

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT
MEMBER**

and

SHRI KULDIP SINGH, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCE)

**ITA No.4069/Del./2018
(ASSESSMENT YEAR : 2013-14)**

**ITA No.4070/Del./2018
(ASSESSMENT YEAR : 2014-15)**

M/s. Gurgaon Gramin Bank, (Now, Sarva Haryana Gramin Bank), H.O. Near Bajrang Bhawan, Delhi Road, Rohtak. (PAN : AAAAG5681L)	vs.	ACIT, Rohtak Circle, Rohtak.
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**ITA No.4071/Del./2018
(ASSESSMENT YEAR : 2014-15)**

**ITA No.4072/Del./2018
(ASSESSMENT YEAR : 2013-14)**

M/s. Haryana Gramin Bank, (Now, Sarva Haryana Gramin Bank), H.O. Near Bajrang Bhawan, Delhi Road, Rohtak. (PAN : AAALH0138G) (APPELLANT)	vs.	ACIT, Rohtak Circle, Rohtak. (RESPONDENT)
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ASSESSEE BY : Shri Vivek Gupta, CA
REVENUE BY : Shri Mahesh Thakur, Senior DR

**Date of Hearing : 27.07.2021
Date of Order : 30.07.2021**

ORDER

PER BENCH :

Since common questions of facts and law have been raised in the inter-connected appeals, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, Gurgaon Gramin Bank (now Sarva Haryana Gramin Bank) (hereinafter referred to as 'the assessee') by filing the present appeals bearing ITA Nos.4069 & 4070/Del/2018 sought to set aside the impugned order dated 02.04.2018 passed by the Commissioner of Income-tax (Appeals), Rohtak qua the assessment years 2013-14 & 2014-15 respectively on the grounds inter alia that :-

"ITA NO.4069/DEL/2018

1. That on the facts and circumstances of the case and provisions of the law, the order u/s 143(3) dated 27/12/2016 of the Ld AO and confirmed by the Ld. CIT(A), being passed in the name of the non-existence assessee, is void ab initio and therefore the same needs to be quashed.

2. That without prejudice to ground no 1 above and on the facts and circumstances of the case and provisions of the law, the Ld. AO as well as Ld.CIT(A) erred in making/confirming the disallowance (Rs.1,14,07,412/- & Rs.1,23,23,294/-) u/s 14A read with Rule 8D of IT Act against the exempted income of dividend & tax free income of Rs.1,57,85,000/-.

ITA NO.4070/DEL/2018

1. That on the facts and circumstances of the case and provisions of the law, the order u/s 143(3) dated 27/12/2016 of the Ld AO and confirmed by the Ld. CIT(A), being passed in the name of the non-existence assessee, is void ab initio and therefore the same needs to be quashed.

2. (a) That without prejudice to ground no 1 above and on the facts and circumstances of the case and provisions of the law, the Ld. AO as well as Ld.CIT(A) erred in making/confirming the disallowance of Rs.1,23,23,294/- u/s 14A read with Rule 8D of IT Act against the exempted income of dividend & tax free income of Rs.1,05,05,444/-.

(b) That without prejudice to ground no.2(1), above, the Ld. AO as well as Ld. CIT (A) is not justified in making/confirming the disallowance u/s 14A read with Rule 8D of IT Act in excess of the exempted income of dividend & tax free income which is only of Rs.1,05,05,444/-.

3. That on the facts and circumstances of the case and provisions of the law, the Ld. AO as well as Ld. CIT (A) erred in not allowing the deduction u/s 36(1)(viiia) to the extent of Rs.22,00,000/- by not fully accepting the provision for bad & doubtful debts made by the bank for the purpose of deduction u/s 36(1)(viiia) of IT Act, 1961.”

3. Appellant, Haryana Gramin Bank (now Sarva Haryana Gramin Bank) (hereinafter referred to as ‘the assessee’) by filing the present appeals bearing ITA Nos.4071 & 4072/Del/2018 sought to set aside the impugned order dated 28.03.2018 passed by the Commissioner of Income-tax (Appeals), Rohtak qua the assessment years 2014-15 & 2013-14 respectively on the identical grounds, except the difference of additions/disallowances, inter alia that :-

“ITA NO.4070/DEL/2018

1. That on the facts and circumstances of the case and provisions of the law, the order u/s 143(3) dated 26/12/2016 of the Ld AO and confirmed by the Ld. CIT(A), being passed in the name of the non-existence assessee, is void ab initio and therefore the same needs to be quashed.

2. That on the facts and circumstances of the case and provisions of the law, the Ld. AO as well as Ld. CIT (A) erred

in not allowing the deduction u/s 36(1)(vii) to the extent (Rs.7,89,000/- & Rs.46,01,000/- in AY 2013-14 & 2014-15) by not fully accepting the provision for bad & doubtful debts made by the bank for the purpose of deduction u/s 36(1)(vii) of IT Act, 1961.

3. That without prejudice to ground no 1 above and on the facts and circumstances of the case and provisions of the law, the Ld. AO as well as Ld.CIT(A) erred in making/confirming the disallowance (Rs.1,44,32,212 & Rs.1,09,98,527/- in AY 2013-14 & 2014-15) in respect of amortization of premium paid at the time of purchase of securities over the remaining period of securities.”

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee is into the business of banking established under the Regional Rural Bank Act, 1976. Assessee's banks, namely, Gurgaon Gramin Bank and Haryana Gramin Bank who have filed appeals bearing ITA Nos.4069 & 4670/Del/2018 and ITA Nos.4071 & 4072/Del/2018, have been merged with Sarva Haryana Gramin Bank w.e.f. 29.11.2013 as per Government of India Notification by way of amalgamation of erstwhile Gurgaon Gramin Bank HO at Gurgaon (sponsored by Syndicate Bank) and erstwhile Haryana Gramin Bank HO at Rohtak (sponsored by PNB) with 50% shares of Government of India, 35% shares of Sarva Haryana Gramin Bank & 15% shares of the Haryana Government respectively.

5. During the year under consideration, Assessing Officer (AO) while assessing the income of the assessee bank, Haryana Gramin Bank, under the head “business or profession” made

disallowance of Rs.7,89,000/- & Rs.46,01,000/- and Rs.1,44,33,212/- Rs.1,09,98,527 on account of claim of deduction representing 'provisions for standard assets' and amortization of premium over the securities claimed by the assessee under the head "Held to Maturity (HTM)" respectively and thereby assessed the total income of assessee bank at Rs.95,64,09,620/- & Rs.93,87,15,890/- for AYs 2013-14 & 2014-15 in ITA Nos.4072 & 4071/Del/2018 respectively.

5.1 Likewise, in the case of Gurgaon Gramin Bank, during the year under consideration, Assessing Officer (AO) made the disallowances of Rs.1,14,07,412/- & Rs.1,23,23,294/- on account of disallowance made u/s 14A read with Rule 8D and Rs.22,00,000/- on account of claim of deduction representing 'provisions for standard assets' respectively and thereby assessed the total income of assessee bank at Rs.1,26,66,80,400/- & Rs.95,50,68,050/- for AYs 2013-14 & 2014-15 in ITA Nos.4069 & 4070/Del/2018 respectively.

6. The assessee carried the matter before the Id. CIT (A) by way of filing the appeals who has partly allowed the same. Feeling aggrieved with the impugned orders passed by Id. CIT (A)s, the assessee has come up before the Tribunal by way of filing the present appeals.

7. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the Revenue authorities below in the light of the facts and circumstances of the case.

8. Ld. AR for the assessee by raising ground no.1 has sought to quash the assessment proceedings on the ground that the assessments in the aforesaid cases have been framed by the AO on a non-existent entity and brought on record a Gazette Notification No.2686 dated 29.11.2013 of Government of India vide which erstwhile Gurgaon Gramin Bank and Haryana Gramin Bank have been amalgamated with M/s. Sarva Haryana Gramin Bank w.e.f. 29.11.2013. Ld. AR for the assessee also brought on record copy of letter dated 05.12.2016, available at pages 7 to 10 of the paper book, whereby AO has been duly intimated regarding amalgamation of erstwhile Gurgaon Gramin Bank and Haryana Gramin Bank with M/s. Sarva Haryana Gramin Bank during the course of assessment. Ld. AR for the assessee contended that assessments for AYs 2013-14 & 2014-15 framed in the name of non-existent entity i.e. Haryana Gramin Bank and Gurgaon Gramin Bank dated 26.12.2016 & 27.12.2016 respectively are nullity and as such liable to be quashed. Ld. AR for the assessee also relied upon section 170(2) of the Act and also relied upon the decision

rendered by **Hon'ble Supreme Court in the case of CIT vs. Maruti Suzuki India Ltd. (2019) 107 taxmann.com 375 (SC).**

On the other hand, ld. DR for the Revenue relied upon the order passed by the AO as well as ld. CIT (A).

9. Undisputedly, assessment orders in cases of Haryana Gramin Bank & Gurgaon Gramin Bank for AYs 2013-14 & 2014-15 were framed on 26.12.2016 & 27.12.2016 respectively. It is also not in dispute that factum of amalgamation of the assessee banks with M/s. Sarva Haryana Gramin Bank have been duly brought to the notice of AO by the assessee by writing a letter dated 05.12.2016, which is available at pages 7 to 10 of the paper book.

10. Section 170(2) of the Act is very categoric as to how the assessment is to be made when predecessor cannot be found. In such cases, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.

11. When we examine aforesaid undisputed facts and provisions contained u/s 170(2) of the Act in the light of the fact that

assessments in this case have been framed on 26.12.2016 & 27.12.2016 whereas the assessee ceased to be in existence w.e.f. 29.11.2013 on account of amalgamation with M/s. Sarva Haryana Gramin Bank vide Gazette Notification (supra) and as such, assessment framed in this case is not sustainable having been framed in the name of non-existent entity, rather the AO was required to frame the assessment in the name of amalgamated or merged entity.

12. Hon'ble Supreme Court in case of CIT vs. Maruti Suzuki India Ltd. (supra) decided the identical issue by returning following findings :-

“15. The final assessment order was passed on 31 October 2016 in the name of SPIL (amalgamated with MSIL) making an addition of Rs. 78.97 crores to the total income of the assessee. While preferring an appeal before the Tribunal, the assessee raised the objection that the assessment proceedings were continued in the name of the non-existent or merged entity SPIL and that the final assessment order which was also issued in the name of a non-existent entity, would be invalid.

16. By its decision dated 6 April 2017, the Tribunal set aside the final assessment order on the ground that it was void ab initio, having been passed in the name of a non-existent entity by the assessing officer. The decision of the Tribunal was affirmed in an appeal under [Section 260A](#) by the Delhi High Court on 9 January 2018 following 9 “DRP” its earlier decision in the case of the assessee for AY 2011-12. That has given rise to the present appeal.

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33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of

amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfortainment on 2 November 2017. The decision in Spice Enfortainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfortainment.

34. *We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.”*

13. Moreover, the scheme of amalgamation itself takes care of all the consequences of the erstwhile entity. Identical issue has been decided in favour of assessee by the **coordinate Bench of the Tribunal in assessee’s own case in ITA No.1073/Del/2016 for AY 2012-13 vide order dated 28.08.2020.**

14. In view of what has been discussed above and following **Maruti Suzuki India Ltd. case** (supra) of Hon’ble Supreme Court, we are of the considered view that AO as well as Id. CIT (A) have erred in framing / confirming the assessments in the name

of non-existent entities, namely, Haryana Gramin Bank and Gurgaon Gramin Bank which are not sustainable in the eyes of law being nullity, hence ordered to be quashed. Consequently, all the appeals filed by the assessee are allowed.

Order pronounced in open court on this 30th day of July, 2021.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 30th day of July, 2021
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT (A), Rohtak.
- 4.CIT
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**