

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी' अहमदाबाद।

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2614/Ahd/2011

निर्धारण वर्ष/ Assessment Year : 2008-09

The Kalupur Commercial Co-op. Bank Ltd., Kalupur Bank Bhavan, Nr. Income Tax, Ashram Road, Ahmedabad PAN : AAAAT 9360 R	Vs	The ACIT, Range-7, Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri S.N. Soparkar, AR
Revenue by :		Ms. Richa Rastogi, Sr DR

सुनवाई की तारीख/Date of Hearing : 02/08/2016

घोषणा की तारीख /Date of Pronouncement: 17/08/2016

**आदेश/ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER :-**

This appeal by the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-XIV, Ahmedabad dated 16.09.2011 for Assessment Year 2008-09.

2. The grounds raised by the assessee in its appeal read as under:

- The learned Commissioner of Income-tax (Appeals)-XIV, Ahmedabad has erred both in law and on facts of the case in framing appellate order u/s 250 of the I.T. Act for 2008-09 on 16<sup>th</sup> September 2011.*
- The Learned CIT(A)-XIV, Ahmedabad has erred in confirming the following additions made by Assessing Officer.*

Sr. No.	Nature of disallowance	Amount
(a)	Scholarship to students	Rs. 5,05,741
(b)	Payment to legal heirs of Members	Rs. 19,95,000
(c)	Gifts to Members	Rs. 82,10,889
	Total	Rs.1,07,11,630

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3. *The learned CIT(A) has erred in upholding the addition of Rs.2,25,617/- made on the basis of AIR data.*
4. *The learned CIT(A) has erred in not adjudicating upon ground relating to initiation of penalty proceeding.*

3. The brief facts of the case are that the assessee is a co-operative bank which filed its original return of income for the year under consideration on 29.09.2008 declaring total income at Rs.35,17,13,880/-. Thereafter, a revised return was filed on 08.05.2009 declaring total income at Rs.34,57,36,040/-, which was consequent to change of depreciation. Subsequently, the case of the assessee was selected for scrutiny through CASS and the assessment was framed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") vide order dated 28.12.2010. While framing the assessment, the Assessing Officer made various additions under the following heads:-

i)	Scholarship of students	-	Rs. 5,05,741/-
ii)	Payment to legal heirs of members	-	Rs.19,95,000/-
iii)	Gifts to Members	-	Rs.82,10,889/-
iv)	Interest other than securities as per AIR information	-	Rs. 2,25,617/-

The Id. CIT(A) vide order dated 16.09.2011 sustained the additions made by the Assessing Officer under above various sub-heads as mentioned above.

3.1 Aggrieved by the order of the Id. CIT(A), the assessee in now in appeal before us.

4 First ground of assessee's appeal is general in nature.

5. Second ground relates to the disallowance of business expenditure of Rs.1,07,11,630/-. During the course of assessment proceedings, the assessee explained to the Assessing Officer that these gifts were provided to the members on the basis of number of coupons and holding of shares to maintain cordial and long relationship with members. Assessee has further

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stated that these kinds of gesture certainly help the bank in promoting and enhancing banking services which was in the nature of business expediency. The assessee also relied on various judicial judgments. The Assessing Officer stated that these expenditures appeared to be incurred for the benefit of members of the bank and not prima facie attributable to the business of banking of the assessee and accordingly made the addition in question.

v)	Scholarship of students	-	Rs. 5,05,741/-
vi)	Payment to legal heirs of members	-	Rs.19,95,000/-
vii)	Gifts to Members	-	Rs.82,10,889/-
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Total			Rs.1,07,11,630/-

Aggrieved, the assessee went in appeal before the Id. CIT(A) who, after considering the submissions of the assessee, confirmed these additions made by the Id. AO, by observing as under:-

*"I have carefully considered the assessment order and the submission filed by the appellant. The A. O. has disallowed the expenditure treating the same for non business purpose. It has been held by him that the expenditure was for the benefit of the members of the bank and was of gratuitous nature rather than reflecting business expediency. The appellant has submitted that the expenditure has been incurred wholly and exclusively for banking business only. The main receipt of the appellant being a commercial co-operative bank was that of receipt of interest realized on advances made by bank. The principal source of recurring income is that from members and, therefore, keeping all members in good humour is wholly, exclusively and necessarily for the purpose of business. During the course of appellate proceedings, the appellant was also asked to explain the scheme of gift coupons and also the accounting treatment of the funds utilised for gift. The appellant has submitted that gift coupons are issued on the basis of membership i.e. one coupon is given to each member irrespective of shares held by members. The value of the one coupon did not exceed Rs.250/- to Rs.300/-. The gifts were given between two three years to members so that they continue to place deposit with the appellant bank only. The appellant has also relied on the decision of High Court of Gujarat in the case of Karzan Co-operative Cotton Sales Ginning and Processing Society Vs. CIT [199 ITR 17, Gujarat]. Regarding the accounting treatment, it was explained by the appellant that every year, certain provision is made from the profit of the company by setting aside 5% of the profit to the member / customer incentive fund. This*

*adjustment is in the nature of appropriation of the profit and is done below the profit and loss account. Whenever, some gift or any expenditure is made from this fund, the same is claimed as deduction out of the taxable income for the year in the statement of income filed with the return. In the present year also, the expenditure of Rs.1,07,11,630/- has been reduced from the provision but has been claimed as revenue expenditure u/s. 37(1) of the Act from the taxable income of the present year.*

*After considering all the facts, I am of the opinion that the expenditure is in the nature of application of profit by the appellant. The accounting entry of making the provision out of the taxable profit every year and spending the money from that reserve for this kind of expenditure is an act which confirms that the expenditure is in the nature of appropriation of profit. The expenditures of giving scholarship to the students belonging to the family of the members, payment to legal heirs of the members on the demise of the members and gift to members after regular interval is nothing but distribution of profit to the members who are in fact the shareholders in the bank. The claim of the appellant that this has been done to keep the members in good humour and, therefore, it should be allowed as an expenditure is not acceptable as the accounting treatment clearly show that it is an appropriation of profit. The judgment of Hon'ble Gujarat High Court mentioned by the appellant has been carefully perused by me. The facts of the case are different as in that case the bank had distributed memento on the occasion of silver jubilee to the members. But in the present case, it is a regular practice of the bank to distribute the gifts at the interval of two to three years. This act is nothing but distribution of profit to the shareholders of the bank. Accordingly, the disallowance made by the A. O. is upheld and the ground of appeal is dismissed."*

Aggrieved by the order of the Id. CIT(A), the assessee is further appeal before us.

5.1 Ld. Counsel for the assessee contended that scholarships were provided to the children of the members with the object of ensuring good education on clearing of exams of various Boards/Universities and professional exams. He also pointed out that payment of Rs.19,95,000/- to legal heirs of members were provided on the basis of procedure laid down for giving one time payment of Rs.10,000/- to the family members expired during the previous years. He further stated that gifts to the members for Rs.82,10,889/- were provided in order to maintain cordial and long relationship with members who were also customers of the bank. He

referred to various para of the details furnished to the Assessing Officer mentioned in the paper-book filed. The scholarship to student is provided to promote the education and to inspire students to secure more marks and the amount of scholarship per student vary from Rs.1001/- to Rs.3501/-. More than 95% business of advances/deposits etc is through members only and nature of gifts which hardly cost to Rs.250 to Rs.300/- per coupon are provided for keeping good relation with members. He also stated that expenditures as explained above were incurred to increase the confidence and faith of the members in the bank which certainly help to promote and increase the business activity. The nature of these expenditure is not of capital nature or personal in nature and incurred for business expediency according to the scheme framed with rules and regulations approved in the AGM of bank.

5.2 Ld. Counsel for the assessee also relied on the following case laws:-

- a) Judgment of Hon'ble Calcutta High Court in the case of Indian Leaf Tobacco Development Co. Ltd, 137 ITR 827;
- b) Hon'ble Calcutta High Court's judgment in the case of Hindustan Motors Ltd., 175 ITR 411;
- c) Hon'ble Gujarat High Court judgment in the case of Karjan Cooperative Cotton Sales Ginning & Pressing Soc., 199 ITR 17;
- d) Hon'ble Gujarat High Court judgment in the case of Dascroi Taluka Coop Purchase & Sales Union Ltd, 126 ITR 413;
- e) Order of ITAT, Mumbai in the case of Yahoo India Pvt Ltd in ITA No. 3800/Mum/2014.

5.3 On the other hand, ld. DR relied on the order of the ld. CIT(A). She pointed out that these expenditures are not incurred for the purpose of the business or profession and not reflecting any business expediency.

5.4 We have heard both sides, perused the material available on record and gone through the orders of the authorities below. The main source of

income of the assessee is that of receipt of interest realized on the advances made by the bank and out of the total advances outstanding at the end of the year at Rs.735.65 crores, advances to the members works out to be Rs.722.36 crores which comprises more than 98% of total advances. The principal source of recurring income of the assessee is from the members and therefore the expenditure for keeping members' support and attraction towards the bank is wholly and exclusively necessary for the purpose of business. The Hon'ble High Court of Gujarat (Full Bench) in the case of Karjan Co-operative Cotton Sales Ginning Pressing Society (supra) has held that it was absolutely necessary for the assessee to maintain goodwill amongst its members and to lure them to continue to do their business with the society if it give presents to its members and to commemorate silver jubilee celebrations, it could not be said that the society was not doing something as a prudent business.

5.5 Reliance is also placed in the case of CIT vs. Dascroi Taluka Coop Purchase & Sales Union Ltd, 126 ITR 413 of Hon'ble Gujarat High Court judgment, where it was held that the amount spent by the assessee-society on purchase of stainless steel utensils and other for the purpose of tour expenses of members was considered to be business expenditure within the meaning of Section 37 of the Act.

5.6 Considering to the above stated facts and circumstances, the volume of earning of the assessee bank are mainly made through its members. These expenses are incurred by the assessee bank to attract the members confidence and loyalty towards the bank in the prevailing competition so that the members place their deposits with the assessee bank and also continue to borrow funds from the assessee bank in order to improve the profit earning and income of the assessee bank. We have also considered that the amount spent on the aforesaid expenditures is very marginal

compared to the amount of interest realized on the advances made to the members by the bank and amount of deposit made by the members with the bank. Under these circumstances the amount spent on scholarship to the children of members, payment to legal heirs of members and gifts to members could be said to be expenditure incurred wholly and exclusively for the purpose of business since the amount was spent for keeping alive its good image amongst its members and ensuring that goodwill and continuity of business with the members. In view of above mentioned facts and circumstances, we find that the assessee had incurred above stated expenditure for promoting the business, even though there is no legal obligation to incur these expenditure but the assessee had incurred it for preserving business connection and goodwill of the business. Therefore, in view of above findings, we allow the aforesaid expenditure as business expenditure under Section 37 of the Act.

6. Next ground relates to the addition of Rs.2,25,617/- made by the Assessing Officer on the basis of Annual Information Return data.

6.1 During the course of assessment proceedings, the assessee was asked to explain the sixteen entries pertaining to AIR with the return of income/books of accounts; however, assessee was able to explain only thirteen entries out of sixteen entries and an amount of Rs.2,25,617/- relating to interest was not explained. The Assessing Officer accordingly added this amount to the total income of the assessee while framing assessment u/s 143(3) of the Act. Aggrieved by the order of the Id. AO, the assessee preferred appeal before the Id. CIT(A) who, after considering the submissions of the assessee, dismissed this ground of the assessee, by observing as under:-

*"I have carefully considered the assessment order and the submission filed by the appellant. The appellant could not explain the entry of Rs.2,25,617/-*

*relating to interest other than securities from the banks of account. The AO added the amount as the same was not explained by the appellant. During the course of appellate proceedings also, the appellant has not been able to give any satisfactory explanation regarding the entry. It has been submitted by the appellant that the details were incomplete and incorrect. The submission of the appellant is not acceptable are merely by saying that the details were incorrect, the appellant cannot wash its hands off from the responsibility of explaining the entry. The addition made by the AO is, therefore, upheld. The ground of appeal is, therefore, dismissed."*

6.2 Ld. Counsel for the assessee contended that before the AO it was explained that entry pointed out by him as per AIR information of Rs.2,25,617/- relating to 'interest other than securities' was not traceable in its books of account. The ld. Counsel also stated that it was explained to the ld. CIT(A) that there is incomplete details relating to the above entry stating that ""Backbay Reclamation" have paid interest to the assessee. The ld. CIT-DR, on the other hand, relied on the order of the lower authorities.

6.3 We have heard both the parties and considered the material on record and found that the Assessing Officer made this addition on the basis of AIR information pointing that assessee has received interest on securities from the party named "Backbay Reclamation". The assessee had explained before the lower authorities that there cannot be any party such as "Backbay Reclamation" which indicates that details were incomplete and also incorrect. The ld.CIT(A) has not given consideration to the submission of the assessee that the Assessing officer was failed to point out the complete detail of the said transaction because of which the transactions remain unexplained. In view of the above stated facts and circumstances, we consider that the addition was made in absence of complete particulars of the transactions which could not identify any such income earned by the assessee. Because of incomplete information and particulars relating to source of interest payment supplied by the AO to the assessee, the



transactions could not be traced out. In view of above stated facts and circumstances, the addition made by the Assessing Officer is not justified. We, therefore, allow this ground of appeal of the assessee.

7. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Court on 17<sup>th</sup> August, 2016 at Ahmedabad.**

Sd/-

Sd/-

**(S. S. GODARA)**  
**JUDICIAL MEMBER**

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 17/08/2016

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**आदेश की प्रतिलिपि ब्रेवित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad