

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.788/Bang/2014
Assessment Year :2009-10

ITO, Ward – 3(1), Bengaluru.	Vs.	M/s. Karnataka State Industrial Co-operative Bank Ltd., No.11, Bull Temple Road, Basavanagudi, Bengaluru – 560 004. PAN : AAAAT 3503 G
APPELLANT		RESPONDENT

Assessee by	:	Smt. Pratibha, Advocate
Revenue by	:	Shri. Sumeer Kumar Singh, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	28.12.2021
Date of Pronouncement	:	03.01.2022

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal filed by the Revenue against the order dated 07.02.2014 of CIT(A)-II, Bengaluru, relating to Assessment Year 2009-10. This appeal was dismissed by this Tribunal by order dated 14.01.2016 on the ground that the tax effect involved in the appeal was less than Rs.10 lakhs and by following the CBDT Circular No.21/2015 laying down the monetary limit for filing the appeals by the Department. The Revenue filed appeal before Hon’ble High Court in ITA No.502/2016 and the Hon’ble High Court in order dated 27.01.2021 held that the tax effect in the appeal of the Department was more than Rs.10 lakhs and therefore the Tribunal should decide the appeal of the Revenue on merits.

2. The grounds of appeal raised by the Revenue in the appeal reads as follows:

- 1) *The order of the Ld. CIT(A) is clearly opposed to law as far as the findings are perverse, contrary to the facts and circumstances of the case and hence not sustainable.*
- 2) *The CIT(A) erred in deleting the disallowances of provision for wage revision of Rs.9,84,29,827/- and provision for audit fees of Rs.15,37,261/- by not considering the fact that these claims were made by the assessee in a revised computation of loss submitted during assessment proceedings but not through a revised return. Hon'ble Supreme Court held in the case of Goetze(India) Ltd.(No. 1761 of 2006) dtd. 24.03.2006(Taxman-Vo1.157 (2006) that any such claims of deductions made other than by filing the revised returns are not allowable. The CIT(A) has erred in not applying this judgment while granting relief.*
- 3) *The CIT(A) failed to appreciate that the order of the Hon'ble High Court of Karnataka consequent to which wage revision provision was stated to have been made was received on 09.01.2009 i.e. before the end of the relevant previous year and in such circumstances the assessee sought to have file I the return after debiting this provision. Since this provision was neither debited nor the amount disbursed at the time of filing the return, it has to be inferred that the liability has not arisen in the relevant previous year and therefore it should not be allowed.*

3. The assessee is a co-operative society carrying on the business of banking. For Assessment Year 2009-10, the assessee filed the return of income declaring a loss of Rs.8,69,495/-. In the assessment proceedings under section 143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act'), the assessee filed revise computation of total income declaring a loss of Rs.10,47,17,49/-. The revised computation of total income was filed because of the revision of computation of loss as per P & L A/c. The same is as follows:

Reconciliation of loss as per original return and the revised return

	Original	Revised
Loss as per P & L A/c	-41795790	- 157738148
Add : Disallowances :		
FBT	413484	413848
Loss on NPA	4386411	16446805
Depreciation	1283904	1283904
Expenditure provision	36160000	36160000
	<hr/>	<hr/>
Total	448009	-103433591
Less : Allowable		
Deduction U/s36(i)(vii)	33600	
Depreciation	1283904	1283904
	<hr/>	<hr/>
	- 869495	-104717495
Loss as per Original return Filed		- 41795790
Loss as per Revised return		<u>-157738148</u>
Difference increase in Loss		<u>-115942358</u>

4. The increase in loss was due to the following expenses which were claimed in the revised P & L A/c.

1. Wage revision due to court order including DA, HRA, Leave encashment & Gratuity	Rs. 98429827/-
2. Audit fees	Rs. 1537261/-
3. NPA additional	Rs. 12060394/-
4. Loss on theft on Gold jewelry	Rs. 3914875/-
Total	<hr/> <u>Rs. 115942357/-</u>

5. It is not in dispute that he AO took up for consideration the revised computation of loss of Rs.10,47,17,495/- as a starting point of computation of total income. The AO accepted the claim of the assessee in so far as items 3 and 4 of expenses debited to the P & L A/c referred to above. He did not allow

the claim for deduction on account of wage revision due to court order and audit fees. The reason assigned by the AO for not accepting the claim of the AO for the aforesaid 2 items are that these expenses are only contingent in nature and were not paid during the relevant previous year.

6. Before CIT(A), the assessee pointed out that the Hon'ble Karnataka High Court in the judgment dated 09.01.2009 in writ petition No.9182/2006 held that the assessee employees should be paid increase in DA on par with Government of Karnataka employees. Hence, the aforesaid order of the Hon'ble Karnataka High Court crystallizes the liability of the assessee for payment of revised wages a sum of Rs.9,84,29,827/- which was the arrears of DA payable to the assessee's employees claimed as a deduction in the P & L A/c. It is not in dispute that the details of computation of DA arrears payable as above has been furnished by he assessee and the details are at pages 44 to 59 of the assessee's Paper Book.

7. The assessee relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Bharat Heavy Electricals Ltd., 352 ITR 88 (Delhi) in which the Hon'ble Delhi High Court took the view that even where a probable liability on account of revision of rates pending settlement with the employees can be claimed as a deduction provided the estimation is fair. Even in respect of provision for audit fees, the assessee explained that the same is cost of internal audit payable upto 31.03.2009 for which payment was made in April 2009. The CIT(A) accepted the submission as made above by the assessee and held that the liability cannot be considered to be contingent and consequently the claim made by the assessee was allowed. Aggrieved by the order of CIT(A), the Revenue has preferred present appeal before the Tribunal. We have heard the rival submissions. The learned DR reiterated the stand of the Revenue as contained in the ground of appeal filed before the Tribunal. Learned Counsel for the assessee relied on the order of the CIT(A).

8. We have carefully considered the rival submissions. In so far as ground No.2 raised by the Revenue is concerned, we find that the AO in the Assessment Order has considered the revised computation of loss of Rs.10,47,17,495/- and has not insisted on the revised return of income being filed in this regard. It is therefore not the case of the AO that the claim is inadmissible owing to the assessee not having filed the revised return of income under section 139(5) of the Act. Ground No.2 is therefore misconceived and deserves to be dismissed. In so far as ground 3 raised by the Revenue is concerned, the grievance of the Revenue appears to be that the relevant entry should have been made in the books of accounts of the assessee because the order of the Hon'ble Karnataka High Court was available to the assessee as early as 09.01.2009. It was only during the finalization of the accounts of the assessee by T. G. Channabasavaraju, Chartered Accountant, they raised the issue of not making provision for wage revision and audit fees. Thereafter, the assessee had a discussion with the executive committee members and the officers in the meeting held on 07.09.2009 and it was only thereafter that the liability on account of wage revision and audit fees were quantified and the claim made in the revised computation of total income. These reasons assigned by the assessee before the AO have not been found to be false. Besides the above, the law is well settled that entries in the books of accounts are not determinative of the assessee's right to claim a legitimate deduction. In our view, the liability of the assessee had crystalized and therefore the sum in question is allowable as deduction in computing the total income of the assessee for Assessment Year 2009-10. We, however, direct the AO to verify if the assessee has claimed the same amount in any subsequent Assessment Years and take remedial action in case the same has been claimed in subsequent Assessment Years to ensure that there is no double deduction claimed by the assessee. With these observations, we dismiss the appeal of the Revenue.

9. In the result, appeal of the Revenue is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated:03.01.2022.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.