

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “ B ” BENCH – AHMEDABAD

Before Shri Rajpal Yadav, JM, & Shri Manish Borad, AM.

ITA No. 355/Ahd/2014
Asst. Year: 2010-11

ACIT, Circle-2, Surat.	Vs.	M/s Surat National Co-op. Bank Ltd., 3/4016, Navnidhi Navapura, Karwa Road, Surat.
Appellant		Respondent
PAN AAAAS 5702J		

Appellant by	Shri James Kurien, Sr. DR
Respondent by	None

Date of hearing: 30/9/2016
Date of pronouncement: 05/10/2016

O R D E R

PER Manish Borad, Accountant Member.

This appeal of Revenue for Asst. Year 2010-11 is directed against the order of Id.CIT(A)-II, Surat dated 13.11.2013 in appeal No.CAS-II/175/2012-13 passed against order u/s 143(3) of the IT Act, 1961 (in short the Act) framed on 17.12.2012 by DCIT, Circle-2, Surat. Following grounds have been raised by the Revenue :-

- (1) On the facts and circumstances of the case, whether the Ld.CIT(A)-II, Surat was justified in deleting the addition of Rs. 21,58,676/- made on account of disallowances of Premium Amortization Expenses incurred on purchase of Govt. Securities, without appreciating the fact that there is no such provisions in the Income-tax Act, 1961.

- (2) On the facts and circumstances of the case, whether the Ld.CIT(A)-II, Surat was justified in deleting the addition of Rs. 42,76,929/- made on account of disallowances of provisions for Staff Ex-gratia without appreciating the fact that a contingent liability cannot constitute deductible expenditure for the purpose of Income-tax Act and thus putting aside an amount which may become expenditure in the future is not an allowable expenditure in the Income-tax Act, 1961.
- (3) On the facts and circumstances of the case, whether the Ld.CIT(A)-II, Surat was justified in deleting the addition of Rs.6,89,508/- made on account of disallowance of claim of payment made to the members from the Members Welfare Fund. The CIT(A) has failed to appreciate that the members were actually owners of the bank.
- (4) On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.
- (5) It is therefore, prayed that the order of the CIT(A) may be set-side and that of Assessing Officer may be restored to the above extent.

2. Briefly stated facts of the case are that the assessee is a Co-op. Bank. Return of income for Asst. Year 2010-11 was filed on 17.09.2010 declaring total income at Rs.4,45,61,640/-. Case was selected for scrutiny assessment and notice u/s 143(2) of the Act was issued followed by notice 142(1) of the Act along with questionnaire. Necessary details/information/evidences were furnished by the assessee. Assessment was completed at an income of Rs.5,41,31,288/- after making addition of Rs.95,69,548/- towards following :-

1	Disallowance of claim of premium amortization expenses	Rs. 21,58,676
2	Disallowance of Staff ex-gratia expenses	Rs. 42, 76,929
3	Disallowance of Special Long term Finance Fund	Rs. 24,00,000
4	Disallowance of payment to member from Member Welfare fund	Rs. 6,89,508
5	Disallowance of income Tax Expenses	Rs. 44,535

3. Assessee went in appeal before Id. CIT(A) against all the additions except the disallowance of income-tax expenditure at

Rs.44,435/-. Appeal of the assessee was allowed by Id. CIT(A) deleting all the addition.

4. Aggrieved, Revenue is now in appeal before the Tribunal raising various grounds against the deletion of Rs.21,58,676/- towards premium amortization expenses, deletion of Rs.42,76,929/- against disallowance of staff ex-gratia expenses, deletion of Rs.6,89,508/- towards disallowance of claim of payment made to its Members from Welfare fund.

5. None appeared on behalf of the assessee. However, written submissions dated 14.9.2016 was placed on record.

6. Ld. DR relied on the order of Assessing Officer.

7. We, therefore, proceed ahead on the basis of written submissions and after hearing the Id. DR. We have heard the Id. DR and gone through the written submissions. We find that all the three issues raised by the Revenue relate to (i) premium amortization expenses at Rs.21,58,676/-, (ii) disallowance of staff ex-gratia expenses at Rs. 42,76,929/- & (iii) deletion of disallowance towards claim of payment made to its Members from Welfare fund at Rs. 6,89,508/-.

8. First we take up ground no.1 in relation to deletion of Rs. 21,58,676/- towards premium amortization expenses. We find that Co-ordinate Bench in assessee's own case in ITA No.2793/Ahd/2012

for Asst. Year 2009-10 has dealt with this issue and decided in favour of assessee by observing as below :-

6. After taking into consideration the submission of the assessee, Id. CIT(A) deleted the addition by observing as under:-

"2.3 I have considered the facts of the case and legal position on the issue. The allowability of amortized expenses on premium on Government Securities has been provided u/s. 36(1)(ii) of the provisions have been clarified and explained by CBDT, New Delhi vide Instruction No. 17 of 2008 dated 26.11.2008. As per this clarification, investments of banks classified under HTM (Held to Maturity) category need not be marked to market and are carried at acquisition cost unless these are more than the face value, in which case, the premium should be amortized over the period remaining to maturity. On the basis of this Instruction, different Tribunals, as mentioned above by assessee, have allowed the amortized expenditure. The AO has ignored the provisions of Instruction which is binding on him while discussing the issue and disallowing the expenditure. Since, the Instructions and Circulars are binding in nature on AOs and different Tribunals have given decisions against the revenue, respectfully following the same, ground of appeal of assessee is allowed and addition made by AO is deleted."

Since Ld. CIT(A) has given relief to the assessee by placing reliance on various decisions of Tribunals on the issue in view of CBDT Instruction dated 26-11-2008, we feel no need to interfere with the order passed by him and the same is hereby upheld. This ground of the revenue is dismissed

9. Similar issue came up before the Tribunal in the case of DCIT vs. Prime Co-op. Bank Ltd. in ITA No.2791/Ahd/2012 for Asst. Year 2009-10 wherein the Co-ordinate Bench vide its order dated 23.8.2013 has decided the same in favour of assessee by observing as under :-

6. After taking into consideration the submission of the assessee, Ld. CIT(A) deleted this addition by observing as under:-

"2.3 I have considered the facts of the case and legal position on the issue. The allowability of amortized expenses on premium on Government securities has been provided u/s.36(1)(vii) of the Act and I.T.A No.2791/Ahd/2012 A.Y. 2009-10 Page No 5 DCIT vs. Prime Co-operative Bank Ltd. these provisions have been clarified and explained by CBDT, New Delht vide Instruction No.17 2008 dated 26.11.2008. As per this clarification, investments of

banks classified under HTM (Held to Maturity) category need not be marked to market and are carried at acquisition cost unless these are more than the face value, in which case, the premium should be amortized over the period remaining to maturity. On the basis of this Instruction, different Tribunals, mentioned above by assesses, have allowed the amortized expenditure. The AO has ignored the provisions of Instruction which is binding on him while discussing the issue and disallowing the expenditure. Since, the instructions and Circulars are binding in nature on AO's and different Tribunals have given decisions against the revenue, respectfully following the same, ground of appeal of assessee is allowed and addition made by AO is deleted."

Since Ld. CIT(A) has given relief to the assessee by placing reliance on various decisions of Tribunals on the issue in view of CBDT Instruction dated 26-11-2008, we feel no need to interfere with the order passed by him and the same is hereby upheld. This ground of the revenue is dismissed.

10. Respectfully following the decisions of the Tribunal referred to above, we find that the issue has been decided in favour of assessee in view of CBDT Instruction dated 26.11.2008. We, therefore, find no reason to interfere with the order of Id. CIT(A) and uphold the same. The ground raised by the Revenue is dismissed.

11. As regards ground no.2 regarding disallowance of Rs. Rs. 42,76,929/- on account of ex-gratia payment to staff, we find that similar issue came before the Tribunal in assessee's own case in ITA No.2793/Ahd/2012 for Asst. Year 2009-10 and the Co-ordinate Bench has decided the same vide its order dated 23.08.2013 by observing as under :-

14. After taking into consideration the submission of the assessee, ld. CIT(A) deleted the addition by observing as under:-

"4.3 I have considered the facts on the issue and found that AO has disallowed the expenses on account of ex-gratia paid to staff members only on the ground that these expenses are provisional expenses being unascertained liability and any contingent liability cannot constitute deductible expenditure for the purpose of [IT Act](#). In my opinion, the conclusion drawn by AO is misplaced. The amount of ex-gratia has been determined on the basis of Memorandum of Understanding

entered into by bank with union of employees. The copy of Memorandum, signed by all the staff members, is submitted by appellant which contains the method of working the ex-gratia payments. Moreover, these expenses are not claimed by appellant first time. In the earlier years also i.e. in A.Y. 2007-08 and 2008-09, appellant has claimed ex-gratia expenses of Rs. 29,15,540/- and Rs.32,84,023/- respectively which were allowed also by AO without raising any objection. Since, these expenses are being regularly incurred and claimed by appellant and worked out on the basis of Memorandum of Understanding, it is ascertained liability which is allowable as per the provisions of the Act. In view of this, I hold that ex-gratia expenses of Rs. 38,00,386/-are allowable expenses therefore there is no justification in the addition made by AO. This ground of appeal is allowed."

Since Ld. CIT(A) has given relief to the assessee in view of the fact that expenses being regularly incurred and claimed by the assessee and worked out on the basis of Memorandum of Understanding it is ascertainable liability which is allowable as per the provision of the Act, we are not inclined to interfere with the order passed by Ld. CIT(A) and the same is hereby upheld. This ground of the revenue is also dismissed. I.T.A No.2793/Ahd/2012 A.Y. 2009-10 Page No 10 DCIT vs. Surat National Co-operative Bank Ltd.

12. Respectfully following the decisions of the Tribunal referred to above, we find that the issue has been decided in favour of assessee. We, therefore, find no reason to interfere with the order of Id. CIT(A) and uphold the same. The ground raised by the Revenue is dismissed.

13. As regards ground no.3 in relation to deletion of disallowance of payment of Rs.6,89,508/- to Members from its Welfare fund, we find that similar issue came up before the Tribunal in assessee's own case in ITA No.3242/Ahd/2010 for Asst. Year 2007-08 and the Co-ordinate Bench vide its order dated 23.08.2013 has decided the same in favour of assessee by observing as under :-

7. Ground No.2 of appeal is against not allowing deduction of Rs.3,33,0887-in respect of amount spent for welfare of the members. The AO found that the assessee had debited in the profit & loss account Rs.3,33,0887- under the head "members welfare fund" before offering the profit for taxation. The assessee was given reasonable opportunity of being heard which was replied by the assessee

vide letter dated 05-11-2009. The assessee's reply was considered by the AO but it was held by the AO that members are owner of the bank and expenditure incurred on the owner cannot be allowed as incurred wholly and exclusively for the purpose of business as provided u/s 37 of the Act. Thus, he made addition of Rs.3,33,0887-. Being aggrieved by this order of the AO, the assessee carried the matter before the CIT(A) who has confirmed the addition by observing as under:-

"7. Decision:

7,1 I have considered the submission of the appellant. In so far as the decisions relied upon by the appellant are concerned, the same are not applicable to the facts of the case. The above two decisions are in respect of Co-Op. Societies and not in C-Op. Banks, which are governed by the RBI guidelines. The appellant has also not controverted the finding of the Assessing Officer that the above deduction claimed is not from the income of this year, but created out of profit of earlier years. The appellant has also not explained as to whether the above claim is as per the RBI guidelines and CBDT Instruction No. 17 of 2008 dated 26.11.2008. In view of the above, I do not find any justification for allowing the above deduction. This ground of appeal is, therefore, dismissed.

8. Now, the assessee is in appeal before us. The learned Counsel for the assessee again drawn out attention to the paper book as well as submissions made before the authorities below and argued that to create interest in the members by the bank and keep the relation alive between the assessee and the members, the assessee had to incur certain expenditure. He further relied on the decision in the case of CIT, Guj. - III Vs Dascroi Taluka Co-operative Purchase & Sales Union Ltd. reported in 126 ITR 413 wherein assessee's expenditure incurred on account of silver jubilee and purchase of presentation of articles to the members were held to be incurred wholly and exclusively for the purpose of assessee's business u/s 37 of the Act. In support of his contention, he has also relied on the decision rendered by the Hon'ble Guj'arat High Court in the case of Karjan Co-operative Cotton Sales Jinning & Pressing Society reported in 199 ITR 17 and prayed that assessee's claim may be allowed.

9. At the outset, the learned DR vehemently relied on the order of the learned CIT(A).

10. We have heard the rival submissions and perused the materials on record. We find that the nature of the expenditure is with respect of welfare of the members of the bank. The assessee had to maintain good relation with the members and thus, the assessee had incurred the expenditure towards the welfare of the members. As held by the Hon'ble Gujarat High Court in the above cases, supra, such type of expenditure is incurred for the purpose of business u/s 37 of the Act. Thus we reverse the order of the CIT(A) and delete the addition made by the AO. This ground of appeal of the assessee stands allowed."

14. Respectfully following the decisions of the Tribunal referred to above, we find that the issue has been decided in favour of assessee. We, therefore, find no reason to interfere with the order of Id. CIT(A) and uphold the same. The ground raised by the Revenue is dismissed.

15. Other grounds are of general nature, which need no adjudication

In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 05 th October, 2016
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Sd/-
(Rajpal Yadav)
Judicial Member

sd/-
(Manish Borad)
Accountant Member

Dated 5 /10/2016

Mahata/-

Copy of the order forwarded to:

1.	The Appellant
2.	The Respondent
3.	The CIT concerned
4.	The CIT(A) concerned
5.	The DR, ITAT, Ahmedabad
6.	Guard File

BY ORDER

Asst. Registrar, ITAT, Ahmedabad

1. Date of dictation: 30/09/2016
2. Date on which the typed draft is placed before the Dictating Member: 5/10/2016 other Member:
3. Date on which approved draft comes to the Sr. P. S./P.S.:
4. Date on which the fair order is placed before the Dictating Member for pronouncement: _____
5. Date on which the fair order comes back to the Sr. P.S./P.S.:
6. Date on which the file goes to the Bench Clerk: 6/10/16
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assistant Registrar for signature on the order:
9. Date of Despatch of the Order: