

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos. 133 to 139/PUN/17
निर्धारण वर्ष / Assessment Years : 2004-05, 2007-08 to 2009-10,
2011-12 to 2013-14

ACIT, Ratnagiri Circle,
Ratnagiri

Vs. Ratnagiri District Central
Co-op. Bank Ltd.,
Sahakar Bhawan,
Jawahar Peth,
Ratnagiri

PAN : AAAAR7920B

Appellant

Respondent

Appellant by

Shri S.B. Prasad

Respondent by

Shri P.S. Shingte

Date of hearing

13-02-2019

Date of pronouncement

14-02-2019

आदेश / ORDER

PER BENCH :

These seven appeals by the Revenue relate to the Assessment Years 2004-05, 2007-08 to 2009-10, 2011-12 to 2013-14. For the sake of convenience, we have clubbed them for disposal.

A.Y. 2004-05 :

2. The only issue raised by the Revenue in its appeal is against the deletion of addition of Rs.13,23,80,669/- on account of provision for overdue interest.

3. Briefly stated, the facts of the case are that the assessee is a Co-operative Bank whose original assessment was completed u/s.143(3), wherein amount of Rs.10.53 crore declared as income was accepted. After recording certain reasons, the Assessing Officer (AO) framed the instant reassessment making addition, *inter alia*, of Rs.13.23 crore. The facts concerning this issue are that the assessee made a provision for overdue interest of Rs.13,23,80,669/-. The AO held that the assessee could claim deduction in respect of any amount of bad debt or part thereof in terms of section 36(1)(vii) of the Act. He, therefore, did not grant deduction of the provision created by the assessee amounting to Rs.13.23 crore. The ld. CIT(A) overturned the assessment order on this issue, against which the Revenue has approached the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. The issue raised in this appeal is against the deletion of disallowance of claim of provision towards overdue interest of Rs.13.23 crore. The ld. CIT(A) has relied on the judgment of Hon'ble Bombay High Court in *CIT Vs. Deogiri Nagari Sahakari Bank Limited (2015) 379 ITR 24 (Bom.)* for deleting the addition. We have gone

through this judgment. It can be seen from para 3 of the judgment that “the common issue involved in all these appeals relating to the assessment years mentioned in the aforesaid table about deletion of addition on account of interest on sticky advances”. The Hon’ble Bombay High Court considered the provisions of section 43D and came to hold that income by way of interest, in relation to such categorized bad or doubtful debts as may be prescribed having regard to the guidelines issued by the RBI, shall not be chargeable to tax in the previous year in which it is credited to the profit and loss account. Thus, it is clear that the question in that case was about the taxability or otherwise of amount of interest on NPA advances. The ld. AR relied on another recent judgment of Hon’ble Bombay High Court dated 29-01-2019 in *Pr. CIT Vs. Solapur District Central Cooperative Bank Limited*. In that case, again, the Hon’ble Bombay High Court laid down about the non-taxability of interest on NPA advances. When we turn to the facts of the instant case, it is observed that the question raised herein is not about the taxability or otherwise of interest income earned on NPA advances but the provision made by the assessee towards

overdue interest which was claimed as deduction u/s.37(1). When this position was confronted to the Id. AR, he submitted that the assessee credited full amount of interest, including interest on NPA advances, to its Profit and loss account and thereafter created provision in respect of interest relating to NPA advances, the effect of which was that the amount of interest on NPA advances was not taken into consideration for the purposes of taxability. On a specific query to point out this fact of having disclosed interest income on gross basis for the purpose of taxation and then claimed deduction by way of provision of Rs.13.23 crore towards interest on NPA advances, included in the interest income, he could not point out such details. This fact could not be pointed out even from the assessment order or the impugned order. He, however maintained that such details could be provided.

5. Here, it is pertinent to mention that there is a massive departure from the stand taken by the assessee on this issue in this appeal *vis-à-vis* in appeal for the A.Y. 2012-13. It would be seen *infra* that for such later year, the AO added interest on NPA advances, which was not credited to the Profit and loss account and the addition got deleted by the Id. first appellate

authority on the ground that such interest cannot be charged to tax. The point to be noted is that for such a later year, the assessee did not credit interest on NPA advances to its Profit and loss account and accordingly did not offer it for taxation. On the contrary, the stand of the assessee for the instant year is that interest on NPA advances was credited to the Profit and loss account and provision was debited to the Profit and loss account for the amount of interest on NPA advances. Though, the position taken in a later year may not be determinative of the stand taken for the extant year, but, in any case, this fact needs to be properly verified.

6. Considering the totality of the facts and circumstances of the instant case, we are of the considered opinion that the ends of justice would meet adequately if the impugned order on this issue is set-aside and the matter is restored to the file of AO. We order accordingly and direct the AO to verify the assessee's contention in this regard. If it is found that the amount of interest on NPA advances was offered for taxation by the assessee by means of credit to its profit and loss account and thereafter deduction was claimed towards such interest on NPA advances for a sum of Rs.13.23 crore in

question, then the deduction should be allowed to this extent while ensuring that the amount of Rs.13.23 crore included in the income side of the interest account is duly taken into consideration for taxation. In the otherwise scenario, the AO will proceed as per law after ascertaining the correct nature of the transaction.

7. In the result, the appeal is allowed for statistical purposes.

A.Y. 2007-08 :

8. The only issue raised in this appeal is against the deletion of addition of Rs.65,59,247/- on account of provision made for NPA advances in terms of section 36(1)(viia) of the Act.

9. Both the sides are in agreement that the facts and circumstances of this ground are similar to those of the appeal for the A.Y. 2004-05. Following the view taken hereinabove, we set-aside the impugned order and remit the matter to the file of AO for deciding the issue in terms of our directions given in the appeal for the A.Y. 2004-05.

10. In the result, the appeal is allowed for statistical purposes.

A.Y. 2008-09 :

11. The only issue raised by the Revenue in its appeal through various grounds is against treating contingent liability of Rs.54,18,898/- as ascertained liability without granting an opportunity to the AO before considering fresh material in violation of Rule 46A of the Income-tax Rules, 1962.

12. Briefly stated, the facts of the case are that the AO observed that the assessee claimed deduction towards contingent liability debited under the head "Provision for NPA". Such amount of Rs.65,14,898/- was added by the AO in the absence of assessee furnishing any details. The assessee furnished certain details before the Id. first appellate authority, on the basis of which he held that disallowance of Rs.54,18,898/- towards Managerial charges was not a contingent but an ascertained liability. The Revenue is aggrieved by such deletion of addition.

13. We have heard both the sides and gone through the relevant material on record. It is observed that the assessee

claimed provision for overdue interest of Rs.3.26 crore and NPA provision of Rs.1.25 crore. The following amounts were included in the said provisions :

| Sr.No. | Particulars of provision | Amount |
|--------|--------------------------|---------|
| 1 | Managerial Charges | 5418898 |
| 2 | Building Advance | 31000 |
| 3 | Sundry Debtor | 577000 |
| 4 | Defalcation | 353000 |
| 5 | Demand Draft paid | 61000 |
| 6 | Advance paid | 74000 |
| | Total | 6514898 |

14. When called upon to substantiate the claim for deduction of the above referred six amounts included in the amount of provision, the assessee failed to furnish any details of these amounts which led to the making of addition of Rs.65,14,868/- by treating them as contingent liability. The assessee pressed only the addition of Rs.54,18,898/- out of the said total addition of Rs.65.14 lakh and did not challenge the other five amounts for which the AO made addition by treating them as contingent liabilities. The Id. CIT(A) deleted the addition of Rs.54,18,898/- by observing that “*from the details submitted before me*” him during the appeal, I find that the managerial charges are actual receivable of the appellant from the State Government as the appellant was entrusted with the work of

distribution of salary to High School teachers”. It is apparent from the categorical finding in the impugned order that the Id. CIT(A) deleted the addition by considering the details submitted before him. We have noticed from the assessment order that the assessee did not furnish any details in respect of six items before the AO. In our considered opinion, it is a clear case on violation of Rule 46A of Income-tax Rules, 1962. The Id. CIT(A), before acting on such additional evidence, ought to have sought comments of the AO which he failed to do. We, therefore, set-aside the impugned order and remit the matter to the file of AO for examining the amount of deduction allowed by the Id. CIT(A) to the tune of Rs.54,18,898/-. It is made clear that the assessee will be entitled to lead any fresh evidence before the AO as it desires expedient.

15. In the result, the appeal is allowed for statistical purposes.

A.Y. 2009-10 :

16. The first ground of the Revenue’s appeal is against the deletion of addition of Rs.1,13,72,902/- on account of provision for overdue interest.

17. Both the sides are in agreement that the facts and circumstances of this ground are similar to those of the appeal for the A.Y. 2004-05. Following the view taken hereinabove, we set-aside the impugned order and remit the matter to the file of AO for deciding the issue in terms of directions given for the A.Y. 2004-05.

18. The only other issue which survives in this appeal is against the deletion of addition of Rs.17,59,38,118/- on account of bad debts written off by entertaining fresh evidence without giving any opportunity to the AO.

19. The facts concerning this issue are that the assessee claimed deduction u/s.36(1)(viii) at Rs.11,28,99,295/- on account of bad debts written off and Rs.9,11,34,070/- on account of overdue interest written off totaling to Rs.20,40,33,365/-. On verification of the record, the AO observed that the debt was written off by passing a resolution in the special general meeting of the shareholders of the bank on 20-06-2009, i.e. after the close of the relevant financial year. The AO held that deduction on account of bad debts could be claimed only on debiting the amount to the Profit and

loss account and not otherwise. Since the said amount was not debited to the Profit and loss account, the AO made addition of Rs.20.40 crore. The ld. CIT(A) entertained fresh material from the assessee and deleted the addition by effectively restricting it to Rs.2,80,95,247/-. There is no cross appeal filed by the assessee and the Revenue is aggrieved by the reduction in the addition effected by the ld. CIT(A) to the tune of Rs.17,59,38,118/-.

20. Having heard both the sides, it is observed that the ld. CIT(A) deleted the addition on the basis of a chart submitted by the assessee as reproduced on page 9 of the impugned order. Admittedly, this chart was not filed before the AO. In fact, the assessee failed to furnish such details before the AO. Since the ld. CIT(A) did not seek comments of the AO and acted on a chart filed by the assessee before him for the first time, we are of the considered opinion that the ends of justice would be adequately met if the impugned order is set-aside and the matter is restored to the file of AO. We order accordingly direct him to decide this issue afresh as per law after providing reasonable opportunity of hearing to the

assessee. The assessee will be at liberty to lead any fresh evidence which it wants to place before the AO in this regard.

21. In the result, the appeal is allowed for statistical purposes.

A.Y. 2011-12 :

22. The Revenue is aggrieved by the deletion of addition of Rs.47,15,176/- effected by the Id. CIT(A) by admitting fresh evidence without giving any opportunity to the AO in violation of Rule 46A .

23. The factual matrix, as discussed on page 3 of the assessment order, is that as per the tax audit report of the assessee, a sum of Rs.157.55 lakh was shown under the head “Any amounts of profits chargeable to tax u/s.41 and computation thereof” under item 20. The AO observed that as against the mention of Rs.157.55 lakh in the tax audit report, only a sum of Rs.1,10,03,824/- was shown as income by the assessee in its Profit and loss account on this count. He, therefore, made an addition for the differential amount of Rs.47,51,176/-. The Id. CIT(A) deleted the addition on the

basis of details filed by the assessee before him for the first time. The Revenue is aggrieved by such deletion of addition.

24. After considering the rival submissions and perusing the relevant material on record, it is observed that there is definitely a difference in the amount of income credited to the Profit and loss account towards write off of loan recovery amounting to Rs.1.10 crore and the amount mentioned by the auditor in the tax audit report to the tune of Rs.157.55 lakh. The assessee did not furnish any reconciliation before the AO. It was only on the basis of “details filed” before the Id. CIT(A) that he chose to delete the addition without confronting the AO or seeking his comments. Under the given circumstances, we are of the considered opinion that the impugned order cannot be sustained as it is in violation of Rule 46A. We, therefore, set-aside the impugned order to this extent and remit the matter to the file of AO for deciding the issue afresh after affording reasonable opportunity of hearing to the assessee.

25. In the result, the appeal is allowed for statistical purposes.

A.Y. 2012-13 :

26. Ground No.1 is against the deletion of addition of Rs.2,83,48,770/- on account of provision for overdue interest.

27. Both the sides agree that the facts and circumstances of this ground are similar to those of the A.Y. 2004-05. Following the view taken hereinabove, we set-aside the impugned order and remit the matter to the file of AO for deciding the issue in terms of directions given by us in the appeal order for the A.Y. 2004-05.

28. The only other ground is against the deletion of addition of Rs.4,78,86,885/- on account of Park interest - interest accrued on NPA.

29. The assessee had shown Park interest receivable amounting to Rs.16,06,79,270/- on both the assets and liabilities sides of its balance sheet. During the course of verification, the AO observed that the amount of interest on NPA during the year at Rs.4,78,86,885/- was not credited to the Profit and loss account on accrual basis. He, therefore, made an addition of this sum which came to be deleted in the first appeal.

30. Having heard both the sides and gone through the relevant material on record, it is noticed that the assessee did not offer a sum of Rs.4.78 crore for taxation, being, interest on NPA advances. The Hon'ble Bombay High Court in *Deogiri Nagari Sahakari Bank Limited (supra)* has categorically held that interest accrued on sticky loans cannot be charged to tax. Since the amount of interest due on NPA to the tune of Rs.4.78 crore was charged to tax by the AO without there being any corresponding receipt of such amount, we hold that the ld. CIT(A) was justified in deleting this addition.

31. In the result, the appeal is partly allowed for statistical purposes.

A.Y. 2013-14 :

32. The only issue raised in this appeal is against the deletion of addition of Rs.25,47,17,145/- on account of bad debts written off.

33. The facts of this ground are that the assessee claimed deduction of Rs.50,47,56,484/- in the computation of total income on account of bad debts written off out of reserves. On verification, it transpired that credit balance in the

provision for bad and doubtful debts was to the tune of Rs.26,31,08,917/-. Considering the mandate of proviso to section 36(1)(vii), the AO held that the deduction should have been allowed after exhausting the amount of provision. He, therefore, restricted the deduction to the extent of the amount claimed as deduction in excess of the existing provision of bad and doubtful debts. This resulted into an addition of Rs.26.31 crore. The Id. CIT(A) deleted the addition on the basis of a chart, captured on page 7 of the impugned order, furnished by the assessee before him for the first time.

34. Having heard both the sides and gone through the relevant material on record, it is observed that the ground taken by the Revenue for violation of Rule 46A is sustainable in as much as the Id. CIT(A) deleted the addition after entertaining a fresh chart from the assessee, which was not available before the AO in the same form or any in its details. We, therefore, set-aside the impugned order and remit the matter to the file of AO with a direction to decide this issue in accordance with law after providing reasonable opportunity of hearing to the assessee. It is made clear that the assessee will

be entitled to lead any fresh evidence before the AO as it desires expedient.

35. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 14th February, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 14th February, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-2, Kolhapur
4. The CIT-2, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR
'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

| | | Date | |
|-----|--|------------|-------|
| 1. | Draft dictated on | 13-02-2019 | Sr.PS |
| 2. | Draft placed before author | 14-02-2019 | Sr.PS |
| 3. | Draft proposed & placed before the second member | | JM |
| 4. | Draft discussed/approved by Second Member. | | JM |
| 5. | Approved Draft comes to the Sr.PS/PS | | Sr.PS |
| 6. | Kept for pronouncement on | | Sr.PS |
| 7. | Date of uploading order | | Sr.PS |
| 8. | File sent to the Bench Clerk | | Sr.PS |
| 9. | Date on which file goes to the Head Clerk | | |
| 10. | Date on which file goes to the A.R. | | |
| 11. | Date of dispatch of Order. | | |

*