accounts u/s.145(3) and did not allow Business loss

to be carried forward on the basis of provisional accounts and assessed income at Rs.1,49,99,840/- and passed order u/s.143(3) r.w.s. 145(3) of the Income tax Act, 1961 on 6.2.2014.

5. Aggrieved by the order of the Assessing Officer, the assessee has filed appeal with the CIT(A). In the appellate proceedings, Id A.R. of the assessee argued and supported with written submission on nature of activities conducted and the Reasons for not filing the statutory audit report. The CIT(A) having considered the written submissions and the findings of the Assessing Officer observed that the assessee has filed return of income u/s.139(3) r.w.s. 139(1) on 29.9.2011 claiming current year loss of Rs.1,38,03,189/- whereas the Assessing Officer relied on the judicial decision and observed that since no revised return was filed, declined to Accept the tax audit report. The CIT(A) observed the Accounts are not approved by the Auditor General of Co-operative Society, Orissa as the statutory audit report obtained after the tax audit report u/s.44AB. The assessee has filed Audit report Based on the provisional accounts and the Assessing Officer has not issued notice u/s.139(9) to rectify the defect. The CIT(A) further observed that the assessee has filed Audit report within time frame of assessment proceedings as there was delay in getting accounts audited by the Auditor General of Co-operative Society, Orissa and further the assessee has complied with the provisions u/s.44AB of the Act and the Assessing Officer was not correct to rely on the same audit report ignoring Audited P&L account and directed the Assessing Officer to

consider the Assessed income at Nil and partly allowed the appeal by order dated 14.8.2014.

6. Aggrieved by the order of the CIT(A) the revenue has filed appeal before the Tribunal. Ld D.R. submitted that the CIT(A) has erred in not considering the findings of the Assessing Officer and directing the Assessing Officer to consider the income as Nil. The Assessing Officer has considered the statutory Audited Accounts but because no Revised return was filed hence claim was declined and the CIT(A) erred in not calling for comments from the Assessing Officer and prayed for allowing the appeal.

7. We heard Id D.R. and perused the orders of lower authorities and materials available on record. Prima facie, we find that the assessee being a co-operative society is engaged in the business of providing agricultural loan in rural areas to the farmers. The assessee has filed Return of income within due date u/s.139(1) of the Act. The statutory audit has to be conducted by the Auditor General of Cooperative Society, Orissa, and since it was not completed before filing of Return of income on due date, the assessee had no other option but to file the Return of income under section 139(1) of the Act alongwith Tax audit report u/s.44AB of the Act in Form 3CA and 3CD. The assessee had complied with the provisions of filing Return of income within time limit u/s.139(1) of the Act and in the assessment proceedings, the Assessing Officer has ignored this facts and also accepted the statutory audit report dated 19.10.2012 but has omitted to consider the report. We are of the opinion that the Assessing Officer

should have considered and accept the Audit report with reasons explained for the delay. Accordingly, in the interest of justice, we remit the disputed issue to the file of the Assessing officer to verify and examine and pass the order on merits and the assessee shall be provided adequate opportunity of hearing and shall co-operative in filing in statutory Audit report and other details in respect of claim before passing the order

8. In the result, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced on 31 /05/2017.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Cuttack; Dated 31 /05/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : DCIT, Circle 1(1), Bhubaneswar.
 2. The Respondent. The Orissa State Co-operative Agricultural & Rural Development Bank Ltd., A/34, J.N.Marg, Kharvel Nagar, Unit-III, Bhubaneswar
 3. The CIT(A)-1, Bhubaneswar
 4. Pr.CIT-1, Bhubaneswar.
 5. DR, ITAT, Cuttack
 6. Guard file.
- //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack